UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K
CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): June 7, 2019

Neiman Marcus Group LTD LLC
(Exact Name of Registrant as Specified in Charter)

Delaware (State or Other Jurisdiction of Incorporation)
333-133184-12 (Commission File Number)

20-3509435 (I.R.S. Employer Identification No.)

One Marcus Square
1618 Main Street
Dallas, Texas 75201
(Address of Principal Executive Offices and Zip Code)

Registrant’s Telephone Number, Including Area Code: (214) 743-7600

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<table>
<thead>
<tr>
<th>Title of each class</th>
<th>Trading Symbol(s)</th>
<th>Name of each exchange on which registered</th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
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</table>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o
Item 1.01. Entry Into a Material Definitive Agreement.

On June 7, 2019 (the “Settlement Date”), Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Company”) completed a comprehensive set of previously announced transactions (collectively, the “Recapitalization Transactions”) to among other things, extend the maturities of the Company’s existing debt obligations by three years. On June 10, 2019, the Company issued a press release announcing the completion of the Recapitalization Transactions which is attached hereto as Exhibit 99.1 and is incorporated herein by reference. The material terms of the Recapitalization Transactions are summarized herein.

Amendment to Senior Secured Term Loan Facility

On the Settlement Date, the Company amended the credit agreement governing its existing senior secured term loan facility (as amended, the “Amended Term Loan Facility”) pursuant to that certain Extension Amendment and Amendment No. 2 to Credit Agreement (the “Extension Amendment”), by and among, inter alios, the Company, Mariposa Intermediate Holdings LLC, a Delaware limited liability company and the direct parent of the Company (“Holdings”), The Neiman Marcus Group LLC, a Delaware limited liability company and direct, wholly-owned subsidiary of the Company (“TNMG LLC”) and The NMG Subsidiary LLC, a newly formed Delaware limited liability company and direct, wholly-owned subsidiary of TNMG LLC (the “NMG Subsidiary”), as co-borrowers, the lenders from time to time party thereto and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent (in such Capacities, the “Term Loan Agent”), to convert the existing term loans outstanding thereunder (the “Existing Term Loans”) into extended term loans with an extended maturity date of October 25, 2023 (the “Extended Term Loans”). In connection with the Extension Amendment and Amended Term Loan Facility, approximately $2,775.4 million aggregate principal amount of Existing Term Loans were converted into Extended Term Loans by consenting term lenders, representing approximately 99.5% of the total outstanding principal amount of Existing Term Loans. After giving effect to the partial paydown described below, approximately $2,248.5 million of Extended Term Loans and approximately $12.7 million of Existing Term Loans remain outstanding under the Amended Term Loan Facility. Upon consummation of the amendment, an upfront fee of (i) 125 bps (calculated on a post-paydown basis) was paid to the initial consenting term lenders who executed the previously announced Transaction Support Agreement by March 25, 2019 and (ii) 25 bps (calculated on a post-paydown basis) was paid to consenting term lenders who executed the Transaction Support Agreement or a joinder thereto by April 6, 2019. In connection with the Extension Amendment, the Company paid such fees to the consenting term lenders of approximately $21.1 million.

The Extended Term Loans accrue interest at the option of each consenting term lender of either (a) LIBOR plus 6.00% per annum (subject to a 1.50% per annum floor) or ABR plus 5.00% per annum (subject to a 2.50% per annum floor), in each case payable in cash, or (b) LIBOR plus 5.50% per annum (subject to a 1.50% per annum floor) or ABR plus 4.50% per annum (subject to a 2.50% per annum floor), in each case payable in cash, plus 1.00% per annum paid-in-kind, subject to the terms of the Amended Term Loan Facility. The Amended Term Loan Facility also provides for increased amortization payments for Extended Term Loans at 1.50% per annum payable in equal quarterly installments of 0.375% per annum, less certain mandatory and voluntary prepayments, with the remaining balance due at maturity.

In addition, (i) TNMG LLC and the NMG Subsidiary were added as co-borrowers under the Amended Term Loan Facility (ii) the Extended Term Loans are guaranteed by Holdings and all of the co-borrowers’ current and future domestic subsidiaries and future foreign subsidiaries, (iii) the Extended Term Loans are secured by an enhanced collateral package (as described below), (iv) Holdings, the Company and its subsidiaries are subject to substantially the same covenants as they were under the existing senior secured term loan facility but with additional restrictions, and (v) the Extended Term Loans are non-callable during the first year following the Settlement Date subject to a customary make-whole premium (using a discount rate set at the treasury rate plus 0.5% per annum). On or after the first anniversary of the Settlement Date, the Company may prepay the Extended Term Loans, in whole or in part, at any time, subject to an annual prepayment premium equal to (a) 2.0% of the principal amount prepaid if made before the second anniversary of the Settlement Date and (b) 1.0% of the principal amount prepaid if made after the second anniversary of the Settlement Date but before the third anniversary of the Settlement Date. Thereafter, no prepayment premium is applicable. The key terms of the Existing Term Loans held by lenders that do not participate in the conversion of such Existing Term Loans into Extended Term Loans pursuant to the Term Loan Facility Amendment remain unchanged.

As more fully described in the Amended and Restated Term Loan Guarantee and Collateral Agreement, by and among Holdings, the Company, the guarantors and guarantors party thereto and the Agent, the obligations with respect to the Extended Term Loans under the Amended Term Loan Facility and the guarantees of those obligations (other than the guarantees provided by Extended Term Loan PropCo (as defined below) and Notes PropCo) are secured by the following additional collateral: (i) a first priority security interest in certain future foreign assets, intercompany debt and certain additional equity interests of new subsidiary guarantors, subject to clause (iv) below, (ii) a first priority security interest in, and mortgages on, substantially all of the Company’s, the co-borrowers’ and any subsidiary guarantors’ owned real estate interests and the real estate leasehold
interests and other real property interests related to full-line Neiman Marcus or Bergdorf Goodman stores or warehouses or distribution centers other than the Notes Priority Real Estate Collateral (as defined below) (the "New Term Priority Real Estate Collateral"), (iii) a first-priority security interest in the equity interests of NMG Term Loan PropCo LLC, a new special purpose entity that is a subsidiary of the Company ("Extended Term Loan PropCo") formed solely to hold certain real estate leases constituting New Term Priority Real Estate Collateral that cannot be mortgaged directly to secure the Amended Term Loan Facility (the collateral described in the foregoing subclauses (i) through (iii), collectively, the "New Term Priority Assets"), and (iv) a third-priority security interest in the Notes Priority Real Estate Collateral and the equity interests in Notes PropCo (as defined below), subject to the "call right" described below.

Immediately following certain amendments contemplated by the Extension Amendment and the Amended Term Loan Facility and the conversion of Existing Term Loans into Extended Term Loans, $526.9 million aggregate principal amount of the Extended Term Loans were prepaid, on a pro rata basis, in cash at par, subject to adjustment pursuant to the terms of the Amended Term Loan Facility, with the net cash proceeds from the issuance of the New Second Lien Notes (as defined below), cash on hand, and other sources of liquidity.

The foregoing summary is not intended to be a complete description and is qualified in its entirety by reference to the full text of the Extension Amendment and the Amended and Restated Term Loan Guarantee and Collateral Agreement, which are attached hereto as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

**Amended Asset-Based Revolving Credit Facility.**

On June 7, 2019, the Company entered into an amendment to the credit agreement governing the Company’s asset-based revolving credit facility, by and among the Company, Holdings and the NMG Subsidiary, as co-borrowers together with other co-borrowers party thereto, the guarantors party thereto, the lenders from time to time party thereto and Deutsche Bank AG New York Branch, as Administrative Agent and Collateral Agent (the "ABL Agent"), and the other parties party thereto from time to time (as amended, the "Amended Asset-Based Revolving Credit Facility"), which expanded the collateral package securing the Company’s and the other guarantors’ obligations thereunder to include (i) a fourth-priority security interest on the New Term Priority Assets granted in favor of the Extended Term Loans under the Amended Term Loan Facility, (ii) a fifth-priority unsecured guarantee by Extended Term Loan PropCo and, subject to the "call right" (described below), a fourth priority unsecured guarantee by Notes PropCo and (iii) subject to the "call right", a fourth priority security interest on the Notes Priority Real Estate Collateral and the equity interests in Notes PropCo. The amendment to the Asset-Based Revolving Credit Facility also includes more restrictive negative covenants substantially consistent with the Amended Term Loan Facility and eliminates or tightens the Company’s and its subsidiaries’ ability to incur debt under certain covenants governing the incurrence of additional indebtedness.

The foregoing summary is not intended to be a complete description and is qualified in its entirety by reference to the full text of the Fourth Amendment to the Revolving Credit Agreement and the Amended and Restated ABL Guarantee and Collateral Agreement, which are attached hereto as Exhibits 10.3 and 10.4, respectively, and are incorporated herein by reference.

**Issuance and Offering of New Second Lien Notes.**

Concurrently with the consummation of the Extension Amendment and the settlement of the Exchange Offers (as defined below), the Company completed a private offering of New Second Lien Notes in an aggregate principal amount of $550.0 million. The New Second Lien Notes bear interest payable in cash at 8.000% per annum and interest payable in kind at 6.000% per annum and will mature on April 25, 2024. Contemporaneously with the execution of the Transaction Support Agreement, certain consenting holders of the Company’s Existing Notes (as defined below) and the Company’s Sponsors agreed to purchase up to $550.0 million of New Second Lien Notes as set forth in the backstop commitment letter. In consideration for execution of the backstop commitment letter, the Company made backstop commitment payments to such consenting noteholders equal to $27.5 million or 5.000% of the aggregate principal amount of commitments in respect of the New Second Lien Notes.

In connection with the issuance and offering of New Second Lien Notes, the Company entered into an Indenture (the “Second Lien Notes Indenture”), by and among the Company, Mariposa Borrower, Inc., a Delaware corporation and direct, wholly-owned subsidiary of the Company (“Mariposa Borrower”), TNMG LLC and the NMG Subsidiary, as co-issuers (collectively, the “Issuers”), the Guarantors (as defined below) and Ankura Trust Company, LLC, as trustee and collateral agent. The Second Lien Notes Indenture contains covenants that are substantially consistent with the covenants contained in the Existing Indentures (as defined below) but with additional restrictions.
The New Second Lien Notes are secured by collateral that includes (i) a second-priority security interest in the priority collateral under the senior secured term loan facility, (ii) a second-priority security interest in the New Term Priority Assets, (iii) a second-priority interest in certain previously unencumbered real estate interests related to certain full-line Neiman Marcus stores (the “Notes Priority Real Estate Collateral”) and the equity interests of a newly formed special purpose entity and subsidiary of the Company (“Notes PropCo”) formed to hold certain Notes Priority Real Estate Collateral that cannot be mortgaged directly to the collateral agent (subject to a cap on recovery equal to $200.0 million less any amounts recovered against those assets by holders of the New Third Lien Notes issued in connection with the Exchange Offers described herein), (iv) a third-priority security interest in the collateral that secures the Company’s Asset-Based Revolving Credit Facility, and (v) except in certain circumstances, a first-priority security interest in the assets of MYT Holding Co., an indirect wholly-owned subsidiary of Neiman Marcus Group, Inc. that indirectly holds NMG Germany GmbH, which holds and through its subsidiaries operates the MyTheresa business, in each case subject to permitted liens and other exceptions and limitations.

The New Second Lien Notes are fully and unconditionally guaranteed on a senior secured basis by each of the Company’s current and future domestic subsidiaries (other than the Co-Issuers, Notes PropCo and Extended Term Loan PropCo) and, subject to certain exceptions, each of the Company’s future foreign subsidiaries (collectively, the “Guarantors”), subject to the terms of the Collateral Agreement, dated as of June 7, 2019, by and among the Issuers, the Guarantors, and Ankura Trust Company, LLC, as the trustee and collateral agent (the “Second Lien Notes Collateral Agreement”). In addition, MYT Holding Co. will, together with each of its subsidiaries other than NMG Germany GmbH and its subsidiaries (the “MYT Guarantor Entities”), provide a limited guarantee on a senior secured basis up to $200.0 million (the “MYT Limited Guarantee”) pursuant to the Guarantee and Collateral Agreement, by and among MYT Parent Co., the grantors party thereto and Ankura Trust Company, LLC, as trustee and collateral Agent (the “MYT Guarantee and Collateral Agreement”).

The Issuers may redeem some or all of the New Second Lien Notes at any time prior to June 7, 2021 at a redemption price equal to 100% of their principal amount plus a make-whole premium, together with accrued and unpaid interest, if any, to, but excluding, the redemption date. The Issuers may redeem some or all of the New Second Lien Notes at any time on or after June 7, 2021 upon payment of a premium that declines ratably over time. If the Issuers experience certain change of control transactions, the Issuers must offer to purchase the New Second Lien Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase.

The New Second Lien Notes have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any state and may not be offered or sold in the United States absent registration or an exemption from the registration requirements of the Securities Act and applicable state securities laws.

The foregoing summary is not intended to be a complete description of, and is qualified in its entirety by reference to the full text of, the New Second Lien Notes Indenture, the New Second Lien Notes Collateral Agreement and the MYT Guarantee and Collateral Agreement, which are attached hereto as Exhibits 10.5, 10.6 and 99.2, respectively, and are incorporated herein by reference.

Exchange Offers and Consent Solicitations.

On June 7, 2019, simultaneously with the consummation of the Extension Amendment and the issuance of New Second Lien Notes, the Company announced the completion of the private exchange offers and related consent solicitations (the “Exchange Offers”) pursuant to which $879,320,000 principal amount of the Company’s existing unsecured 8.000% Senior Cash Pay Notes due 2021 (the “Cash Pay Notes”) and $599,163,048 principal amount of its existing unsecured 8.750%/9.500% Senior PIK Toggle Notes due 2021 (the “PIK Toggle Notes” and, together with the Existing Cash Pay Notes, the “Existing Notes”) were validly tendered and exchanged for aggregate consideration consisting of $730,534,000 principal amount of 8.000% of New Third Lien Notes due 2024 (the “New 8.000% Third Lien Notes”), $497,849,150 principal amount of 8.750% of New Third Lien Notes due 2024 (the “New 8.750% Third Lien Notes”) and 250,000,000 shares of Series A Preferred Stock of MYT Holding Co., par value $0.001 per share (the “Series A Preferred Stock”), with an initial liquidation preference of $1.00 per share. Holders of Existing Notes who executed the Transaction Support Agreement or a joinder thereto by April 6, 2019 received an upfront fee of 100 bps. In connection with the exchange, the Company paid consent fees to the Consenting Noteholders of approximately $14.2 million.

The New Third Lien Notes and MYT Series A Preferred Stock have not been and will not be registered under the Securities Act or the securities laws of any state and may not be offered or sold in the United States absent registration or an exemption from the registration requirements of the Securities Act and applicable state securities laws. This press release does not constitute an offer to sell or the solicitation of an offer to buy any securities of the Company, nor shall there be any sale of the Company’s securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

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Exhibit 10.9, respectively, and are incorporated herein by reference.

In connection with the issuance of the New Series A Preferred Stock, MYT Parent Co. and MYT Holding Co. entered into a letter agreement (the "MYT Parent Letter Agreement") that defines the rights of the holders of Series A Preferred Stock to participate in distributions on account of the equity of MYT Holding Co. or the proceeds from a sale of equity interests of MYT Holding Co. The MYT Parent Letter Agreement defines the rights of holders of Series A Preferred Stock to participate in distributions on account of the equity of MYT Holding Co. or the proceeds from a sale of equity interests of MYT Holding Co. on a senior basis other than the MYT Guarantor Entities.

In connection with the Exchange Offers, on June 4, 2019, MYT Holding Co. filed an Amended and Restated Certificate of Incorporation with the State of Delaware, effecting upon its acceptance, authorizing the issuance of Series A Preferred Stock. In addition, MYT Holding Co. filed with the State of Delaware a Certificate of Designation, setting the rights, powers, and obligations of the New Series A Preferred Stock (the "Series A Certificate of Designation"). The Series A Preferred Stock accrues dividends at a rate of 10.000% per annum and will mature on the tenth anniversary of the date the shares of Series A Preferred Stock are first issued to holders thereof. Under the terms of the MYT Series A Preferred Stock, NMG Germany GmbH and its subsidiaries that conduct the operations of MyTheresa (the "MYT Operating Entities") are subject to certain covenants covering (i) the payment of dividends, (ii) the incurrence of indebtedness and certain liens, (iii) the issuance of equity, and (iv) certain affiliate transactions and business activities, in each case subject to exceptions set forth in the certificate of designation. However, the MYT Operating Entities will not provide any direct guarantees or equity pledges in support of the New Third Lien Notes other than a pledge of the equity (but not the assets) of NMG Germany GmbH. The MYT Operating Entities remain outside of the Company’s credit structure and will continue to operate as a standalone business.

In connection with the Exchange Offers, on June 4, 2019, MYT Parent Co. and MYT Holding Co. entered into a letter agreement (the "MYT Parent Letter Agreement"), dated as of June 7, 2019, as an inducement to the holders of Series A Preferred Stock to enter into the Recapitalization Transactions relating to Company and its affiliates’ outstanding indebtedness and equity interests. The MYT Parent Letter Agreement defines the rights of holders of Series A Preferred Stock to participate in distributions on account of the equity of MYT Holding Co. or the proceeds from a sale of equity interests of the MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any independent third party.

The foregoing summary is not intended to be a complete description of, and is qualified in its entirety by reference to, the Amended and Restated Certificate of Incorporation, the Series A Certificate of Designation and the MYT Parent Letter Agreement, which are attached hereto as Exhibit 99.3, 99.4 and Exhibit 10.9, respectively, and are incorporated herein by reference.

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Amendment of the Indentures Governing the Existing Notes

In connection with the Exchange Offers, the Company solicited and received the requisite number of consents from holders of the Existing Notes to adopt certain proposed amendments to the indentures governing the Existing Notes (the "Existing Indentures") to (i) remove substantially all of the restrictive covenants contained therein and effect certain other changes, (ii) add TNMG LLC and the NMG Subsidiary as co-issuers of each series of Existing Notes so that any remaining Existing Notes not tendered in the applicable Exchange Offer are the joint and several primary obligations of each of the Issuers, (iii) include certain collective action and/or no-action provisions that preclude noteholder action with respect to any rights or remedies with respect to the Transaction Support Agreement and the Recapitalization Transactions, (iv) eliminate certain provisions that prohibit certain consolidations and mergers and (v) eliminate certain events of default and related provisions. Supplemental indentures effecting the amendments relating to the Existing Notes were executed on June 7, 2019 by the Issuers, the Guarantors, Drivetrain Trust Company LLC, as trustee. Following the settlement of the Exchange Offers, approximately $137.3 million aggregate principal amount of the Existing Notes remain outstanding and will be governed by the Existing Indentures, as amended by the supplemental indentures.

The foregoing summary is not intended to be a complete description of, and is qualified in its entirety by reference to, the Second Supplemental Indentures, which are attached hereto as Exhibit 10.10 and 10.11, respectively, and are incorporated herein by reference.

Amendment of the 2028 Debentures Indenture.

On June 7, 2019, concurrently with the consummation of the Recapitalization Transactions, TNMG LLC and the holders of a majority of the outstanding principal amount of the 2028 Debentures (the "Majority 2028 Debenture Holders"), together with the successor trustee thereto, executed a supplemental indenture (the "Third Supplemental Indenture") to the indenture governing the 2028 Debentures (the "2028 Debentures Indenture") to, among other things, amend the reporting covenant in the 2028 Debentures Indenture to substantially replicate the reporting requirements previously set forth in the indentures governing the Existing Notes. In addition, as a result of the amendment to the reporting covenant, the Company expects to cease filing periodic reports with the U.S. Securities and Exchange Commission.

Pursuant to the terms of the Third Supplemental Indenture, the 2028 Debentures (i) were secured by "equal and ratable" liens on certain owned real estate properties, real estate ground leases and real estate operating leases of TNMG LLC and its subsidiaries and on shares of capital stock and indebtedness of certain subsidiaries, in each case pari passu with the Extended Term Loans, subject to the terms of the Third Supplemental Indenture, and (ii) received a new second-priority unsecured guarantee from Extended Term Loan PropCo. The Third Supplemental Indenture contains covenants that are substantially consistent with the covenants contained in the 2028 Debentures Indenture but with additional restrictions.

The foregoing summary is not intended to be a complete description and is qualified in its entirety by reference to the full text of the Third Supplemental Indenture, which is attached hereto as Exhibit 10.13 and is incorporated herein by reference.

No Solicitation, No Registration

Neither this Report on Form 8-K nor the attached agreements constitute an offer to purchase or sell any securities or the solicitation of an offer to exchange any securities of the Company, nor will there be any purchase, sale or exchange of any securities in any state or other jurisdiction in which such offer, solicitation or sale or exchange would be unlawful prior to the registration or qualification of any such securities or offer under the securities laws of any such state or other jurisdiction. None of the New Third Lien Notes and the related guarantees, the New Second Lien Notes and related Guarantees or the New Series A Preferred Stock has been registered under the Securities Act, and may not be offered or sold in the United States absent registration or any applicable exemption from registration requirements.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

To the extent required by Item 2.03 of the Form 8-K, the disclosure set forth above under Item 1.01 above is incorporated by reference into this Item 2.03.
### Item 9.01. Financial Statements and Exhibits

(d) Exhibits:

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>10.1</td>
<td>Extension Amendment and Amendment No. 2 to Credit Agreement, dated as of June 7, 2019</td>
</tr>
<tr>
<td>10.2</td>
<td>Amended and Restated Term Loan Guarantee and Collateral Agreement, dated as of June 7, 2019</td>
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<tr>
<td>10.3</td>
<td>Fourth Amendment to the Revolving Credit Agreement, dated as of June 7, 2019</td>
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<td>10.4</td>
<td>Amended and Restated ABL Guarantee and Collateral Agreement, dated as of June 7, 2019</td>
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<tr>
<td>10.5</td>
<td>14.0% Second Lien Notes Indenture, dated as of June 7, 2019</td>
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<td>10.6</td>
<td>Second Lien Notes Collateral Agreement, dated as of June 7, 2019</td>
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<td>10.7</td>
<td>8.000% Third Lien Notes Indenture, dated as of June 7, 2019</td>
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<td>10.8</td>
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<td>10.9</td>
<td>Letter Agreement, dated as of June 7, 2019</td>
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<td>10.10</td>
<td>Third Lien Notes Collateral Agreement, dated as of June 7, 2019</td>
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<td>10.11</td>
<td>Second Supplemental Indenture, dated as of June 6, 2019</td>
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<td>10.12</td>
<td>Second Supplemental Indenture, dated as of June 6, 2019</td>
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<td>10.13</td>
<td>2028 Senior Debentures Third Supplemental Indenture, dated as of June 7, 2019</td>
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<td>99.1</td>
<td>Press Release, dated as of June 10, 2019</td>
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<tr>
<td>99.2</td>
<td>Guarantee and Collateral Agreement, dated as of June 7, 2019</td>
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<tr>
<td>99.3</td>
<td>Amended and Restated Certificate of Incorporation of MYT Holding Co., dated as of June 4, 2019</td>
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<td>99.4</td>
<td>Certificate of Designation of Cumulative Series A Preferred Stock of MYT Holding Co., dated as of June 6, 2019</td>
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<tr>
<td>99.5</td>
<td>Certificate of Designation of Cumulative Series B Preferred Stock of MYT Holding Co., dated as of June 6, 2019</td>
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<td>99.6</td>
<td>Pledge Agreement, dated as of June 7, 2019</td>
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Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NEIMAN MARCUS GROUP LTD LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President, General Counsel, Chief Compliance Officer and Corporate Secretary

Date: June 11, 2019
EXHIBIT 10.1
EXECUTION VERSION

EXTENSION AMENDMENT AND AMENDMENT NO. 2 TO CREDIT AGREEMENT, dated as of June 7, 2019 (this “Extension Amendment”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (“Existing Borrower”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (“TNMG LLC”), THE NMG SUBSIDIARY LLC, a Delaware limited liability company (together with TNMG LLC, the “New Borrowers” and each, a “New Borrower”), and the New Borrowers and the Existing Borrower, collectively, the “Borrowers” and each, a “Borrower”), the GUARANTORS party hereto, the LENDERS party hereto (the “Consenting Lenders”) and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and Collateral Agent (in such capacities, the “Agent”) to the TERM LOAN CREDIT AGREEMENT dated as of October 25, 2013 (as amended, supplemented or otherwise modified prior to the date hereof, the “Existing Credit Agreement”), among Holdings, the Existing Borrower, the Lenders from time to time party thereto, the Agent and the other parties party thereto from time to time. Capitalized terms used but not otherwise defined in this Extension Amendment shall have the respective meanings assigned to such terms in the Existing Credit Agreement, as amended, supplemented or otherwise modified by this Extension Amendment (the “Amended Credit Agreement”).

WHEREAS, pursuant to the Existing Credit Agreement, the Lenders (as defined in the Existing Credit Agreement) have extended credit in the form of term loans (the “Existing Term Loans”) to the Existing Borrower pursuant to the terms and subject to the conditions set forth in the Existing Credit Agreement;

WHEREAS, the Existing Borrower and Holdings wish to make certain amendments as may be necessary or appropriate in connection with the establishment of two new Classes of Term Loans pursuant to the terms of Section 2.20 of the Existing Credit Agreement, as amended by the amendments contemplated in this Extension Amendment, and certain other amendments in accordance with the terms of Section 10.08 of the Existing Credit Agreement;

WHEREAS, Section 2.20 of the Existing Credit Agreement permits the Lenders of any Existing Term Loans, upon acceptance of an Extension Offer from the Existing Borrower, to extend the scheduled maturity date of all or a portion of such Existing Term Loans;

WHEREAS, the Consenting Lenders agree, pursuant to this Extension Amendment, to, among other things, (i) modify certain terms and conditions in Section 2.20 of the Existing Credit Agreement to permit the new Classes of Term Loans contemplated by this Extension Amendment, (ii) establish such new Classes of Term Loans on the Amendment Effective Date (as defined below), and (iii) amend certain other provisions of the Existing Credit Agreement; and

WHEREAS, subject to the terms and conditions set forth in this Extension Amendment, the Existing Borrower, Holdings and the Consenting Lenders agree that pursuant to this Extension Amendment, the Existing Term Loans of the Consenting Lenders shall be converted into 2019 Extended Term Loans consisting of either (i) Cash Pay Extended Term Loans or (ii) Cash Pay/PIK Extended Term Loans, or a combination of both, in each case, with the Maturity Date set forth under the Amended Credit Agreement.
NOW, THEREFORE, in consideration of the premises and covenants contained in this Extension Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1.  **Waiver.** Subject to the satisfaction or waiver of the conditions set forth in Section 5 of this Extension Amendment, Agent and Consenting Lenders hereby permanently waive any and all Defaults or Events of Default under the Existing Credit Agreement and any of the other Loan Documents existing on or prior to the Amendment Effective Date, effective as of the first date any such Default or Event of Default exists or existed. This is a limited waiver and shall not be deemed to constitute a waiver of any breach of the Amended Credit Agreement or any of the other Loan Documents or any other requirements of any provision of the Amended Credit Agreement or any other Loan Documents, in each case from and after the Amendment Effective Date.

Section 2.  **Amendments; Prepayment; Joinder of New Borrowers.**

(a) Subject to the satisfaction or waiver of the conditions set forth in Section 5(a) of this Extension Amendment, on the Amendment Effective Date, the Existing Credit Agreement is hereby amended to incorporate the changes reflected in Section 2.20(1), 2.20(3) and 2.20(5) (and in any defined term as used in any such provision and to add new defined terms to the extent used in any such provision) of the redlined version of the Amended Credit Agreement attached hereto as Annex A-1 (the “Initial Amendments”) but not, for the avoidance of doubt, any other change reflected in the redlined version of the Amended Credit Agreement attached hereto as Annex A-1.

(b) Subject to the satisfaction or waiver of the conditions set forth in Sections 5(a) and 5(b) of this Extension Amendment, on the Amendment Effective Date and immediately following the Initial Amendment Effective Time (as defined below), (i) the Existing Credit Agreement is hereby amended to incorporate the changes reflected in the redlined version of the Amended Credit Agreement attached hereto as Annex A-1 other than the Initial Amendments, (ii) the Exhibits to the Existing Credit Agreement are hereby amended and restated as set forth on Annex A-2 hereto, and (iii) the Schedules to the Existing Credit Agreement are hereby amended and restated as set forth on Annex A-3 hereto (the “Additional Amendments” and together with the Initial Amendments, collectively, the “Amendments”).

(c) Subject to the agreements of the Waiving Term Loan Lenders (as defined in the TSA), immediately following the effectiveness of the Initial Amendments and the 2019 Conversion (as defined below) and substantially concurrently with the effectiveness of the Additional Amendments, the Borrowers will prepay $550 million of the 2019 Extended Term Loans at par on a pro rata basis (calculated as set forth in the TSA), without any penalty or premium (the “2019 Prepayment”).

(d) Each of the New Borrowers, by its respective signature to this Extension Amendment, shall become a Borrower and a Loan Party under the Amended Credit Agreement and a Loan Party, a Guarantor and a Grantor under the Collateral Agreement with the same force and effect as if originally named therein as a Loan Party, a Guarantor and a Grantor, as applicable, and each New Borrower hereby (i) agrees to all the terms and provisions of (A) the Amended Credit Agreement applicable to it as a Borrower and Loan Party thereunder and (B) the Collateral Agreement applicable to it as a Loan Party, a Guarantor and a Grantor thereunder. Each reference to a “Borrower” or a “Loan Party” in the Amended Credit Agreement and each reference to a “Loan Party,” a “Guarantor,” or a “Grantor” in the Collateral Agreement shall be deemed to include such New Borrowers.

(e) Each of the Guarantors party hereto that were not party to the Collateral Agreement (as in effect prior to the date hereof), by its respective signature to this Extension Amendment, shall become a Guarantor and a Loan Party for all purposes under the Amended Credit Agreement and a Loan Party, a
Guarantor and (if applicable, as set forth in the Collateral Agreement) a Grantor under the Collateral Agreement with the same force and effect as if originally named therein as a Loan Party, a Guarantor and a Grantor, as applicable, and each New Guarantor hereby (i) agrees to all the terms and provisions of (A) the Amended Credit Agreement applicable to it as a Guarantor and Loan Party thereunder and (B) the Collateral Agreement applicable to it as a Loan Party, a Guarantor and a Grantor, if applicable, thereunder. Each reference to a “Guarantor” or a “Loan Party” in the Amended Credit Agreement and each reference to a “Loan Party,” a “Guarantor,” or a “Grantor,” if applicable, in the Collateral Agreement shall be deemed to include such New Guarantors. For the avoidance of doubt, each of the Lenders party hereto hereby consents to the amendment and restatement of the Collateral Agreement (as defined in the Existing Credit Agreement) in the form attached as Annex A-3 hereto, which amendment and restatement shall become effective on the Amendment Effective Date.

Section 3. [Reserved.]

Section 4. Establishment of Extended Term Loans.

(a) Subject to the satisfaction or waiver of the conditions set forth in Section 5(a) of this Extension Amendment on the date hereof but immediately prior to the effectiveness of the Additional Amendments, there is hereby established under the Amended Credit Agreement two Classes of Extended Term Loans which shall be titled (i) "Cash Pay Extended Term Loans" and (ii) "Cash Pay/PIK Extended Term Loans" (such Extended Term Loans collectively, the “2019 Extended Term Loans”) having the terms set forth in this Extension Amendment and the Amended Credit Agreement, and references in the Amended Credit Agreement to Term Loans and Extended Term Loans shall include, without limitation, the 2019 Extended Term Loans; provided, however, that solely for purposes of Section 2.15 of the Amended Credit Agreement or any analogous pro rata sharing provisions under the Amended Credit Agreement the 2019 Extended Term Loans shall not constitute separate Classes with respect to each other. The 2019 Extended Term Loans shall be denominated in Dollars.

(b) Each Consenting Lender that delivers an executed signature page to this Extension Amendment on or prior to the Amendment Effective Date irrevocably agrees to convert into 2019 Extended Term Loans the aggregate principal amount of its Existing Term Loans set forth in the Agent’s register as of the date hereof (such conversion, the “2019 Conversion”). On the Amendment Effective Date, each Consenting Lender hereby agrees that the aggregate principal amount of Existing Term Loans held by such Consenting Lender set forth in the Agent’s register as of the date hereof shall automatically (and without any further action on the part of any party to this Extension Amendment or the Existing Credit Agreement) be converted into and reclassified to become Cash Pay Extended Term Loans, Cash Pay/PIK Extended Term Loans, or a combination of both, in the amounts set forth on such Consenting Lender’s signature page to the 2019 Conversion Allocation Election in the form attached hereto as Annex 2 (the “2019 Conversion Allocation Election”), subject to Section 4(c) of this Extension Amendment. After giving effect to the 2019 Conversion but immediately prior to the 2019 Prepayment, the aggregate principal amount of all such 2019 Extended Term Loans held by a Consenting Lender shall equal the aggregate principal amount of Existing Term Loans held by such consenting Lender as set forth in the Agent’s register as of the date hereof. The remainder (if any) of all Existing Term Loans made under the Existing Credit Agreement will, after giving effect to this Extension Amendment, remain outstanding as Term Loans (the “2013 Term Loans”) on the primary economic terms (maturity, interest) in effect immediately prior to the effectiveness of the Amendments. On the Amendment Effective Date, after giving effect to this Extension Amendment, the aggregate principal amount of Cash Pay Extended Term Loans, the aggregate principal amount of Cash Pay/PIK Extended Term Loans and the aggregate principal amount of 2013 Term Loans shall be set forth on Schedule I hereto.

(c) Each of the Consenting Lenders acknowledges and agrees to the following:
in the event that, pursuant to the 2019 Conversion Allocation Election, Consenting Lenders elect to convert more than $250,000,000 but less than $500,000,000 in aggregate principal amount of Term Loans to one Class of 2019 Extended Term Loans (such Class, the “Undersubscribed Class”), the Consenting Lenders electing to receive the Class of 2019 Extended Term Loans that is not the Undersubscribed Class shall be deemed, on a pro rata basis, to have adjusted such elections such that there is at least $500,000,000 in aggregate principal amount of each Class of 2019 Extended Term Loans; and

(ii) if the aggregate principal amount of either the Cash Pay Extended Term Loans or the Cash Pay/PIK Extended Term Loans subscribed for by the Consenting Lenders is less than $250,000,000, then such undersubscribed Class shall be eliminated in its entirety and all 2019 Extended Term Loans shall be Term Loans of the other Class of 2019 Extended Term Loans.

(d) On the Amendment Effective Date, all accrued and unpaid interest owing by the Existing Borrower under the Existing Credit Agreement with respect to any Existing Term Loan (or portion thereof, if applicable) shall be paid in full in cash immediately prior to the 2019 Conversion. Such payment shall not be subject to any LIBOR breakage cost reimbursement which would have otherwise been incurred under the terms of the Existing Credit Agreement or Amended Credit Agreement.

(e) On and after the Amendment Effective Date, interest shall accrue on the 2019 Extended Term Loans and 2013 Term Loans at the interest rate provided for in the Amended Credit Agreement. Each 2019 Extended Term Loan and 2013 Term Loan shall initially be deemed to be a Borrowing of a 2019 Extended Term Loan or 2013 Term Loan, as applicable, that is a Eurocurrency Loan with an initial Interest Period equal to the remaining duration (as of the Amendment Effective Date) of the Interest Period applicable to such Borrowing of an Existing Term Loan, but accruing interest at the applicable interest rate for 2019 Extended Term Loans or 2013 Term Loan, as applicable, described in the Amended Credit Agreement; provided, however, that it is understood and agreed that in no event shall any conversion or extension of any Existing Term Loan, or any other transaction contemplated by this Extension Amendment, constitute a repayment, conversion or other event with respect to such Loan that would result in the application or operation of the provisions of Section 2.06, 2.07, 2.08 or 2.13 of the Existing Credit Agreement or Amended Credit Agreement.

(f) The terms of the 2019 Extended Term Loans shall be as set forth in this Extension Amendment and the Amended Credit Agreement.

Section 5. Conditions Precedent to the Extension Amendment.

(a) The Initial Amendments will become effective on the date on which the Administrative Agent (or its counsel) shall have received (i) a counterpart of this Extension Amendment signed on behalf of, or written evidence satisfactory to the Administrative Agent (which may include facsimile or electronic transmission (including Adobe pdf file) of an executed signature page of this Extension Amendment) from, (A) the Consenting Lenders and (B) the Existing Borrower, Holdings, the Guarantors and the New Borrowers, and (ii) a 2019 Conversion Allocation Election from each Consenting Lender.

(b) The Additional Amendments will become effective, subject to the occurrence of the Initial Amendment Effective Time, on the date that each of the following conditions is satisfied (or waived by the Required Consenting Term Loan Lenders (as defined in the TSA)):

(i) Administrative Agent (or its counsel) shall have received a counterpart of the Collateral Agreement signed on behalf of, or written evidence satisfactory to the Administrative
Agent (which may include facsimile or electronic transmission (including Adobe pdf file) of an executed signature page of the Collateral Agreement) from, (A) the Collateral Agent, and (B) Holdings, the Borrowers and the other Loan Parties party thereto.

(ii) The Administrative Agent shall have received a customary legal opinion of each of (A) Kirkland & Ellis LLP, special counsel to the Loan Parties, (B) K&L Gates LLP, local counsel to Worth Avenue Leasing Company, NMG Florida Salon LLC and NM Nevada Trust, and (C) Stinson Leonard Street LLP, local counsel to NMGP, LLC.

(iii) The Administrative Agent shall have received (A) a certificate of a Responsible Officer of Holdings, the Borrowers and the other Loan Parties (1) certifying the resolutions of the board of directors, members or other body authorizing the execution, delivery and performance by each Loan Party of this Extension Amendment (including the Amended Credit Agreement and each other Loan Document to be executed on the Amendment Effective Date), (2) containing an incumbency and specimen signature identifying by name and title of the officers of each Loan Party authorized to sign this Extension Amendment (or certifying that the signatures of such officers previously delivered to the Administrative Agent remain true and correct) and (3) containing appropriate attachments, including the organization documents of each Loan Party certified, if applicable, by the relevant authority of the jurisdiction of organization of such Loan Party (or certifying that the organization documents of such Loan Party previously delivered to the Administrative Agent remain true and correct) and (B) a good standing certificate (or other equivalent certificate to the extent such status or analogous concept applies to such jurisdiction of organization) as of a recent date for each such Loan Party from its respective jurisdiction of organization.

(iv) On and as of the Amendment Effective Date, (A) the representations and warranties of Holdings and each other Loan Party contained in Article III of the Amended Credit Agreement or any other Loan Document shall be true and correct in all material respects; provided that, to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; and provided, further that, any representation or warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification in the Amended Credit Agreement) in all respects on such respective dates and (B) except for any Defaults or Events of Default waived pursuant to Section 1 of this Extension Amendment, no Default or Event of Default has occurred and is continuing. The Administrative Agent shall have received a certificate from a Responsible Officer of the Lead Borrower certifying as to the matters set forth in this Section 5(b)(iv) and Section 5(b)(v) below.

(v) All conditions precedent expressly set forth in (A) the TSA (including the Recapitalization Term Sheet attached thereto as Exhibit A), (B) the material documents governing the Second Lien Notes (including the Second Lien Notes Indenture), (C) the material documents governing the Third Lien Notes (including the Third Lien Notes Indenture) and (D) the material documents governing the MT Preferred Equity (as defined in the TSA) (including the applicable Certificate of Designation and material organizational documents) necessary to implement the Recapitalization Transactions, shall have been, or concurrently with the effectiveness of this Extension Amendment shall be, satisfied (or waived in accordance therewith) and New Second Lien Notes in the face amount of $550,000,000 shall have been issued.

(vi) (A) The ABL/Term Loan/Notes Intercreditor Agreement, dated as of the date hereof, among Holdings, the Borrowers, the Administrative Agent, the Collateral Agent, the “Administrative Agent” (as defined in the ABL Credit Agreement), the Second Lien Notes
Collateral Agent and the Third Lien Notes Collateral Agent shall have been duly executed and delivered by each party thereto, and shall be in full force and effect, and (B) the Junior Lien Intercreditor Agreement, dated as of the date hereof, among Holdings, the Borrowers, the Administrative Agent, the Collateral Agent, the Second Lien Notes Collateral Agent and the Third Lien Notes Collateral Agent shall have been duly executed and delivered by each party thereto, and shall be in full force and effect.

(vii) All fees and expenses required to be paid on the Amendment Effective Date pursuant to the TSA to the Consenting Lenders (or any of their respective Affiliates or advisors) upon the consummation of the Recapitalization Transactions and (B) all reasonable (and reasonably documented out-of-pocket expenses of the Administrative Agent pursuant to the terms of the Existing Credit Agreement, in each case, invoiced at least three (3) Business Days prior to the Amendment Effective Date, in each case shall have been, or substantially concurrently with the closing of the Recapitalization Transactions, shall be paid.

(viii) All documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten (10) calendar days prior to the Amendment Effective Date, will be provided not later than the date that is three (3) Business Days prior to the Amendment Effective Date.

(ix) The Administrative Agent shall have received a completed Perfection Certificate dated the Amendment Effective Date and signed by a Responsible Officer of Holdings and the Lead Borrower.

For purposes of determining satisfaction of the conditions precedent set forth in this Section 5 which are subject to the receipt of documents by, or the satisfaction of, the Consenting Lenders, the applicable condition shall be deemed satisfied upon the execution of this Extension Amendment, and the release of signatures by Consenting Lenders representing the Required Lenders. The time at which the conditions specified in Section 5(a) are satisfied or waived is referred to herein as the “Initial Amendment Effective Time” and the date on which the conditions specified in Sections 5(a) and 5(b) are satisfied or waived is referred to herein as the “Amendment Effective Date”.

Section 6. Representations and Warranties. Each Loan Party hereby represents and warrants to the Administrative Agent and to each of the Consenting Lenders that, as of the date first written above:

(a) Each Loan Party has all requisite corporate or other organizational power and authority to execute, deliver and perform this Extension Amendment and to effect the transactions contemplated hereby and under the Amended Credit Agreement.

(b) Each Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Extension Amendment and to effect the transactions contemplated hereby. As of the date first written above, this Extension Amendment has been duly executed and delivered by each Loan Party and constitutes a legal, valid and binding obligation of each Loan Party, enforceable against each such Loan Party in accordance with its terms, subject to:

(i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally;
(ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(iii) implied covenants of good faith and fair dealing; and

(iv) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

(c) The execution, delivery and performance by each Loan Party of this Extension Amendment and the consummation of the transactions contemplated hereby will not violate (i) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party, (ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound, in each case of clause (i), (ii) or (iii), except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 7. Effectiveness; Amendments. This Extension Amendment shall become effective as of the occurrence of the Initial Amendment Effective Time and Amendment Effective Date, as applicable. This Extension Amendment may not be amended nor may any provision hereof be waived except pursuant to a writing signed by Holdings, the Borrowers, and the Required Lenders (or the Administrative Agent acting at the direction of the Required Lenders).

Section 8. Credit Agreement. Except as expressly set forth herein, this Extension Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Lenders, the Agents, the Borrowers or any other Loan Party under the Existing Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle Holdings or the Borrowers to any future consent to, or waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Amended Credit Agreement or any other Loan Document in similar or different circumstances. Upon the Amendment Effective Date, any reference to the “Credit Agreement” shall mean the Amended Credit Agreement. Upon the Amendment Effective Date, this Extension Amendment shall constitute a “Extension Amendment” and a “Loan Document” (in each case as defined in the Amended Credit Agreement). Each 2019 Extended Term Loan shall constitute an “Extended Term Loan” and a “Term Loan” (in each case as defined in the Amended Credit Agreement) and each Consenting Lender shall constitute a “2019 Extending Term Lender” and a “Lender” (in each case as defined in the Amended Credit Agreement), in each case for all purposes of the Amended Credit Agreement and the other Loan Documents.

The parties hereto expressly acknowledge that it is not their intention that this Extension Amendment or any of the other Loan Documents executed or delivered pursuant hereto constitute a novation of any of the obligations, covenants or agreements contained in the Existing Credit Agreement or any other Loan Document, but rather constitute a modification thereof or supplement thereto pursuant to the terms contained herein. The Existing Credit Agreement and the Loan Documents, in each case as amended, modified or supplemented hereby, shall be deemed to be continuing agreements among the parties thereto, and all documents, instruments, and agreements delivered, as well as all Liens created, pursuant to or in connection with the Existing Credit Agreement and the other Loan Documents shall remain
Section 9. **APPLICABLE LAW.** THIS EXTENSION AMENDMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS EXTENSION AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

Section 10. **Counterparts.** This Extension Amendment may be executed in one or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract. Delivery of an executed signature page to this Extension Amendment by facsimile or electronic transmission (including Adobe pdf copy) shall be effective as delivery of an original signed counterpart of this Extension Amendment.

Section 11. **Headings.** The Section headings used in this Extension Amendment are for convenience of reference only, are not part of this Extension Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Extension Amendment.

Section 12. **Construction.** The rules of construction specified in Section 1.02 of the Amended Credit Agreement also apply to this Extension Amendment.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Extension Amendment to be duly executed by their respective authorized officers as of the day and year first written above.

MARIPOSA INTERMEDIATE HOLDINGS LLC,
as Holdings

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

NEIMAN MARCUS GROUP LTD LLC,
as Borrower

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

THE NEIMAN MARCUS GROUP LLC,
as Borrower

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

THE NMG SUBSIDIARY LLC,
as Borrower

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

NEMA BEVERAGE CORPORATION,
a Texas corporation

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NEMA BEVERAGE HOLDING CORPORATION,
a Texas corporation

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to Extension Amendment]
NEMA BEVERAGE PARENT CORPORATION,  
a Texas corporation

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NMG SALON HOLDINGS LLC,  
a Delaware limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NMG CALIFORNIA SALON LLC,  
a California limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG FLORIDA SALON LLC,  
a Florida limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG SALONS LLC,  
a Delaware limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG TEXAS SALON LLC,  
a Texas limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

[Signature Page to Extension Amendment]
BERGDORF GOODMAN INC.,
a New York corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

BERGDORF GRAPHICS, INC.,
a New York corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

BG PRODUCTIONS, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

MARIPOSA BORROWER, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NM BERMUDA, LLC,
a Delaware limited liability company

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NM FINANCIAL SERVICES, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

[Signature Page to Extension Amendment]
NM NEVADA TRUST,
a Massachusetts Trust

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NMG GLOBAL MOBILITY, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NMG TERM LOAN PROP CO LLC,
a Delaware limited liability company

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NMGP, LLC,
a Virginia limited liability company

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

WORTH AVENUE LEASING COMPANY,
a Florida corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

[Signature Page to Extension Amendment]
NMG NOTES PROPCO LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

[Signature Page to Extension Amendment]
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, in its individual capacity and as Administrative Agent and as Collateral Agent,

By: /s/ Bryan J. Matthews
   Name: Bryan J. Matthews
   Title: Authorized Signatory

By: /s/ Megan Kane
   Name: Megan Kane
   Title: Authorized Signatory

[Signature Page to Extension Amendment]
[Lenders’ signature pages on file with the Agent.]

[Signature Page to Extension Amendment]
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<td>2019 Extended Term Loans</td>
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<td>Cash Pay Extended Term Loans</td>
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<td>Cash Pay/PIK Extended Term Loans</td>
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<td><strong>Total 2019 Extended Term Loans</strong></td>
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<td><strong>All Term Loans:</strong></td>
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TERM LOAN CREDIT AGREEMENT,
dated as of October 25, 2013,
among
MARIPOSA INTERMEDIATE HOLDINGS LLC,
as Holdings,
MARIPOSA MERGER SUB LLC,
to be merged with and into NEIMAN MARCUS GROUP LTD INC.,
as the Lead Borrower,
THE NEIMAN MARCUS GROUP LLC and THE NMG SUBSIDIARY LLC,
as Borrowers,
THE LENDERS PARTY HERETO,
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent and Collateral Agent,
CREDIT SUISSE SECURITIES (USA) LLC,
RBC CAPITAL MARKETS,
DEUTSCHE BANK SECURITIES INC.,
GOLDMAN SACHS BANK USA and
MORGAN STANLEY SENIOR FUNDING, INC.,
as Bookrunners and Arrangers,
and
BMO CAPITAL MARKETS CORP.,
JEFFERIES FINANCE LLC,
UBS SECURITIES LLC and
MCS CORPORATE LENDING LLC,
as Co-Managers
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SECTION 1.05. Currencies

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SECTION 1.07. Divisions

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SECTION 2.02. Request for Borrowing Effective Date

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SECTION 2.04. Interest Elections

SECTION 2.05. Promise to Pay; Evidence of Debt

SECTION 2.06. Repayment of Term Loans

SECTION 2.07. Optional Prepayment of Term Loans

SECTION 2.08. Mandatory Prepayment of Term Loans

SECTION 2.09. Fees

SECTION 2.10. Interest

SECTION 2.11. Alternate Rate of Interest

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SECTION 2.13. Break Funding Payments

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SECTION 2.19. Other Term Loans

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SECTION 2.22. Designation of Lead Borrower

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Representations and Warranties

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TERM LOAN CREDIT AGREEMENT, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, this "Agreement"), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company ("Holdings"), MARIPOSA MERGER SUB NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as a Borrower ("Merger Sub"), the Lead Borrower or "Existing Borrower"), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company ("TNMG LLC"), THE NMG SUBSIDIARY LLC, a Delaware limited liability company ("The NMG Subsidiary" and together with TNMG LLC and the Lead Borrower, the "Borrowers" and each, a "Borrower"), the Lenders party hereto from time to time and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as administrative agent (in such capacity, and as further defined in Section 1.01, the "Administrative Agent"), and as collateral agent (in such capacity, and as further defined in Section 1.01, the "Collateral Agent" and together with the Administrative Agent, the "Agents").

RECITALS

(1) Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P. and Canada Pension Plan Investment Board have formed Holdings, and pursuant to the Agreement and Plan of Merger, dated as of September 9, 2013 (the "Merger Agreement"), by and among NM MARIPOSA HOLDINGS, INC., a Delaware corporation, Merger Sub and NEIMAN MARCUS GROUP LTD INC., a Delaware corporation formerly known as Neiman Marcus, Inc. (the "Company"), Merger Sub will merge (the "Merger") with and into the Company, with the Company being the survivor of such Merger. As used herein, the "Borrower" means Merger Sub prior to the consummation of the Merger and the Company thereafter. The Lead Borrower is party to that certain Credit Agreement, dated as of October 25, 2013 (as amended, supplemented or otherwise modified prior to the Amendment No. 2 Effective Date, including by that certain Refinancing Amendment, dated as of March 13, 2014, among Holdings, the Existing Borrower, the Lenders party thereto and the Administrative Agent, the “Existing Credit Agreement”), by and among Holdings, the Existing Borrower, certain Subsidiary Loan Parties, the Administrative Agent, the Collateral Agent and certain Lenders party thereto from time to time.

(2) Pursuant to that certain Extension Amendment and Amendment No. 2 to Credit Agreement, dated as of June 7, 2019 (the “2019 Extension Amendment"), by and among Holdings, the Borrowers, the Subsidiary Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the Lenders party thereto, the Administrative Agent and the Required Lenders have agreed, inter alia, to amend the Existing Credit Agreement in its entirety to read as set forth in this Agreement as of the Amendment No. 2 Effective Date (as defined below).

(3) In connection with the consummation of the Merger, (a) the Lenders have agreed to extend credit to the Borrower in the form of Term Loans on the Closing Date in an aggregate principal amount of $2,950.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower and certain co-borrowers in the form of revolving loans, swingline loans and letters of credit under the ABL Credit Agreement (as defined herein) and (c) each of the Sponsors and certain other equity investors (including members of the Company’s management) arranged by or designated by the Sponsors (such equity investors together with the Sponsors, the “Investors”) will, directly or indirectly, contribute to Holdings or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Holdings or such Parent Entity (and Holdings or such
In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABL Claims" means the "ABL Claims" as defined in the Intercreditor Agreement.

"2013 Collateral" means the "2013 Term Loan Designated Collateral" as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the 2013 Term Loan Lenders pursuant to any Security Document, including without limitation each mortgage of a Real Property entered into prior to the Amendment No. 2 Effective Date.

"2013 Term Loan Lenders" means Lenders holding 2013 Term Loans, in their capacity as such.

"2013 Term Loan Obligations" means the 2013 Term Loans and the Obligations under the Loan Documents directly related thereto, including interest thereon.

"2013 Term Loans" means (i) immediately prior to the effectiveness of the 2019 Extension Amendment, the Term Loans made to the Lead Borrower pursuant to the Existing Credit Agreement and (ii) immediately upon and after the effectiveness of the 2019 Extension Amendment and the 2019 Conversion (as defined therein), the Term Loans made to the Lead Borrower pursuant to the Existing Credit Agreement that the Lenders declined to convert into 2019 Extended Term Loans pursuant to the 2019 Extension Amendment, which remain outstanding under this Agreement as of the Amendment No. 2 Effective Date (which "2013 Term Loans" shall not include, for the avoidance of doubt, any Non-Participating Term Loan Exchange Indebtedness).
“2019 Extended Term Loan Collateral” means all Collateral other than the 2013 Collateral, ABL Priority Collateral, Call Right Collateral and Equity Interests in 2019 Extended Term Loan PropCo.

“2019 Extended Term Loan Installment Date” has the meaning assigned to such term in Section 2.06(3).

“2019 Extended Term Loan Liens” means Liens on the Collateral, which Liens have Required Collateral Lien Priority for Liens securing the 2019 Extended Term Loans.

“2019 Extended Term Loan Obligations” means the 2019 Extended Term Loans and the related Obligations under the Loan Documents related to the 2019 Extended Term Loans (for the avoidance of doubt, including any Additional 2019 Extended Term Loans, but not including any 2013 Term Loan Obligations or Non-Participating Term Loan Exchange Obligations).

“2019 Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Lead Borrower formed solely to hold Real Property interests consisting of 2019 Extended Term Loan PropCo Assets.

“2019 Extended Term Loan PropCo Assets” means the 2019 Term Loan Priority Real Estate Assets, to the extent that such Real Property assets are Non-Mortgageable Leases.

“2019 Extended Term Loans” means, collectively, the Cash Pay Extended Term Loans and the Cash Pay/PIK Extended Term Loans and, as applicable, the Cash Pay Additional 2019 Extended Term Loans and the Cash Pay/PIK Additional 2019 Extended Term Loans, which shall, for the avoidance of doubt, each constitute a separate Class of Term Loans and a separate Term Facility hereunder; provided, however, that solely for purposes of Section 2.07, Section 2.08 (subject to clause (5)(d) thereof) or Section 2.15 and any analogous pro rata sharing provisions under this Agreement and the other Loan Documents, the 2019 Extended Term Loans shall not constitute separate Classes with respect to each other but shall constitute one Class solely for purposes of such pro rata sharing provisions; provided, further that the 2019 Extended Term Loan Obligations (other than the Additional 2019 Extended Term Loans and the Obligations under the Loan Documents related to the Additional 2019 Extended Term Loans) shall be subordinated in right of payment or “waterfall” priority to Obligations in respect of the Additional 2019 Extended Term Loans in respect of any recovery on account of the Call Right Collateral and the Guarantee of the applicable Obligations by Notes PropCo, if any, as set forth in Section 5.04 of the Collateral Agreement.

“2019 Extending Term Lenders” means the Lenders party to the 2019 Extension Amendment and identified as holding 2019 Extended Term Loans on Schedule 2.01 (other than any such Person that has ceased to be a party hereto in such capacity pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that acquires a direct interest in a 2019 Extended Term Loan pursuant to Section 10.04 or Section 2.20.

“2019 Extension Amendment” has the meaning assigned to such term in the recitals hereto.

“2019 Term Loan Priority Real Estate Assets” means (a) the Real Property assets set forth on (i) Schedule 3.15(1) under the heading “2019 Term Loan Priority Real Estate Assets” and (ii) Schedule 3.15(2) under the heading “2019 Term Loan Priority Real Estate Assets”,

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“2028 Debentures” means the 7.125% debentures due 2028 issued by TNMG LLC (f/k/a/ The Neiman Marcus Group, Inc.) pursuant to an indenture, dated as of May 27, 1998, by and between The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) and Wilmington Savings Fund Society, FSB, as successor trustee, as amended, restated, supplemented and/or otherwise modified from time to time, including on or about the date hereof (the “2028 Debentures Indenture”).

“2028 Debentures Collateral” means the “2028 Notes Collateral” as defined in the Junior Lien Intercreditor Agreement.

“2028 Debentures Indenture” has the meaning given such term in the definition of 2028 Debentures.

“2028 Debentures Obligations” means the 2028 Debentures and the related Indebtedness Obligations under the 2028 Debentures Indenture and the other Indebtedness Documents related to the 2028 Debentures.

“ABL Credit Agreement” means the Revolving Credit Agreement, dated as of the Original Closing Date, among Holdings, Merger Sub, the Existing Borrower, the lenders party thereto and Deutsche Bank AG New York Branch, as administrative agent and collateral agent, as such document may be amended, restated, supplemented or otherwise modified from time to time, including by that certain Fourth Amendment to time.

“ABL Credit Agreement Refinancing Indebtedness” means “Credit Agreement Refinancing Indebtedness” as defined in the ABL Credit Agreement. “ABL Extended Revolving Commitments” means “Extended Loans” as defined in the ABL Credit Agreement, dated as of the Amendment No. 2 Effective Date, by and among the parties thereto.

“ABL Facility” means the “Revolving Facility” and any “Incremental Facility,” each as defined in the ABL Credit Agreement or with respect to any other Indebtedness incurred pursuant to Section 6.01(2).

“ABL Incremental Equivalent Debt” means any “Incremental Equivalent Debt” as defined in the ABL Credit Agreement.

“ABL Incremental Facilities” means any “Incremental Facility” as defined in the ABL Credit Agreement.

“ABL Loan Documents” means the ABL Credit Agreement and the other “Loan Documents” as defined in the ABL Credit Agreement or, as applicable, any other Indebtedness incurred pursuant to Section 6.01(2), as each such document may be amended, restated, supplemented or otherwise modified.

“ABL Obligations” means the “Obligations” as defined in the ABL Credit Agreement. “ABL Other Loans” means “Other Loans” as defined in the ABL Credit Agreement, or, as applicable, any similar term employed in respect of other Indebtedness incurred pursuant to Section 6.01(2).

“ABL Priority Collateral” means the “ABL Priority Collateral” as defined in the Intercreditor Agreement.

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“ABL Priority Collateral Asset Sale” means any Asset Sale that consists of or includes the disposition of ABL Priority Collateral outside the ordinary course of business, but solely to the extent of the sale of such ABL Priority Collateral.

“ABL Security Documents” means the “Security Documents” as defined in the ABL Credit Agreement.

“ABL/Term Loan/Notes Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement, dated as of the Amendment No. 2 Effective Date, by and among the Administrative Agent, the Collateral Agent, Deutsche Bank AG New York Branch, as administrative agent and collateral agent under the ABL Credit Agreement, the Second Lien Notes Collateral Agent, the Third Lien Notes Collateral Agent and any other parties party thereto from time to time, and acknowledged by Holdings and the Borrowers, as amended, restated, supplemented and/or otherwise modified from time to time.

“ABR” means, for any day, a fluctuating rate per annum equal to the highest of:

1. the Federal Funds Rate plus 1/2 of 1.00%;
2. the prime commercial lending rate published as of such day by the Administrative Agent as the “prime rate;” and
3. the LIBOR Quoted Rate plus 1.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate, as the case may be.

“ABR Borrowing” means a Borrowing comprised of ABR Loans.

“ABR Loan” means any Term Loan bearing interest at a rate determined by reference to the ABR.

“Additional 2019 Extended Term Loans” means Cash Pay Additional 2019 Extended Term Loan and Cash Pay/PIK Additional 2019 Extended Term Loans, in each case, incurred pursuant to Section 2.18.

“Additional 2019 Extended Term Loan Lenders” has the meaning assigned to such term in Section 2.18(5).

“Additional Lender” means the banks, financial institutions and other institutional lenders and investors (other than natural persons) that become Lenders in connection with an Incremental Term Loan or Other Term Loan; provided that no Disqualified Institution may be an Additional Lender.

“Adjusted LIBO Rate” means, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum equal to the greater of (1) the LIBO Rate in effect for such Interest Period divided by one minus the Statutory Reserves applicable to such Eurocurrency Borrowing, if any, and (2) 1.00% (i) 1.00%, with respect to any Term Loans other than the 2019 Extended Term Loans (including, for the avoidance of doubt, the 2013 Term Loans) or (ii) 1.50%, with respect to any 2019 Extended Term Loans.
“Administrative Agent” means Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“Administrative Agent Fees” has the meaning assigned to such term in Section 2.09(1).

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affiliated Lender” means each Sponsor and each of its Affiliates, other than (1) Holdings or any of its Subsidiaries (including the Borrowers) and (2) any natural person.

“Agents” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“Agreement” has the meaning assigned to such term in the introductory paragraph hereof.

“Amendment No. 2 Effective Date” means the “Amendment Effective Date” as defined in the 2019 Extension Amendment.

“Annual Financial Statements” has the meaning assigned to such term in Section 5.04(1).

“Applicable Margin” means:

(1) with respect to any 2013 Term Loans made on the Closing Date, (a) as of the Closing Date, (x) for ABR Loans, 3.00% and (y) for Eurocurrency Loans, 4.00%, and (b) following delivery of Required Financial Statements for the Borrower’s fiscal quarter ending February 1, 2014, the percentage per annum determined in accordance with the pricing grid set forth below, based on the Senior Secured First Lien Net Leverage Ratio for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Lead Borrower:

<table>
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<th>Senior Secured First Lien Net Leverage Ratio</th>
<th>Applicable Margin for ABR Loans</th>
<th>Applicable Margin for Eurocurrency Loans</th>
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<tr>
<td>Category 1: Greater than 4.00 to 1.00</td>
<td>3.00%</td>
<td>4.00%</td>
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<td>2.75%</td>
<td>3.00%</td>
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For purposes of the foregoing, each change in the Applicable Margin under this clause (1) resulting from a change in the Senior Secured First Lien Net Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent pursuant to
Section 5.04(1) or 5.04(2) of the Required Financial Statements indicating such change and ending on the date immediately preceding the effective date of the next such change; provided that the Senior Secured First Lien Net Leverage Ratio shall be deemed to be in Category 1, at the option of the Administrative Agent or at the request of the Required Lenders, if the Lead Borrower fails to deliver the Required Financial Statements required to be delivered by it pursuant to Section 5.04(1) or 5.04(2) or the certificate of a Financial Officer of the Lead Borrower required pursuant to Section 5.04(3) during the period from the expiration of the time for delivery thereof until such Required Financial Statements and such certificate are delivered;

(2) with respect to any Incremental Term Loans, the “Applicable Margin” set forth in the Incremental Facility Amendment establishing the terms thereof, a percentage per annum equal to (a) for Eurocurrency Loans, 6.00% per annum and (b) for ABR Loans, 5.00% per annum;

(3) with respect to any Cash Pay Extended Term Loan, a percentage per annum equal to (a) for Eurocurrency Loans, 6.00% per annum and (b) for ABR Loans, 5.50% per annum;

(4) with respect to any Cash Pay Additional Extended Term Loan, a percentage per annum equal to (a) for Eurocurrency Loans, 6.50% per annum and (b) for ABR Loans, 5.00% per annum;

(5) with respect to any Cash Pay/PIK Additional Extended Term Loan, a percentage per annum equal to (a) for Eurocurrency Loans, 6.50% per annum or (b) for ABR Loans, 5.50% per annum;

(6) with respect to any Other Term Loans, the “Applicable Margin” set forth in the Refinancing Amendment establishing the terms thereof; and

(7) with respect to any Extended Term Loans other than the 2019 Extended Term Loans, the “Applicable Margin” set forth in the Extension Amendment establishing the terms thereof.

“Applicable Premium” has the meaning assigned to such term in Section 2.07(5).

“Approved Fund” has the meaning assigned to such term in Section 10.04(2).

“Arranger” means each of Credit Suisse Securities (USA) LLC, Royal Bank of Canada, Deutsche Bank Securities Inc., Goldman Sachs Bank USA and Morgan Stanley Senior Funding, Inc.

“Asset Sale” means any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any Sale and Lease-Back Transaction) to any Person of any asset or assets of the Borrowers or any Restricted Subsidiary.

“Asset Sale Proceeds Account” means one or more deposit accounts or securities accounts (as such terms are defined in the Uniform Commercial Code) containing only the Net Cash Proceeds of Asset Sales or any Below Threshold Asset Sale Proceeds, any investments thereof in Cash Equivalents and the proceeds thereof, pending the application of such Net Cash Proceeds in accordance with Section 2.08(1), which accounts have been pledged to the Collateral Agent, for the benefit of the Secured Parties, on a first-priority basis pursuant to documentation in form and substance reasonably satisfactory to the Collateral Agent.

“Assignee” has the meaning assigned to such term in Section 10.04(2).
“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Lead Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form that is approved by the Administrative Agent and reasonably satisfactory to the Lead Borrower.

“Available Amount” means, as of any date, an amount, not less than zero, determined on a cumulative basis, equal to the sum, without duplication, of:

- Contribution Proceeds

Contribution Proceeds means, as of any date, (A) (i) an amount equal to the cumulative amount of cash proceeds received by the Lead Borrower in connection with the sale or issuance of Equity Interests of any Parent Entity after the Amendment No. 2 Effective Date (including upon exercise of warrants or options) which have been contributed to the capital of the Lead Borrower or exchanged for Equity Interests of the Lead Borrower, in each case, other than the proceeds of Disqualified Stock, contributions of the type set forth in Section 6.06(2)(c), the proceeds of common Equity Interest sales used to voluntarily prepay any 2013 Term Loan prior to the Maturity Date applicable thereto in accordance with Section 2.07(2)(b) and Cure Amounts, less (ii) any such amounts that are used prior to such date to make Investments under Section 6.04(3) or Section 6.04(4), and payments in respect of Junior Financing under Section 6.09(2)(f) or Section 6.09(4)(b) and (B) any property (for the avoidance of doubt, not the fair market value thereof, but property in the form received by the Lead Borrower) other than cash received by the Lead Borrower in connection with the sale or issuance of Equity Interests of any Parent Entity after the Amendment No. 2 Effective Date (including upon exercise of warrants or options) which have been contributed to the capital of the Lead Borrower or exchanged for Equity Interests of the Lead Borrower.

1. $200.0 million; plus
2. the Cumulative Retained Excess Cash Flow Amount as of such date (measured annually); plus
3. the cumulative amount of cash proceeds and the fair markt-value of property (other than cash) received by the Borrower or any Parent Entity in connection with the sale or issuance of Equity Interests of the Borrower or any Parent Entity after the Closing Date and on or prior to such date (including upon exercise of warrants or options or in connection with a Permitted Acquisition or other Permitted Investment) which, with respect to proceeds or property received in connection with the sale or issuance of Equity Interests of a Parent Entity, have been contributed to the capital of the Borrower or exchanged for Equity Interest of the Borrower, other than the proceeds of Disqualified Stock, Excluded Contributions, Cure Amounts, any net cash proceeds that are used prior to such date for Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), and equity used to incur Contribution Indebtedness; plus
4. 100% of the aggregate amount of cash contributions to the capital of the Borrower and the fair markt-value of property other than cash contributed to the capital of the Borrower after the Closing Date, other than the proceeds of Disqualified Stock, Excluded Contributions, Cure Amounts, any net cash proceeds that are used prior to such date for Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), and equity used to incur Contribution Indebtedness; plus
5. 100% of the aggregate principal amount of any Indebtedness (including the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Indebtedness)
Stock) of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness (including Disqualified Stock) issued to Holdings, the Borrower or a Restricted Subsidiary), which has been converted into or exchanged for Equity Interests (other than Disqualified Stocks) of the Borrower or any Parent Entity; plus

100% of the aggregate amount of each (and the fair market value of property other than cash) received by the Borrower or any Restricted Subsidiary after the Closing Date from (a) the sale (other than to Holdings, the Borrower or any Restricted Subsidiary) of the Equity Interests of any Unrestricted Subsidiary or (b) any dividend or other distribution (including any payment on intercompany Indebtedness) by any such Unrestricted Subsidiary; plus

in the event any Unrestricted Subsidiary becomes a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, Holdings, the Borrower or any Restricted Subsidiary, the lesser of (a) the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time such Unrestricted Subsidiary becomes a Restricted Subsidiary or at the time of such merger, consolidation, amalgamation, transfer or liquidation (or of the assets transferred or conveyed, as applicable) and (b) the fair market value of the original Investments by the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary, in each case, as determined by a Responsible Officer of the Borrower in good faith; plus

any mandatory prepayment declined by a Lender; minus

the use of such Available Amount since the Closing Date.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Available Incremental Term Loan Facility Amount” has the meaning assigned to such term in Section 2.18(3). “Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Below Threshold Asset Sale Proceeds” means the cash proceeds of Asset Sales involving aggregate consideration of $10.0 million or less.

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “Beneficial Ownership”, “Beneficially Owns” and “Beneficially Owned” have a corresponding meaning.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“Borrower” has the meaning assigned to such term in the recitals to this Agreement. As used herein, the term “Borrower” shall mean, as the context requires, “Borrower” or “Borrowers”.

“Borrower Materials” has the meaning assigned to such term in Section 10.17(1).

“Borrowing” means a group of Term Loans of a single Type made on a single date under a single Term Facility and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“Borrowing Base” means as of any date, the sum of:

(1) 90% of all accounts receivable held by the Borrower and the Restricted Subsidiaries as of such date, plus

(2) 90% of the inventory held by the Borrower and the Restricted Subsidiaries as of such date, plus

(3) 100% of all cash and Cash Equivalents held by the Borrower and the Restricted Subsidiaries as of such date,

in each case, determined on a consolidated basis in accordance with GAAP based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Borrowing Request” means a request by the Borrower in accordance with the terms of Section 2.02 this Agreement and substantially in the form of Exhibit C a form mutually satisfactory to the Administrative Agent and the Lead Borrower.

“Budget” has the meaning assigned to such term in Section 5.04(8).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; provided that when used in connection with a Eurocurrency Loan, the term “Business Day” also excludes any day on which banks are not open for dealings in deposits in the London interbank market.

“Call Right” means “Call Right” as defined in the Junior Lien Intercreditor Agreement.

“Call Right Cap Recovery” has the meaning assigned to such term in the Junior Lien Intercreditor Agreement.
“Call Right Collateral” means the Notes Priority Real Estate Assets that are not Notes PropCo Assets and the Equity Interests in Notes PropCo, and all the proceeds of any of the foregoing.

“Capital Expenditures” means, for any period, the aggregate of all expenditures incurred by the Borrowers and the Restricted Subsidiaries during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the consolidated statement of cash flows of the Borrowers and their Restricted Subsidiaries for such period; provided that Capital Expenditures will not include:

1. Expenditures to the extent they are made with (a) Equity Interests of any Parent Entity or (b) proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrowers after the Closing Amendment No. 2 Effective Date;

2. Expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrowers and their Subsidiaries;

3. Interest capitalized during such period;

4. Expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrowers and any Restricted Subsidiary) and for which none of the Borrowers or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period);

5. The book value of any asset owned by the Borrowers or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

6. The purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (a) used or surplus equipment traded in at the time of such purchase or (b) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

7. Investments in respect of a Permitted Acquisition; or

8. The purchase of property, plant or equipment to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08.

“Capital Lease Obligations” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, notwithstanding any modification or interpretative change.
thereto after the Original Closing Date and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital Stock” means:

(1) in the case of a corporation, corporate stock;
(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Cash Equivalents” means:

(1) Dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
(2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
(3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than $250.0 million;
(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;
(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
(7) Indebtedness issued by Persons (other than the Sponsors) with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition,
and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency); (8)

Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency); (9)

Instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and (10)

Shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above.

“Cash Management Bank” means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Closing Amendment No. 2 Effective Date, on the Closing Amendment No. 2 Effective Date, was the Administrative Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Lender or an Affiliate of the foregoing.

“Cash Management Obligations” means obligations owed by any Loan Party to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Lead Borrower in writing to the Administrative Agent as “Cash Management Obligations” under this Agreement (but only if such obligations have not been designated as “Cash Management Obligations” under the ABL Credit Agreement).

“Cash Management Services” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“Certain Funds Provisions Cash Pay Additional 2019 Extended Term Loans” has the meaning given assigned to such term in the Commitment Letter Section 2.18(8).

“Cash Pay Extended Term Loans” means Term Loans incurred under the 2019 Extension Amendment for which the applicable 2019 Extending Term Lender has elected the classification “Cash Pay Extended Term Loans” in accordance with the 2019 Extension Amendment, which Term Loans shall bear interest at the rate described in clause (2) of the definition of “Applicable Margin”.

“Cash Pay/PIK Additional 2019 Extended Term Loans” has the meaning assigned to such term in Section 2.18(8).

“Cash Pay/PIK Extended Term Loans” means Term Loans incurred under the 2019 Extension Amendment for which the applicable 2019 Extending Term Lender has elected the classification “Cash Pay/PIK Extended Term Loans” in accordance with the 2019 Extensions Amendment, which Term Loans shall bear interest at the rate described in clause (3) of the definition of “Applicable Margin”.

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“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Amendment No. 2 Effective Date, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

A “Change in Control” will be deemed to occur if:

(1) at any time,

(a) Holdings ceases to Beneficially Own, directly or indirectly, 100% of the issued and outstanding Equity Interests of the Borrowers, provided, however, that prior to the completion of the Closing Date Conversions, a controlled Affiliate of the Sponsors may own the Class B Capital Stock of the Borrowers; or

(b) a “change of control” (or comparable event) occurs under the ABL Credit Agreement or the Secured Notes Indentures, the Senior Notes Indentures or the documentation governing any Permitted Refinancing Indebtedness in respect of any of the foregoing, in each case, if any Indebtedness is outstanding under such agreement; or

(2) at any time prior to the consummation of a Qualified IPO, the Permitted Holders, taken together, cease to Beneficially Own, directly or indirectly, Voting Stock representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested); or

(3) at any time after the consummation of a Qualified IPO, any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan of such Person and its Subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, acquires Beneficial Ownership of Voting Stock of a Parent Entity representing (a) more than 35% of the aggregate ordinary voting power for the election of directors represented by the issued and outstanding Equity Interests of such Parent Entity (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) and (b) more than the percentage of the aggregate ordinary voting power for the election of directors that is at the time Beneficially
"Change in Law" means:

1. the adoption of any law, rule or regulation after the Closing Amendment No. 2 Effective Date;
2. any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Amendment No. 2 Effective Date; or
3. compliance by any Lender (or, for purposes of Section 2.12(2), by any lending office of such Lender or by such Lender’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Amendment No. 2 Effective Date; provided that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated or issued.

"Charges" has the meaning assigned to such term in Section 10.09.

"Claim" means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

"Class" means, with respect to a Term Facility, (a) when used with respect to Lenders, the Lenders under such Term Facility, and (b) when used with respect to Term Loans or Borrowings, Term Loans or Borrowings under such Term Facility. For the avoidance of doubt, (i) as of the Amendment No. 2 Effective Date, there shall be three separate Classes of Term Loans hereunder, consisting of one Class of 2013 Term Loans and two Classes of 2019 Extended Term Loans, (ii) the Non-Participating Term Loan Exchange Indebtedness (if any) shall be a separate Class of Term Loans from the 2013 Term Loans and any Class of 2019 Extended Term Loans, and (iii) each class of Additional 2019 Extended Term Loans shall be a separate Class from any other Class of 2019 Extended Term Loans (except as set forth in the definition of “2019 Extended Term Loan”) and the 2013 Term Loans.

"Closing Date" means October 25, 2013.

"Closing Date Conversions" means the transactions described on Schedule 1.01.

"Closing Date Refinancing" means the repayment of debt contemplated by the Debt Payoff Letter (as defined in the Merger Agreement).

"Closing Date Senior Secured First Lien Net Leverage Ratio" means 4.70 to 1.00.
“Closing Date” means 7:00 to 1:00.

“Co-Managers” means each of BMO Capital Markets Corp., Jefferies Finance LLC, UBS Securities LLC and MCS Corporate Lending LLC.


“Collateral” means the “Collateral” as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document, including all interests in Real Property mortgaged in accordance with Section 5.12 hereof and the Real Property constituting Collateral prior to the Amendment No. 2 Effective Date.

“Collateral Agent” means Credit Suisse AG, Cayman Islands Branch, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“Collateral Agreement” means the Amended and Restated Term Loan Guarantee and Collateral Agreement, dated as of the Closing Amendment No. 2 Effective Date, among the Loan Parties and the Collateral Agent, as amended, supplemented, restated and/or otherwise modified from time to time.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Term Loans as set forth on Schedule 2.01. On the Closing Date, the aggregate amount of Commitments is $2,950.0 million for any Lender, the commitment of such Lender to make Other Term Loans pursuant to Section 2.19 or the commitment of such Lender to make Extended Term Loans pursuant to Section 2.20.


“Company Consent Fees” has the meaning assigned to such term in the recitals hereto.

“Consolidated Debt” means, as of any date, the sum (without duplication) of all Indebtedness (other than letters of credit or bank guarantees, to the extent undrawn) consisting of Capital Lease Obligations, Indebtedness for borrowed money, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services of the Borrowers and the Restricted Subsidiaries and all Guarantees of the foregoing, determined on a consolidated basis in accordance with GAAP, based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Consolidated EBITDA” means, for any period, the Consolidated Net Income of the Borrowers for such period:

1. increased, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:
provision for taxes based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of tax distributions actually made to the holders of Equity Interests of the Borrowers or any Parent Entity in respect of such period (in each case, to the extent attributable to the operations of the Borrowers and their Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Borrowers; plus

(b) Consolidated Interest Expense; plus

cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Borrowers or any Restricted Subsidiary; plus

d) all depreciation and amortization charges and expenses; plus

e) all

(i) losses, charges, fees, costs and expenses relating to the Recapitalization Transactions;

(ii) transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Agreement, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the incurrence, modification or repayment of Indebtedness permitted to be incurred under this Agreement (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions; and

(iii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period; plus

(f) any expense or deduction attributable to minority Equity Interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Borrowers; plus

g) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities, fees, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 6.07; plus

(h) earn-out obligations incurred in connection with any Permitted Acquisition or other Investment; plus

(i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of the Borrowers and all losses, charges and expenses related to payments made to
holders of options or other derivative Equity Interests in the common equity of the Borrowers or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; plus

(j) all non-cash losses, charges and expenses, including any write-offs or write-downs; provided that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period (i) the Lead Borrower may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent the Lead Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; plus

(k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; and

(2) decreased, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Original Closing Date. For the avoidance of doubt, amortization of tenant and developer allowances will not be deducted pursuant to this clause (2).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

(i) August 3, 2013 will be deemed to be $107.2 million;

(ii) April 27, 2013 will be deemed to be $206.2 million;

(iii) January 26, 2013 will be deemed to be $178.3 million; and

(iv) October 27, 2012 will be deemed to be $179.8 million;

it being understood that the amounts listed in the foregoing clauses (i), (ii), (iii) and (iv) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

“Consolidated First Lien Net Debt” means, as of any date, all Consolidated Debt as of such date (i) that constitutes Obligations or that is secured by a Lien on the Term Note Priority Collateral that is pari passu with the Lien securing the Obligations or (other than with respect to ABL Priority Collateral or, prior to the Call Right Cap Recovery, the Call Right Collateral), (ii) that is secured by a Lien on the ABL Priority Collateral that is senior to or pari passu with the Lien securing the Obligations, or (iii) prior to the Call Right Cap Recovery, constitutes outstanding Third Lien Notes Obligations or Second Lien Notes Obligations up to a maximum principal amount of $200.0 million, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis;
provided that for purposes of calculating the amount of Consolidated First Lien Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness. For the avoidance of doubt, Indebtedness in respect of the ABL Credit Agreement will constitute Consolidated First Lien Net Debt.

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

1. the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capital Lease Obligations and net payments and receipts (if any) pursuant to Hedge Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, any expenses resulting from the discounting of the Existing 2028 Debentures as a result of the purchase accounting treatment of the Original Transactions and the Recapitalization Transactions and all discounts, commissions, fees and other charges associated with any Receivables Facility receivables facility); plus

2. consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued; plus

3. any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been Guaranteed by the referent Person; less

4. interest income of the referent Person and its Restricted Subsidiaries for such period; provided that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such period. For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Lead Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP (adjusted to reflect any charge, tax or expense incurred or accrued by Holdings or any Parent Entity during such period attributable to the operations of the Borrowers and their Subsidiaries as though such charge, tax or expense had been incurred by the Borrowers, to the extent that the Borrowers has made or would be entitled under the Loan Documents to make any Restricted Payment or other payment to or for the account of Holdings in respect thereof) and before any deduction for preferred stock dividends; provided that:
all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, consolidation, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans in connection with the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions or otherwise (including any transition-related expenses incurred before, on or after the Closing Amendment No. 2 Effective Date), will be excluded; all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded; all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by a Responsible Officer of the Lead Borrower) will be excluded; all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded; all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded; (a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period; and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof; the cumulative effect of a change in accounting principles during such period will be excluded; the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to the Transactions or any acquisition consummated before or after the Closing Amendment No. 2 Effective Date, and the amortization, write-down or write-off of any amounts thereof, net of taxes, will be excluded; all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded; all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;
any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

accruals and reserves for liabilities or expenses that are established or adjusted as a result of the Recapitalization Transactions within 4812 months after the Closing Amendment No. 2 Effective Date will be excluded;

all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(a) the non-cash portion of “straight-line” rent expense will be excluded and (b) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included;

expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount (a) has not been denied by the applicable carrier in writing and (b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period); provided that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities in an aggregate amount not to exceed $20.0 million for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded, and (b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded; and

non-cash charges for deferred tax asset valuation allowances will be excluded; and

non-cash charges for deferred tax asset valuation allowances will be excluded; and solely for the purpose of determining the amount available for Restricted Payments under Section 6.06(15), the net income (or loss) for such period of any Restricted Subsidiary (other than a Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or,
directly or indirectly, by the operation of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived; provided that Consolidated Net Income of such Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to such Person or any of its Restricted Subsidiaries in respect of such period, to the extent not already included therein.

“Consolidated Total Assets” means, as of any date, the total assets of the Borrowers and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Consolidated Total Net Debt” means, as of any date, the Consolidated Debt as of such date minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; provided that for purposes of calculating the Consolidated Total Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“Control Indebtedness” has the meaning assigned to such term in Section 6.01(15).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” will have correlative meanings.

“Control Agreement” means any “Control Agreement” as defined in the Collateral Agreement.

“Controlled Accounts” means “Blocked Accounts” as defined in the ABL Credit Agreement, the Asset Sale Proceeds Accounts, and any other Deposit Account (as defined in the Collateral Agreement), Security Account (as defined in the Collateral Agreement) or Commodities Account (as defined in the Collateral Agreement) subject to a Lien perfected by control to secure the ABL Obligations or similar arrangement providing for perfection by control of such accounts in connection with the ABL Loan Documents, in each case subject to the terms of the Intercreditor Agreement.

“Credit Agreement Refinancing Indebtedness” means secured or unsecured Indebtedness of the Borrowers in the form of term loans or notes; provided that:

(1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, convert, replace or refinance, in whole or part, Indebtedness (“Refinanced Debt”) that is either Term Loans or other Credit Agreement Refinancing Indebtedness;
such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Refinanced Debt (plus the amount of unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, defeasance costs, fees, commissions and expenses);

the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Refinanced Debt, and the final maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the Latest Maturity Date;

such Indebtedness, if incurred under this Agreement, may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments hereunder (and otherwise may not participate at all);

such Indebtedness is not guaranteed or incurred by any Subsidiary of the Borrowers, or by any other entity that is not a Loan Party (unless such entity becomes a Loan Party in connection with the incurrence of such Indebtedness);

such Indebtedness is not secured by any assets or property of Holdings, the Borrowers or any Restricted Subsidiary that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender); and

such Indebtedness is not incurred under this Agreement as new Obligations but is secured:

(a) the security agreements relating to such Indebtedness are substantially similar to or the same as the corresponding Security Documents (as determined in good faith by a Responsible Officer of the Lead Borrower);

(b) if such Indebtedness is secured on a pari passu basis with the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(c) if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of the Junior Lien Intercreditor Agreement as a second, third or other subordinate-ranking Lien priority party and, if applicable, has become party to any other Intercreditor Agreement;

the terms and conditions of such Indebtedness are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Debt (or in the case of any Non-Participating Term Loan Exchange Indebtedness, the 2019 Extended Term Loans) as determined in good faith by a Responsible Officer of the Lead Borrower; provided that the Lead Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); provided that this clause (8) will not apply to:
(a) terms addressed in the preceding clauses (1) through (7);

(b) (i) interest rate, fees, funding discounts and other pricing terms; (ii) redemption, prepayment or other premiums; (iii) optional prepayment terms; and (iv) redemption terms; (c) subordination terms; and

(c) (d) covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness.

Credit Agreement Refinancing Indebtedness will include any Registered Equivalent Notes issued in exchange therefore.

“Cumulative Retained Excess Cash Flow Amount” means, as of any date, an amount, not less than zero in the aggregate, determined on a cumulative basis, equal to the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date. “Credit Support” means, with respect to any Person and any Indebtedness or other Indebtedness Obligations, (i) such Person’s Guarantee of, or becoming a direct or indirect obligor with respect to, such Indebtedness or other Indebtedness Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Indebtedness Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Indebtedness Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Indebtedness Obligations (including by means of a “keepwell” or other similar commitment).

“Cure Amount” means the amount of cash contributions to the capital of the Lead Borrower made pursuant to Section 8.02 of the ABL Credit Agreement.

“Current Assets” means, as of any date, all assets (other than Cash Equivalents or other cash equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrowers and the Restricted Subsidiaries as “current assets” (other than amounts related to current or deferred Taxes based on income or profits), determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Current Liabilities” means, as of any date, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrowers and the Restricted Subsidiaries as “current liabilities,” other than:

(1) the current portion of any Indebtedness;

(2) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is due and unpaid);

(3) accruals for current or deferred Taxes based on income or profits;

(4) accruals, if any, of transaction costs resulting from the Original Transactions or the Recapitalization Transactions; and

(5) accruals of any costs or expenses related to (a) severance or termination of employees prior to the Closing Amendment No. 2 Effective Date or (b) bonuses, pension and other post-retirement benefit obligations;
in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Debt Fund Affiliate” means:

(1) any Affiliate, division or internal group of a Permitted Investor that has the principal purpose of investing in, acquiring or trading commercial loans, bonds or similar extensions of credit in the ordinary course; and

(2) any investment fund or account of a Permitted Investor managed by third parties (including by way of a managed account, a fund or an index fund in which a Permitted Investor has invested) or a division or internal group within a Permitted Investor that is not organized or used primarily for the purpose of making equity investments,

in each case, with respect to which a Sponsor does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity.

“Debt Representative” means, with respect to any Indebtedness that is secured on a pari passu basis with, or on a junior basis to, the Term Loans, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Declining Lender” means the meaning assigned to such term in Section 2.08(4).

“Default” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means any Lender whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“Disinterested Director” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualified Institution” means:

(1) (a) any Person that is a competitor of the Borrowers and identified by the Lead Borrower in writing to the Administrative Agent on or prior to the Closing Amendment No. 2 Effective Date;

(b) any Person that is a competitor of the Borrowers and identified by the Lead Borrower in good faith in writing to the Administrative Agent from time to time after the Closing Amendment No. 2 Effective Date; provided that such Person will not be a
Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrowers and notifies the Lead Borrower of such determination promptly following the date on which the Lead Borrower identifies such Person to the Administrative Agent; and

together with any Affiliates of such competitors described in the foregoing clauses (a) and (b) that are reasonably identifiable as such (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (2) below) that regularly invest in commercial loans or similar extensions of credit in the ordinary course of business and for which no personnel involved with the relevant competitor (i) make investment decisions or (ii) have access to non-public information relating to the Borrowers or any Person that forms part of the Borrowers’ business (including their Subsidiaries); or

(2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Lead Borrower in writing to the Administrative Agent on or prior to the Closing Amendment No. 2 Effective Date.

Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent will not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent will have no liability with respect to any assignment made to a Disqualified Institution.

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

(1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

(2) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;

(3) provide for the scheduled payments of dividends in cash; or

(4) either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is 91 days after the earlier of:

(a) the Latest Maturity Date; and

(b) the date on which the Term Loans and all other Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated.
provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; provided, further, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by Holdings or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and provided, further, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“Distressed Person” has the meaning assigned to such term in the definition of “Lender-Related Distress Event.”

“Dollars” or “$” means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of the Lead Borrower that is organized under the laws of the United States or any political subdivision thereof, and “Domestic Subsidiaries” means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Lead Borrower.

“Dutch Auction” means an auction of Term Loans conducted (1) pursuant to Section 10.04(10) to allow an Affiliated Lender to acquire Term Loans at a discount to par value and on a pro rata basis; or

(2) pursuant to Section 10.04(14) to allow a Purchasing Borrower Party to prepay Term Loans at a discount to par value and on a pro rata basis in each case, in accordance with the applicable Dutch Auction Procedures.

“Dutch Auction Procedures” means, with respect to a purchase of Term Loans in a Dutch Auction, Dutch auction procedures as reasonably agreed upon by the applicable Affiliated Lender or Purchasing Borrower Party, as the case may be, and the Administrative Agent.

“environmental EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition and is subject to the supervision of an EEA Resolution Authority, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision of an EEA Resolution Authority with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.
“Environment” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

“Environmental Laws” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, legally binding agreements and final, legally binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or exposure to Hazardous Materials).

“Equity Contribution” has the meaning assigned to such term in the recitals to this Agreement, means the amount of cash and rollover equity contributed on the Original Closing Date after giving effect to the Original Transactions.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Holdings or any of its Subsidiaries Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Sections 302, 303 and 306(g) of ERISA and Section 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means:

1. a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;

2. a withdrawal by Holdings or any of its Subsidiaries Loan Party or, to the knowledge of Holdings or the Lead Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by Holdings or any of its Subsidiaries any Loan Party or, to the knowledge of Holdings or the Lead Borrower, any ERISA Affiliate that is treated as a termination under Section 4062(e) of ERISA;

3. a complete or partial withdrawal by Holdings or any of its Subsidiaries Loan Party or, to the knowledge of Holdings or the Lead Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by Holdings or any of its Subsidiaries Loan Party or, to the knowledge of Holdings or the Lead Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability on it or written notification that a Multiemployer Plan is, or is expected to be, insolvent, in reorganization within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA or Section 432 of the Code;

4. (a) the provision by a Plan administrator or the PBGC to any Loan Party or, to the knowledge of Holdings or the Lead Borrower, any ERISA Affiliate of notice of intent to terminate a Plan, or to appoint a trustee to administer a Plan, (b) the treatment of a Plan or Multiemployer Plan...
amendment as a termination under Sections 4041 or 4041A of ERISA or (c) the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;

(5) the incurrence by Holdings or any of its Subsidiaries any Loan Party or, to the knowledge of Holdings or the Lead Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the timely payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;

(6) the application for a minimum funding waiver under Section 302(c) of ERISA or Section 412(c) of the Code with respect to a Plan;

(7) the imposition of a lien on the assets of any Loan Party under Section 303(k) of ERISA with respect to any Plan or Section 430(k) of the Code; and

(8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Eurocurrency Borrowing” means a Borrowing comprised of Eurocurrency Loans.

“Eurocurrency Loan” means any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 8.01.

“Excess Cash Flow” means, for any Excess Cash Flow Period, the Consolidated Net Income of the Lead Borrower for such period, minus, without duplication:

(1) repayments, prepayments and other cash payments made with respect to the principal of any Indebtedness or the principal component of any Capital Lease Obligations of the Lead Borrower or any Restricted Subsidiary during such period (excluding voluntary and mandatory prepayments of Term Loans, voluntary prepayments of Indebtedness described in Section 2.08(2)(b) and prepayments of other revolving Indebtedness (except to the extent accompanied by a corresponding reduction in commitments), but including all premium, make-whole or penalty payments paid in cash (to the extent such payments were not already deducted in calculating Consolidated Net Income and are not otherwise prohibited under this Agreement)); provided that a mandatory prepayment of Indebtedness will only be deducted pursuant to this clause (1) to the extent not already deducted in the computation of Net Cash Proceeds of Asset Sales; minus

(2) (a) cash payments made by the Lead Borrower or any Restricted Subsidiary during such period in respect of Capital Expenditures, Permitted Acquisitions, Investments and Restricted Payments (excluding Restricted Payments made pursuant to Sections 6.06(15), or (16), Investments in Cash Equivalents and other items (including Investments and Restricted Payments that are eliminated in consolidation) and (b) cash payments that the Borrower or any Restricted Subsidiary is required to make in respect of Capital Expenditures, Permitted Acquisitions and Investments within 365 days after the end of such period pursuant to binding obligations entered into prior to or during such period; provided that amounts described
in this clause (b) will not reduce Excess Cash Flow in subsequent periods and, to the extent not so paid, will increase Excess Cash Flow in the
subsequent period but including earn-out obligations); minus

(3) cash payments made by the Lead Borrower or any Restricted Subsidiary during such period in respect of (a) long-term liabilities other than
Indebtedness or (b) items for which an accrual or reserve was established in a prior period; minus

(4) (a) cash payments made by the Lead Borrower or any Restricted Subsidiary during such period in respect of Taxes (including distributions to any
Parent Entity in respect of Taxes), to the extent such payments exceed the amount of tax expense deducted in calculating such Consolidated Net
Income, and (b) cash payments that the Lead Borrower or any Restricted Subsidiary will be required to make in respect of Taxes (including
distributions to any Parent Entity in respect of Taxes) within 180 days after the end of such period; provided that amounts described in this clause
(b) will not reduce Excess Cash Flow in subsequent periods; minus

(5) all cash payments and other cash expenditures made by the Lead Borrower or any Restricted Subsidiary during such period (a) with respect to
items that were excluded in the calculation of such Consolidated Net Income pursuant to clauses (1) through (19) of the definition of “Consolidated
Net Income” or (b) that were not expensed during such period in accordance with GAAP; minus

(6) all non-cash credits included in calculating such Consolidated Net Income (including insured or indemnified losses referred to in clauses (16) and
(17) of Consolidated Net Income to the extent not reimbursed in cash during such period); minus

(7) an amount equal to the sum of (a) the increase in the Working Capital of the Lead Borrower during such period, if any, plus (b) the increase in
long-term accounts receivable of the Lead Borrower and the Restricted Subsidiaries, if any (other than any such increases contemplated by clauses
(a) and (b) of this clause (7) that are directly attributable to acquisitions of a Person or business unit by the Lead Borrower and the Restricted
Subsidiaries during such period); plus

(8) all non-cash charges, losses and expenses of the Lead Borrower or any Restricted Subsidiary that were deducted in calculating such Consolidated
Net Income; plus

(9) all cash payments received by the Lead Borrower or any Restricted Subsidiary during such period pursuant to Hedge Agreements that were not
treated as revenue or net income under GAAP; plus

(10) an amount equal to the sum of (a) the decrease in Working Capital of the Lead Borrower during such period, if any, plus (b) the decrease in long-
term accounts receivable of the Lead Borrower and the Restricted Subsidiaries, if any; plus

(11) all amounts referred to in clauses (1) and (2) above to the extent funded with the proceeds of the issuance or the incurrence of Indebtedness (other
than proceeds of revolving loans), the sale or issuance of Equity Interests or any loss, damage, destruction or condemnation of, or any sale, transfer
or other disposition to any Person of, any assets.

“Excess Cash Flow Period” means each fiscal year of the Borrower.

“Excluded Assets” means “Excluded Assets” as defined in the Collateral Agreement.

“Excluded Contributions” means, as of any date, the aggregate amount of the net cash proceeds and Cash Equivalents, together with the aggregate fair market value (determined in good faith by a Responsible Officer of the Borrower) of other assets that are used or useful in a business permitted under Section 6.08, received by the Borrower after the Closing Date from:

(1) contributions to its common equity capital; or

(2) the sale of Capital Stock of the Borrower.

in each case, designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower on the date such contribution is made or such Capital Stock is sold, less the aggregate amount of Investments made pursuant to Section 6.04(28) and Restricted Payments made pursuant to Section 6.06(13), in each case prior to such date, provided that the proceeds of Disqualified Stock, Cure Amounts and any net cash proceeds that are used prior to such date (A) to make Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), (B) to make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount or (C) for Contribution Indebtedness, will not be treated as Excluded Contributions. “Excluded Equity Interests” means “Excluded Equity Interests” as defined in the Collateral Agreement.

“Excluded Indebtedness” means all Indebtedness not incurred in violation of Section 6.01.

“Excluded Subsidiary” means any:

(1) Immaterial Subsidiary;

(2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or the Borrower;

(3) Unrestricted Subsidiary;

(4) Foreign Subsidiary;

(5) Domestic Subsidiary of a Foreign Subsidiary;

(6) Subsidiary substantially all the assets of which are Equity Interests or indebtedness in one or more Foreign Subsidiaries;

(7) Subsidiary if acting as a Guarantor, or its Guarantee, would (a) be prohibited by law or regulation or (b) require a governmental or third party consent, approval, license or authorization; and (8) captive insurance Subsidiary, not-for-profit Subsidiary or Subsidiary which is a special purpose entity for securitization transaction (including any Receivables Subsidiary) or like special purposes; and (ii) not-for-profit Subsidiary or Subsidiary which is a special purpose entity for securitization transaction (including any Receivables Subsidiary) or like special purposes;

(2) in each case, unless the Borrower determines in its sole discretion, upon notice to the Administrative Agent, that any of the foregoing Persons (other than a Subsidiary that is not a Wholly Owned Subsidiary of Holdings or the Borrower), only to the extent such Subsidiary was created, formed or acquired in connection with a Permitted Acquisition.
Foreign Subsidiary that is existing as of the Amendment No. 2 Effective Date; provided that such Foreign Subsidiary shall not be deemed an Excluded Subsidiary hereunder to the extent that one or more Loan Parties makes Investments in such Foreign Subsidiary after the Amendment No. 2 Effective Date exceeding $2.5 million in the aggregate; and

Foreign Subsidiary or FSHCO acquired or created after the Amendment No. 2 Effective Date and with respect to which (i) an officer of the Lead Borrower (reasonably and in good faith) and the Administrative Agent have determined that making such Subsidiary a Subsidiary Loan Party is not practicable (including as a result of local law in the jurisdiction in which such Subsidiary is organized or other applicable law, rule or regulation), or (ii) a Responsible Officer of the Lead Borrower (reasonably and in good faith) and the Collateral Agent determine that the burden or cost (including as a result of any adverse changes in applicable tax laws) of providing a Guarantee of the Obligations from such Subsidiary outweigh the benefit of the Guarantee afforded thereby (it being understood for purposes of each of the foregoing that any such Guarantee provided by a Subsidiary Loan Party may not be given, or may be released, due to material adverse U.S. federal income tax consequences, in each case, only if such consequences arise as a result of a change in law occurring after the Amendment No. 2 Effective Date, including, for the avoidance of doubt, a change to the Proposed Regulations under section 956 of the Internal Revenue Code of 1986, as amended, published on November 5, 2018);

in each case, unless the Lead Borrower determines in its sole discretion, upon written notice to the Collateral Agent, that any of the foregoing Persons should not be an Excluded Subsidiary until the date on which the Lead Borrower has informed the Administrative Collateral Agent that it elects to have such Person be an Excluded Subsidiary; provided that (i) the Guarantee provided by a Subsidiary Loan Party and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person, and (ii) to the extent that a Subsidiary of Holdings provides Credit Support for the Second Lien Notes and/or Third Lien Notes or any Refinancing thereof, such Subsidiary shall not be deemed an Excluded Subsidiary for the purposes of this Agreement. For the avoidance of doubt, Immaterial Subsidiaries shall not automatically constitute Excluded Subsidiaries hereunder, but Immaterial Subsidiaries shall not, subject to Section 5.10, constitute Subsidiary Guarantors as of the Amendment No. 2 Effective Date.

“Excluded Taxes” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

(1) income taxes imposed on or measured by its net income (however denominated) or franchise taxes imposed in lieu of net income taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (1) above;

(3) any withholding tax (including any backup withholding tax) that is in effect and would apply to amounts payable hereunder to or for the account of a Recipient under the law applicable at the time such Recipient becomes a party to this Agreement (or in the case of a Lender, under the law applicable at the time such Lender changes its lending office), except to the extent that the Recipient’s assignor (if any), at the time of assignment (or such Lender immediately before it
changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any withholding tax pursuant to Section 2.14(1) or Section 2.14(3);

(4) Taxes that are attributable to such Lender’s or Administrative Agent’s failure to comply with Section 2.14(5) or Section 2.14(6); and

(5) any U.S. federal withholding Taxes imposed under FATCA.

“Executive Order” has the meaning assigned to such term in Section 3.19(3)(a).

“Existing 2028 Debentures” means the 7.125% debentures due 2028 issued by The Neiman Marcus Group, Inc. pursuant to an indenture dated as of May 27, 1998. “Credit Agreement” has the meaning assigned to such term in the recitals hereto.

“Extended Term Loan Installment Date” has the meaning assigned to such term in Section 2.06(2)(3). The 2019 Extended Term Loan Installment Date shall be deemed to be an Extended Term Loan Installment Date for all purposes of this Agreement.

“Extended Term Loans” has the meaning assigned to such term in Section 2.20(1). The 2019 Extended Term Loans and the Additional 2019 Extended Term Loans shall be deemed to be Extended Term Loans for all purposes of this Agreement.

“Extending Term Lender” has the meaning assigned to such term in Section 2.20(1). The 2019 Extending Term Lenders shall be deemed to be Extending Term Lenders for all purposes of this Agreement.

“Extension” has the meaning assigned to such term in Section 2.20(1).

“Extension Amendment” has the meaning assigned to such term in Section 2.20(2). The 2019 Extension Amendment shall be deemed to be an Extension Amendment for all purposes of this Agreement.

“Extension Offer” has the meaning assigned to such term in Section 2.20(1).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“FCPA” has the meaning assigned to such term in Section 3.19(2).

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that:

(1) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and
if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.0%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“Fee Letter” means the Fee Letter, dated September 9, 2013, by and among Merger Sub, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Royal Bank of Canada, Deutsche Bank Securities Inc., Deutsche Bank AG New York Branch and Deutsche Bank AG Cayman Islands Branch, as amended and in effect from time to time and including any joinders thereto.

“Fees” means the (1) Administrative Agent Fees and all other fees set forth in the Fee Letter payable to a Lender, the Administrative Agent, any Arranger or any Co-Manager, in each case, with respect to Term Loans and (2) the Consent Fees.

“Financial Covenant Default” has the meaning assigned to such term in Section 8.01(6).

“Financial Officer” means, with respect to any Person, the chief financial officer, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person.

“First Lien Intercreditor Agreement” means a “pari passu” intercreditor agreement substantially in the form attached hereto as Exhibit G (as the same may be modified in a manner satisfactory to the Administrative Agent). Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a First Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a pari passu basis with the Term Loans.

“Fixed Charge Coverage Ratio” means, as of any date, the ratio of:

(1) (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, minus (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) minus (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or payable in cash during such period (including tax distributions paid in cash during such period) to

(2) Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

“Fixed Charges” means, for any period, the sum without duplication, of the following for such period:

(1) the Consolidated Interest Expense of the Borrower that was paid or payable in cash during such period; plus

(2) all scheduled principal amortization payments that were paid or payable in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the
all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FSHCO” means any Domestic Subsidiary substantially all the assets of which are Equity Interests or Indebtedness of one or more Foreign Subsidiaries that are treated as controlled foreign corporations within the meaning of Section 957 of the Code.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of “Capital Lease Obligations” or “Capital Expenditures”, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Original Closing Date, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures on the Original Closing Date (assuming for purposes hereof that they were in existence on the Original Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“Governmental Authority” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Guarantee” of or by any Person (the “guarantor”) means:

1. any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

   a. to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

   b. to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;
(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Amendment No. 2 Effective Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

The term “Guaranteed” as used herein will have a corresponding meaning.

“Guarantor” means (1) Holdings; (2) each Subsidiary Loan Party that is not a Borrower; and (3) each Parent Entity or Restricted Subsidiary (other than any Restricted Subsidiary that is not a Wholly Owned Subsidiary) that the Lead Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations until such date that the Lead Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations; provided that, in the case of this clause (3), the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

“Hazardous Materials” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would reasonably be expected to give rise to liability under any Environmental Law due to their dangerous or deleterious properties.

“Hedge Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings or any of its Subsidiaries will be a Hedge Agreement.
“Holdings” has the meaning assigned to such term in the introductory paragraph hereof.

“Hudson Yard Indebtedness” means the deferred financing obligation reflected on the balance sheet of TNMG LLC related to its ownership for accounting purposes of a portion of TNMG LLC’s retail property at Hudson Yards.

“Immaterial Subsidiary” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered ended prior to the Amendment No. 2 Effective Date, have assets with a value in excess of 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% of total revenues of the Lead Borrower and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered most recently ended prior to the Amendment No. 2 Effective Date, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered Lead Borrower ended prior to the Amendment No. 2 Effective Date, did not have assets with a value in excess of 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Lead Borrower and the Restricted Subsidiaries for a consolidated basis for such four-quarter period. All Immaterial Subsidiaries existing as of the Amendment No. 2 Effective Date shall, within 90 days of the Amendment No. 2 Effective Date shall, within 90 days of the Amendment No. 2 Effective Date (or such later date as mutually agreed by the Lead Borrower and the Administrative Agent) either (i) be dissolved, liquidated or merged out of existence or (ii) become a Guarantor hereunder in accordance with Section 5.10.

“Incremental Equivalent Term Debt” means secured or unsecured Indebtedness of the Borrower in the form of term loans or notes; provided that:

1. the aggregate outstanding principal amount of such Indebtedness on any date that such Indebtedness is incurred pursuant to Section 6.01(1) shall be subject to the limitations set forth in Section 2.18(3);

2. the final maturity date of such Incremental Equivalent Term Debt may not be earlier than the Latest Maturity Date of the Term Loans;

3. the Weighted Average Life to Maturity of such Incremental Equivalent Term Debt may be no shorter than the longest remaining Weighted Average Life to Maturity of the Term Loans;

4. if such Indebtedness is secured on a pari passu basis with the Term Loans, such Indebtedness (a) consist of notes and (b) a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement; and

5. if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement.

Incremental Equivalent Term Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Incremental Facility” has the meaning assigned to such term in Section 37.
“Incremental Facility Amendment” has the meaning assigned to such term in Section 2.18(5).

“Incremental Lenders” has the meaning assigned to such term in Section 2.18(5).

“Incremental Term Loan-Installment Date” has the meaning assigned to such term in Section 2.06(2).

“Incremental Term Loans” has the meaning assigned to such term in Section 2.18(1).

“Incremental Yield” has the meaning assigned to such term in Section 2.18(8).

“Indebtedness” means, with respect to any Person, without duplication:

(1) all obligations of such Person for borrowed money;

(2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;

(4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;

(5) all Capital Lease Obligations of such Person;

(6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;

(7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;

(8) the principal component of all obligations of such Person in respect of bankers’ acceptances;

(9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and

(10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

(a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
prepaid or deferred revenue arising in the ordinary course of business;

(c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or

(d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Documents” means, with respect to any Indebtedness, all agreements and instruments governing such Indebtedness, all evidences of such Indebtedness or Credit Support thereof, all security documents for such Indebtedness (and documents and filings related thereto) and any intercreditor or similar agreements related thereto.

“Indebtedness Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Indemnified Taxes” means (1) all 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 (2) to the extent not otherwise described in clause (1), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 10.05(2).

“Intellectual Property Rights” has the meaning assigned to such term in Section 3.20(1).

“Intercreditor Agreement” means the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and Deutsche Bank AG, New York Branch, as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by Holdings and the Borrower, as amended, restated, supplemented or otherwise modified from time to time any of the ABL/Term Loan/Notes Intercreditor Agreement or the Junior Lien Intercreditor Agreement or any other intercreditor or similar agreements related to the Obligations.

“Interest Coverage Ratio” means, as of any date, the ratio of (1) the Consolidated EBITDA for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Lead Borrower for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Lead Borrower or preferred stock of any of the Restricted Subsidiaries, in each case, made during such period.

“Interest Election Request” means a request by the Lead Borrower to convert or continue a Borrowing in accordance with Section 2.04.
“Interest Payment Date” means (1) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Term Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing; and (2) with respect to any ABR Loan, the last Business Day of each fiscal quarter of the Lead Borrower commencing with the last Business Day of the fiscal quarter of the Borrower ending in January 2014.

“Interest Period” means, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months thereafter (or, if agreed by all Lenders, 12 months or a shorter period), as the Lead Borrower may elect, or the date any Eurocurrency Borrowing is converted to an ABR Borrowing in accordance with Section 2.04 or repaid or prepaid in accordance with Section 2.06, 2.07 or 2.08; provided that:

1. if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day;

2. any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will end on the last Business Day of the calendar month at the end of such Interest Period;

3. no Interest Period will extend beyond the applicable Maturity Date. Interest will accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period; and

4. with respect to the 2019 Extended Term Loans and the 2013 Term Loans, the initial Interest Period, commencing on the Closing Amendment No. 2 Effective Date, will end on December 6, 2013. July 5, 2019.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

1. securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);

2. securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrowers and its Restricted Subsidiaries;
corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and

investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Investor” has the meaning assigned to such term in the recitals hereto.

“Junior Financing” means (i) any Indebtedness permitted to be incurred hereunder that is contractually subordinated in right of payment to the Obligations, unsecured or secured by Liens that are contractually subordinated to the Liens securing the Obligations or any Permitted (excluding (a) the ABL Obligations and (b) Obligations under this Agreement), (ii) the 2028 Debentures, (iii) the Senior Notes, (iv) the Secured Notes, or (v) any Refinancing Indebtedness in respect of any of the foregoing.

“Junior Lien Intercreditor Agreement” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H (as the same may be modified in a manner satisfactory to the Administrative Agent), or, if requested by the providers of Indebtedness to be secured on a junior basis to the Term Loans, another lien subordination arrangement satisfactory to the Administrative Agent. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Term Loans. Indebtedness” means Indebtedness that is secured only by Junior Liens on the Collateral.

“Junior Liens” means Liens on the Collateral, which Liens on any item of Collateral rank junior to the Liens securing the Obligations on such item of Collateral, provided that, with respect to the Call Right Collateral, such Liens may rank senior to the Lien securing the Obligations in accordance with the Junior Lien Intercreditor Agreement.

“Junior Lien Intercreditor Agreement” means that certain Junior Lien Intercreditor Agreement, dated as of the Amendment No. 2 Effective Date, by and among the Administrative Agent, the Collateral Agent, the Second Lien Notes Collateral Agent, the Third Lien Notes Collateral Agent and any other parties party thereto from time to time, and acknowledged by Holdings and the Borrowers, as amended, restated, supplemented or otherwise modified from time to time.

“Latest Maturity Date” means, as of any date of determination, the latest Maturity Date of the Term Facilities in effect on such date.

“Lender” means each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 and any Additional Lender.

“Lender Default” means:

(1) the refusal (which has not been retracted) or failure of any Lender to make available its portion of any Borrowing;
any Lender has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations under the Term Facility or under other similar agreements in which it commits to extend credit or

(3) the admission by any Lender that it is insolvent or such Lender becoming subject to a Lender-Related Distress Event.

“Lender-Related Distress Event” means, with respect to any Lender or any Person that directly or indirectly controls a Lender (each, a “Distressed Person”), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; provided that a Lender-Related Distress Event will not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“lending office” means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Term Loans.

“Letter of Credit” has the meaning assigned to such term in the ABL Credit Agreement.

“LIBOR Quoted Rate” means, for any day (or if such day is not a Business Day, the immediately preceding Business Day), a fluctuating rate per annum equal to the greater of (1) the Adjusted LIBO Rate for an interest period of one month as determined as of 11:00 a.m. (London, England time) on such day by reference to the British Bankers’ Association Interest Settlement Rates (or by reference to any successor or substitute entity or other quotation service providing comparable quotations to such British Bankers’ Association Interest Settlement Rates) for deposits in dollars (as set forth by any service selected
by the Administrative Agent that has been nominated by the British Bankers’ Association (or any successor or substitute agency) as an authorized vendor for the purpose of displaying such rates); and (2) (a) 1.00%, with respect to any Term Loans other than the 2019 Extended Term Loans (including the 2013 Term Loans) or (b) 1.50%, with respect to any 2019 Extended Term Loans.

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) 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; provided that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Limited MYT Guarantee” means the joint and several, irrevocable, full and unconditional Guarantee by each MYT Guarantor on a senior basis of the performance of and punctual payment when due of all obligations of the issuers of the Second Lien Notes under the Second Lien Notes Indenture and the Second Lien Notes Trustee under such Second Lien Notes Indenture and the Second Lien Notes Trustee in accordance therewith (the maximum amount recoverable therefrom in the aggregate not to exceed $200.0 million).

“Limited MYT Guarantee Collateral” means all or substantially all assets of the MYT Guarantors securing the Limited MYT Guarantee of each MYT Guarantor.

“Loan Documents” means this Agreement, the Security Documents, the Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note, any Extension Amendment (including the 2019 Extension Amendment), any other amendment or other agreement or document evidencing or governing the Obligations hereunder, and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

“Loan Parties” means Holdings, the Borrowers and the Subsidiary Loan Parties.

“Maintenance Capital Expenditures” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“Make-Whole Premium” means, with respect to any Premium Event, an amount equal to the sum of the present values, as determined by the Administrative Agent in accordance with accepted financial practice, at the date (the “Prepayment Date”) of the applicable prepayment, acceleration, satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance, refinancing, amendment, or compromise of 2019 Extended Term Loans, of (i) all remaining scheduled payments of interest payable on the principal amount prepaid, accelerated, satisfied, released, paid, restructured, reorganized, reinstated, replaced, defeased, refinanced, amended or compromised, as applicable, from the Prepayment Date up to but not including the first anniversary of the Amendment No. 2 Effective Date, calculated using an interest rate equal to the interest rate applicable to such 2019 Extended Term Loans on the Prepayment Date and (ii) the prepayment premium that would be due with respect to a prepayment of 2019 Extended Term Loans on the first anniversary of the Amendment No. 2 Effective Date pursuant to Section 2.07(4)(v), in the case of each of clauses (i) and (ii), discounted to the Prepayment Date at a rate equal to the Treasury Rate plus 0.50%.
“Management Agreement” means (1) each of the Management Services Agreements, as in effect on the Closing Date (the “Closing Date Management Agreements”), as amended, supplemented or otherwise modified in a manner not materially adverse to the Lenders, and (2) any other similar or related agreement with one or more of the Sponsors on terms not materially adverse to the Lenders relative to the terms of the Closing Date Management Agreements; it being agreed that (a) the inclusion of or increases (either by amendments to the Closing Date Management Agreements, the execution of a similar or related agreements or otherwise) by a material amount in the aggregate amount payable to the Sponsors as a monitoring, management or similar fee above $10.0 million per annum (with pro rated amounts payable for any partial year periods and any amounts not paid in any year accruing and payable upon request of the Sponsors in future periods) will be deemed to be materially adverse to the Lenders and (b) (i) adding Affiliates of the Sponsors as parties to any such agreements or (ii) providing for the payment (or accrual) of an annual monitoring, management or similar fee to the Sponsors in an aggregate amount equal to or less than $10.0 million per annum for any period commencing on or after the Closing Date (with pro rated amounts payable for any partial year periods and any amounts not paid in any period beginning on the Closing Date accruing and being payable upon request of the Sponsors in future periods), either by amendments to the Closing Date Management Agreements, the execution of a similar or related agreements or otherwise, in each case, will not be materially adverse to the Lenders.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the Borrower and its Subsidiaries on the Closing Date or who became directors, officers or management personnel of the Borrower and its Subsidiaries following the Amendment No. 2 Effective Date (other than in connection with a transaction that would otherwise be a Change in Control if such persons were not included in the definition of “Permitted Holders”), or (in each case) family members thereof, or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date Beneficially Own or have the right to acquire, directly or indirectly, Equity Interests of the Lead Borrower or any Permitted Parent.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect on:

(1) the business, financial condition or results of operations, in each case, of the Lead Borrower and the Restricted Subsidiaries (taken as a whole);

(2) the ability of the Borrowers and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or

“Management Agreement” means (1) each of the Management Services Agreements, as in effect on the Closing Date (the “Closing Date Management Agreements”), as amended, supplemented or otherwise modified in a manner not materially adverse to the Lenders, and (2) any other similar or related agreement with one or more of the Sponsors on terms not materially adverse to the Lenders relative to the terms of the Closing Date Management Agreements; it being agreed that (a) the inclusion of or increases (either by amendments to the Closing Date Management Agreements, the execution of a similar or related agreements or otherwise) by a material amount in the aggregate amount payable to the Sponsors as a monitoring, management or similar fee above $10.0 million per annum (with pro rated amounts payable for any partial year periods and any amounts not paid in any year accruing and payable upon request of the Sponsors in future periods) will be deemed to be materially adverse to the Lenders and (b) (i) adding Affiliates of the Sponsors as parties to any such agreements or (ii) providing for the payment (or accrual) of an annual monitoring, management or similar fee to the Sponsors in an aggregate amount equal to or less than $10.0 million per annum for any period commencing on or after the Closing Date (with pro rated amounts payable for any partial year periods and any amounts not paid in any period beginning on the Closing Date accruing and being payable upon request of the Sponsors in future periods), either by amendments to the Closing Date Management Agreements, the execution of a similar or related agreements or otherwise, in each case, will not be materially adverse to the Lenders.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the Borrower and its Subsidiaries on the Closing Date or who became directors, officers or management personnel of the Borrower and its Subsidiaries following the Amendment No. 2 Effective Date (other than in connection with a transaction that would otherwise be a Change in Control if such persons were not included in the definition of “Permitted Holders”), or (in each case) family members thereof, or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date Beneficially Own or have the right to acquire, directly or indirectly, Equity Interests of the Lead Borrower or any Permitted Parent.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect on:

(1) the business, financial condition or results of operations, in each case, of the Lead Borrower and the Restricted Subsidiaries (taken as a whole);

(2) the ability of the Borrowers and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or

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the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents.

"Material Indebtedness" means Indebtedness (other than the Term Loans) of the any Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding $50.0 million.

"Material Subsidiary" means any Subsidiary other than an Immaterial Subsidiary.

"Maturity Date" means, as the context may require:

(1) with respect to the 2013 Term Loans existing on the Closing Date, October 25, 2020;

(2) with respect to any Incremental Term Loans, the final maturity date specified therefor in the applicable Incremental Facility Amendment; 2019 Extended Term Loans, (i) unless clause (ii) applies, October 25, 2023 and (ii) July 16, 2021, if and only if, all of the Senior Notes (and any Refinancing in respect thereof), other than Senior Notes (and any Refinancing in respect thereof) in an aggregate principal amount not to exceed $150.0 million, have not been, on or prior to July 16, 2021, (a) fully repaid or otherwise redeemed, discharged or defeased or (b) extended so that the maturity date with respect thereto is no earlier than April 24, 2024;

(3) with respect to any Other Term Loans, the final maturity date specified therefor in the applicable Refinancing Amendment; and

(4) with respect to any other Extended Term Loans, the final maturity date specified therefor in the applicable Extension Amendment.

"Maximum Rate" has the meaning assigned to such term in Section 10.09.

"Merger" has the meaning assigned to such term in the recitals hereto. Sub" means Mariposa Merger Sub LLC, a Delaware limited liability company, which merged with and into Lead Borrower with Lead Borrower surviving such merger.

"Merger Agreement" has the meaning assigned to such term in the recitals hereto.

"Merger Sub" has the meaning assigned to such term in the introductory paragraph hereof.

"MNPI" means any material nonpublic Information regarding Holdings and the Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition "material nonpublic Information" means nonpublic information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Term Loans or to enter into any of the transactions contemplated thereby.

"Moody's" means Moody's Investors Service, Inc or any successor to the rating agency business thereof.

"Mortgage Policies" has the meaning assigned to such term in Section 5.10(2).
“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Holdings, the Borrower or any Restricted Subsidiary, any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“MYT Entities” means, (a) collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH (Germany), (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in subclauses (i) through (vii) of this clause (a), and (b) as used in the definitions of “MyTheresa Designation” and “MyTheresa Distribution” and in Section 10.05(2) and Section 10.22, the entities described in subclauses (i) through (vi) of the foregoing clause (a).

“MYT Guarantor” means, collectively, and together with their respective successors, (a) the entities listed in clause (a)(i), (a)(ii) and (a)(vii) of the definition of “MYT Entities” and (b) MYT Parent and MYT Intermediate Holdco, providing the Limited MYT Guarantee of the Second Lien Notes Indenture.

“MYT Holdco” means MYT Holding Co., a Delaware corporation and a direct Wholly Owned Subsidiary of MYT Parent, together with its successors.

“MYT Holdco Common Equity” means the common Equity Interests of the MYT Holdco.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Preferred Stock” means, collectively, the Cumulative Series A Preferred Stock of MYT Holdco under the certificate of designation governing the MYT Holdco Preferred Series A Stock and the Cumulative Series B Preferred Stock of MYT Holdco under the certificate of designation governing the MYT Holdco Preferred Series B Stock.

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.

“MYT Holdco Preferred Stock Documents” means, collectively, the documents governing the MYT Holdco Preferred Stock (including the applicable certificates of designation and organizational documents).

“MYT Intermediate Holdco” means MYT Intermediate Holding Co., a newly formed Delaware corporation and a direct Wholly Owned Subsidiary of MYT Holdco, together with its successors.
“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.

“MYT Waterfall” means, collectively, distributions of cash or any other assets received in connection with a MYT Secondary Sale (as defined in the Second Lien Notes Indenture) by MYT Holdco or any of the equityholders thereof (which proceeds shall be funded by the purchasers directly to MYT Holdco for deposit or distribution) made in accordance with the following priorities:

(1) first, up to $200.0 million irrevocably deposited into the MYT Account (as defined in the Second Lien Notes Indenture); provided, that, upon the earlier to occur of (i) the satisfaction and discharge in full of the Second Lien Notes Obligations and (ii) provision of MYT Alternate Security (as defined in the Second Lien Notes Indenture), any amounts in the MYT Account shall be released and distributed in accordance with clauses (2), (3) and (4) below;

(2) second, to holders of MYT Holdco Series A Preferred Stock on a pro rata basis, up to an amount in respect of each share of MYT Holdco Series A Preferred Stock equal to (i) $1.00, adjusted as appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization, combination or similar event with respect to shares of MYT Holdco Series A Preferred Stock, plus (ii) all accumulated and unpaid dividends (whether or not declared, and including all such dividends that have compounded) thereon through but not including, the date of payment (such amount in the aggregate, the “Liquidation Preference”);

(3) third, to the holders of MYT Holdco Series B Preferred Stock, up to an amount equal to the Liquidation Preference received by the holders of MYT Holdco Series A Preferred Stock in the foregoing clause (2) (excluding any additional dividends of 2% per annum payable in accordance with the MYT Holdco Preferred Series A Certificate upon certain events of default therein); and

(4) fourth, (x) to the holders of the MYT Holdco Common Equity, 50% of any remaining distributions on a pro rata basis and (y) the other 50% of any remaining distributions, to the Lead Borrower as common equity and used by the Lead Borrower to redeem the Third Lien Notes at par.

“MyTheresa Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.

“MyTheresa Designation” means, collectively, all designations by any Loan Party or any of their Related Parties prior to the execution date of the TSA of any of the MYT Entities as “unrestricted” Subsidiaries under the Senior Notes Indentures, the Existing Credit Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Loan Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Loan Party or any of their Related Parties (including but not limited to NMG International) prior to the execution date of the TSA to or for the benefit of any other Related Parties of (1) any Equity Interests in the MYT Entities, (2) any Indebtedness owed by the MYT Entities to any Related Party (including but not limited to NMG International), and (3) any and all other Claims or Equity Interests of any Related Party (including but not limited to NMG International) in the MYT Entities, and all
acts or omissions taken by any Loan Party or any of its Related Parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1) through (3) of this definition.

“Net Cash Proceeds” means the aggregate cash proceeds (using the fair market value of any Cash Equivalents) received by the Lead Borrower or any Restricted Subsidiary in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses incurred as a result thereof, taxes paid or payable within one year of such Asset Sale as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required to be paid as a result of such transaction that is secured by a Permitted Lien that is prior or senior to the Lien securing the Obligations, and any costs associated with unwinding any related Hedge Agreements in connection with such transaction and any deduction of appropriate amounts to be provided by the Borrower or any of the Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any of the Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; provided that such reserved amounts will be deemed to be Net Cash Proceeds to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount). For purposes of Section 2.08(1), no cash proceeds realized in connection with an Asset Sale will be deemed to be Net Cash Proceeds unless such Asset Sale involves aggregate consideration in excess of $10.0 million.

“New MYT Dutch HoldCo” means a newly formed Dutch B.V., Wholly Owned Subsidiary of MYT Intermediate Holding and direct parent of NMG Germany GmbH as a result of a merger by absorption of Mariposa Luxembourg II S.à r.l. into Mariposa Luxembourg I S.à r.l. and a subsequent merger by absorption of Mariposa Luxembourg I S.à r.l. into such newly formed Dutch B.V.

“New York Courts” has the meaning assigned to such term in Section 10.15.

“NM Group” means, collectively, NMG and its Subsidiaries.

“NMG” means Neiman Marcus Group, Inc., a Delaware corporation and the direct Parent Entity of Holdings.

“NMG International” means NMG International LLC, a Delaware limited liability company.

“No MNPI Representation” means, with respect to any Person, a customary representation that such Person is not in possession of any MNPI.
“Non-Consenting Lender” has the meaning assigned to such term in Section 2.16(3).

“Non-Debt Fund Affiliate” means any Affiliated Lender other than a Debt Fund Affiliate.

“Non-Debt Fund Affiliate Assignment and Acceptance” has the meaning assigned to such term in Section 10.04(10)(b).

“Non-Ratio Based Incremental Facility Cap” has the meaning assigned to such term in Section 2.18(3).

“Mortgageable Leases” means all leasehold Real Property interests subject to provisions restricting the mortgaging, assignment or other creation of a security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by a Responsible Officer of the Lead Borrower and the Collateral Agent) to be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest; provided that no leasehold Real Property shall be a Non-Mortgageable Lease if it is not treated as a Non-Mortgageable Lease under any of the Indebtedness Documents governing any Indebtedness of the Borrowers or any Restricted Subsidiary.

“All Non-Participating Term Loan Exchange Indebtedness” means, any Indebtedness incurred by the Borrowers or any Guarantors under this Agreement in exchange for or converted from, or the net proceeds of which are used to, Refinance or repay the 2013 Term Loan Obligations (or any refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

1. the principal amount (or accreted value, if applicable) of such Non-Participating Term Loan Exchange Indebtedness does not exceed 100% of the outstanding aggregate principal amount (or accreted value, if applicable) of the 2013 Term Loans so refinanced or repaid (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. such Non-Participating Term Loan Exchange Indebtedness otherwise qualifies as Permitted Refinancing Indebtedness with respect to the 2013 Term Loans (except that such Indebtedness and Guarantees thereof may be unsecured, secured with 2019 Extended Term Loan Liens (including secured with any existing 2019 Extended Term Loan Liens) or secured with Liens junior to the 2019 Extended Term Loan Liens on any or all of the Collateral and Guaranteed by any Person that Guarantees the 2019 Extended Term Loans, including any PropCo Guarantor);

3. such Non-Participating Term Loan Exchange Indebtedness shall not amortize;

4. such Non-Participating Term Loan Exchange Indebtedness shall not be subject to any “most favored nation” pricing provisions;

5. such Non-Participating Term Loan Exchange Indebtedness shall mature no earlier than the latest Maturity Date then applicable to the 2019 Extended Term Loans hereunder;

6. such Non-Participating Term Loan Exchange Indebtedness has a cash interest rate not exceeding that of the 2019 Extended Term Loans incurred on the Amendment No. 2 Effective Date; and
such Non-Participating Term Loan Exchange Indebtedness is subordinated in right of payment or “waterfall” priority to the 2019 Extended Term Loan Obligations.

Notwithstanding any other provision of this Agreement (including the specific provisions of Sections 2.19 and 2.20), Non-Participating Term Loan Exchange Indebtedness may be incurred as Other Term Loans pursuant to Section 2.19 (to the extent incurred to refinance existing 2013 Term Loans) or Extended Term Loans pursuant to Section 2.20 (to the extent holders of 2013 Term Loans elect to extend such 2013 Term Loans in the form of Non-Participating Term Loan Exchange Indebtedness).

“Non-Participating Term Loan Exchange Obligations” means the Indebtedness and the related Obligations under the Loan Documents related to the Non-Participating Term Loan Exchange Indebtedness.

“Non-Wholly Owned Target” means any Person or assets acquired pursuant to a Permitted Acquisition that becomes, upon the consummation of such acquisition, a non-Wholly Owned Subsidiary, a joint venture entity or any other entity, special purpose vehicle, or asset in which a Loan Party owns a minority interest under any similar arrangement.

“Note” has the meaning assigned to such term in Section 2.05(5).

“Notes Priority Real Estate Assets” means the Real Property assets set forth on (i) Schedule 3.15(1) under the heading “Notes Priority Real Estate Assets” and (ii) Schedule 3.15(2) under the heading “Notes Priority Real Estate Assets”.

“Notes PropCo” means NMG Notes PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Lead Borrower formed solely to hold the Real Property interests consisting of Notes PropCo Assets; provided, however, that in the event no Notes Priority Real Estate Assets are contributed to the Notes PropCo as of the post-closing deadline (subject to any applicable extensions) to put in place mortgages over the Notes Priority Real Estate Assets set forth on Schedule 5.12, Notes PropCo shall be permitted to be liquidated or dissolved pursuant to Section 6.05(1)(g) after the Amendment No. 2 Effective Date.

“Notes PropCo Assets” means the Notes Priority Real Estate Assets, to the extent that such Real Property assets are Non-Mortgageable Leases.

“Obligations” means:

(1) all amounts owing to any Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document (including any Applicable Premium and any contingent indemnification and reimbursement obligations, or other payments required under Section 10.05), including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Loan Party of any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding;

(2) any Specified Hedge Obligations; and
(3) any Cash Management Obligations;

provided that:

(a) the Obligations of the Loan Parties under any Specified Hedge Agreement and Cash Management Obligations will be secured and Guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and Guaranteed; and

(b) any release of Collateral or Guarantors (as defined in the Collateral Agreement) effected in the manner permitted by this Agreement or any Security Document will not require the consent of any Cash Management Bank or Qualified Counterparty pursuant to any Loan Document.

“OFAC” has the meaning assigned to such term in Section 3.19(3)(e).

“Offering Circular” means the Offering Circular related to the offering of Second Lien Notes, dated as of May 20, 2019.

“Original Closing Date” means October 25, 2013.

“Original Commitment” means, with respect to each Lender, the commitment of such Lender to make Term Loans under the Existing Credit Agreement.

“Original Merger” means the “Merger” as defined in the Existing Credit Agreement.

“Original Merger Agreement” means the “Merger Agreement” as defined in the Existing Credit Agreement.

“Original Term Loan Installment Date” has the meaning assigned to such term in Section 2.06(1).

“Original Transactions” means the “Transactions” as defined in the Existing Credit Agreement.

“Other Connection Taxes” means, with respect to any Recipient, 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, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Term Loan or Loan Document).

“Other First Lien Indebtedness” has the meaning assigned to such term in Section 2.08(1)(c).

“Other Taxes” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16).
“Other Term Loan Installment Date” has the meaning assigned to such term in Section 2.06(2).

“Other Term Loans” has the meaning assigned to such term in Section 2.19(1).

“Parent Entity” means any direct or indirect parent of the Lead Borrower.

“Participant” has the meaning assigned to such term in Section 10.04(4)(a).

“Participant Register” has the meaning assigned to such term in Section 10.04(4)(a).

“Payment Office” means the office of the Administrative Agent located at Eleven Madison Avenue, New York, New York 10010 or such other office as the Administrative Agent may designate to the Lead Borrower and the Lenders from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“Perfection Certificate” means the Perfection Certificate with respect to the Loan Parties in a form substantially similar to that delivered on the Closing Amendment No. 2 Effective Date.

“Permitted Acquisition” means any acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or merger, consolidation or amalgamation with, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired in a Permitted Acquisition) if (1) no Event of Default is continuing immediately prior to making such Investment or would result therefrom; and (2) immediately after giving effect thereto, with respect to acquisitions of entities that do not become Subsidiary Loan Parties, the aggregate fair market value of all Investments made in such entities since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(6), will not exceed the greater of (a) $100 million and (b) 1.15% of Consolidated Total Assets as of the date any such acquisition is made—the purchase or other acquisition, by merger, consolidation, amalgamation or otherwise, of the Equity Interests in, or the assets of (including all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person, including minority investments and joint ventures (or any subsequent investment made in a Person, business unit, division, product line or line of business previously acquired in a Permitted Acquisition) (any such transaction, an “Acquisition”), provided:

- Permitted Amendment means any Incremental Facility Amendment, Refinancing Amendment or Extension Amendment

1. no Event of Default is continuing immediately prior to making such Investment or would result therefrom;

2. immediately after giving effect thereto, the aggregate consideration (which shall not include any related transaction costs of the Loan Parties or their Subsidiaries for their own account, but shall include Indebtedness of the target assumed or retained in connection with any applicable transaction) (collectively, the “Aggregate Consideration”) paid (s) in connection with any such individual Acquisition, whether consummated through a single transaction or
series of related transactions but excluding from such amount any amounts paid utilizing the Available Contribution Proceeds, shall not exceed $150.0 million (the “Individual Cap”), plus after such Permitted Acquisition is made, additional incremental amounts not to exceed $25.0 million in the aggregate (the “Incremental Cap”) in such Permitted Acquisition, and (v) for all Permitted Acquisitions since the Amendment No. 2 Effective Date (without taking into account subsequent increases or decreases in value of the target or assets acquired but including any incremental amounts funded pursuant to the preceding clause (x) after any initial Permitted Acquisition), but excluding from such aggregate amount any amounts paid utilizing the Available Contribution Proceeds shall not exceed, together with Indebtedness assumed in connection with such acquisition pursuant to Section 6.01(12), $300.0 million less the Aggregate Consideration paid by TNMG LLC prior to the Amendment No. 2 Effective Date in respect of that certain Investment made by TNMG LLC pursuant to that certain Unit Purchase Agreement, dated as of April 17, 2019, by and among FashionPhile Group, LLC, TNMG LLC and the other parties party thereto (the “Aggregate Cap”);

(3) following the consummation thereof,

(a) any acquired Person, solely to the extent such Person becomes a Wholly Owned Subsidiary of Holdings or any of its Subsidiaries, shall become a Guarantor hereunder, to the extent required by and subject to the limitations of Section 5.10; and

(b) any acquired assets (including any Equity Interests in a Non-Wholly Owned Target) shall constitute Collateral, subject to the limitations set forth in the Loan Documents;

provided, that, (i) no Non-Wholly Owned Target shall be required to become a Guarantor hereunder or pledge any of its assets as Collateral hereunder, (ii) any Non-Wholly Owned Target so acquired pursuant to this definition shall be permitted to fund its ratable share of investments in other bona fide operating businesses, in each case, subject to the Individual Cap, the Incremental Cap and the Aggregate Cap, and (iii) for purposes of clarity, a third party owner (that is not Holdings or any of its Subsidiaries) of a Non-Wholly Owned Target shall not be required to pledge its Equity Interests in such entity as Collateral;

(4) immediately after giving effect to any such Acquisition, on a Pro Forma Basis as of the date any such Acquisition is made, “Excess Availability” as defined in and under the ABL Credit Agreement shall not be less than $300 million;

(5) such Acquisition is not in respect of any Indebtedness of, or Equity Interests in, Holdings or its Subsidiaries nor in any Person that holds any such Indebtedness or Equity Interests; and

(6) any joint venture investment shall (x) not be consummated with Affiliates of Holdings, the Borrowers, or their Subsidiaries (except that such Affiliates (including any Sponsor but excluding Holdings, the Borrowers, and their Subsidiaries) may co-invest in any such joint venture with an unaffiliated third party Person on terms substantially similar to the terms of the applicable Loan Party’s or Subsidiary’s Investment without such Affiliates’ Investments being subject to the caps set forth above), and (y) consist of bona fide operating businesses reasonably related to the Borrowers’ business.

“Permitted Debt” has the meaning assigned thereto in Section 6.01.

“Permitted Holders” means each of:
the Sponsors;

any member of the Management Group (or any controlled Affiliate thereof of which members of the Management Group hold at least 50% of the Voting Stock and 50% of the economic value);

any other holder of a direct or indirect equity interest Equity Interest in Holdings that either (a) holds such interest Equity Interest as of the Closing Date and is disclosed to the Arrangers prior to the Closing Date or (b) becomes a holder of such interest prior to the three-month anniversary of the Closing Date and is a limited partner of a Sponsor on the Closing Date, provided that the limited partners that become holders of equity interests pursuant to this clause (b) do not own in the aggregate more than 25% of the Voting Stock of Holdings as of such three-month anniversary Amendment No. 2 Effective Date;

any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in the foregoing clauses (1), (2) or (3) are members; provided that, (a) without giving effect to the existence of such group or any other group, the Persons described in the foregoing clauses (1), (2) and (3), collectively, Beneficially Own Voting Stock representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings or any Permitted Parent (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested) then held by such group and (b) if the Beneficial Ownership described in subclause (a) is shared with any Person other than the Persons described in clauses (1), (2) and (3) above, the Persons described in clauses (1), (2) and (3) above hold at least 50% of the economic value of the equity securities of Holdings or Permitted Parent, as the case may be) then held by such group; and

any Permitted Parent.

"Permitted Holdings Debt" means unsecured Indebtedness of Holdings that:

is not subject to any Guarantee by the Borrowers or any Restricted Subsidiary;

does not mature prior to the date that is ninety-one (91) days after the Latest Maturity Date;

no Event of Default has occurred and is continuing immediately after the issuance or incurrence thereof or would result therefrom;

has no scheduled amortization or payments of principal (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (6) hereof) prior to the Latest Maturity Date;

does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the earlier to occur of the date that is ninety-one (91) days after the Latest Maturity Date; and

has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive than those set forth in the Senior Notes Indentures taken as a whole (other than
provisions customary for senior discount notes of a holding company), in each case as determined in good faith by a Responsible Officer of the Lead Borrower;

provided that clauses (4) and (5) will not restrict payments that are necessary to prevent such Indebtedness from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code; provided, further that the Lead Borrower will deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Lead Borrower is bound by a confidentiality obligation with respect thereto, in which case the Lead Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

“Permitted Investments” has the meaning assigned to such term in Section 6.04.

“Permitted Investor” means:

(1) each of the Sponsors;

(2) each of their respective Affiliates (other than any member of the NM Group or any other portfolio company of the Sponsors) and investment managers;

(3) any fund or account managed by any of the Persons described in clause (1) or (2) of this definition;

(4) any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan; and

(5) investment vehicles of members of management of Holdings or the Borrowers that invest in, acquire or trade commercial loans but excluding natural persons.

“Permitted Liens” has the meaning assigned to such term in Section 6.02.

“Permitted Parent” means any Parent Entity for so long as it is controlled only by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof; provided that such Parent Entity was not formed in connection with, or in contemplation of, a transaction that would otherwise constitute a Change in Control.

“Permitted PropCo Guaranteed Obligations” means, collectively, (i) the 2019 Extended Term Loan Obligations, (ii) the Second Lien Notes Obligations, (iii) the Third Lien Notes Obligations, (iv) the ABL Obligations, (v) the Non-Participating Term Loan Exchange Obligations and (vi) the 2028 Debentures Obligations.

“Permitted Refinancing Indebtedness” means any Indebtedness issued in exchange for or converted from, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “Refinance” or a “Refinancing”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);
the final maturity of such Permitted Refinancing Indebtedness is later than the maturity of the Indebtedness so refinanced and the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being refinanced that were due on or after the date that is one year following the Latest Maturity Date were instead due on the date that is one year following the Latest Maturity Date; provided that no Permitted Refinancing Indebtedness incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Latest Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Latest Maturity Date for the Indebtedness being refinanced;

(3) if the Indebtedness being Refinanced is subordinated in right of payment or, as to any assets, lien priority to the Obligations under this Agreement, such Permitted Refinancing Indebtedness is subordinated, as to such assets, in right of payment or lien priority to such Obligations on terms at least as favorable to the applicable Lenders as those contained in the documentation governing the Indebtedness being refinanced;

(4) no Permitted Refinancing Indebtedness may have different obligors, or greater (including higher ranking priority) Guarantees or security, than the Indebtedness being refinanced; provided that, with respect to a Refinancing of the ABL Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness will be on terms not materially less favorable to the Lenders than those contained in the documentation governing the ABL Credit Agreement, as determined in good faith by a Responsible Officer of the Lead Borrower, in the case of a Refinancing of Indebtedness that is secured on a pari passu basis with the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(5) [reserved];

(6) in the case of a Refinancing of Indebtedness that is secured on a pari passu basis with, or on a junior basis to, the Term Loans, by any Collateral and subject to specified Required Collateral Lien Priority, the applicable Liens securing such Permitted Refinancing Indebtedness do not have a higher priority than the Required Collateral Lien Priority applicable to the Liens securing the Obligations and a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Junior Lien Intercreditor Agreement and, if applicable, the ABL/Term Loan/Notes Intercreditor Agreement; and

(7) in the case of a Refinancing of the ABL Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness are subject to the ABL/Term Loan/Notes Intercreditor Agreement or another intercreditor agreement that is substantially consistent with, and no less favorable to the Lenders in any material respect than, the ABL/Term Loan/Notes Intercreditor Agreement as certified by a Responsible Officer of the Lead Borrower; and

(8) in the case of a Refinancing of the Second Lien Notes Obligations and/or the Third Lien Notes Obligations, the cash interest rate on any such Permitted Refinancing Indebtedness
shall not exceed the cash interest rate applicable to such Second Lien Notes Obligations and/or Third Lien Notes Obligations being Refinanced.

Permitted Refinancing Indebtedness may not be incurred to Refinance Indebtedness that is secured on a junior basis to the Term Loans with Indebtedness that is secured on a pari passu basis with the Term Loans. For the avoidance of doubt, any Permitted Refinancing Indebtedness incurred to refinance any Obligations, Incremental Equivalent Term Debt or Credit Agreement Refinancing Indebtedness will be required to satisfy the requirements of the definition of “Incremental Equivalent Term Debt” or “Credit Agreement Refinancing Indebtedness”, as applicable.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

Notwithstanding the foregoing: (a) Indebtedness incurred to refinance the Remaining Senior Notes must be Remaining Senior Notes Exchange Indebtedness; (b) Indebtedness incurred to refinance the 2013 Term Loans must be unsecured Indebtedness, Junior Lien Indebtedness or Non-Participating Term Loan Exchange Indebtedness; (c) Indebtedness incurred to refinance the Second Lien Notes, Third Lien Notes and/or the Guarantees in respect thereof must be unsecured Indebtedness or Junior Lien Indebtedness; (d) Indebtedness incurred to refinance any Indebtedness Guaranteed by Notes PropCo may not have the benefit of a Guarantee by Notes PropCo that has a higher priority in right of payment than the Guarantee by Notes PropCo of the Indebtedness being refinanced; and (e) Indebtedness incurred to refinance any Indebtedness Guaranteed by 2019 Extended Term Loan PropCo may not have the benefit of a Guarantee by 2019 Extended Term Loan PropCo that has a higher priority in right of payment than the Guarantee by 2019 Extended Term Loan PropCo of the Indebtedness being refinanced.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“PIK Interest” has the meaning assigned to such term in Section 2.10(7).

“Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by Holdings or any of its Subsidiaries any Loan Party or any ERISA Affiliate or (b) in respect of which Holdings or any of its Subsidiaries any Loan Party or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” has the meaning assigned to such term in Section 10.17(1).

“Pledged Collateral” means “Pledged Collateral” as defined in the Collateral Agreement.

“Premium Event” has the meaning assigned to such term in Section 2.07(4).

“Pro Forma Basis” or “Pro Forma” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge Coverage Ratio or any other calculation under any applicable provision of the Loan Documents, as of any date, that pro forma effect will be given to the Recapitalization Transactions, any
Permitted Acquisition or Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, or any conversion of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of the Lead Borrower being used to calculate such financial ratio (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Borrowers to be realized based upon actions taken or reasonably expected to be taken within 12 months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Borrowers, up to an amount, after giving effect to such application or adjustment, not in excess of 10% of Consolidated EBITDA for any Reference Period.

“Projections” means all projections (including financial estimates, financial models, forecasts and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of Holdings or any of the Subsidiaries on or prior to the Closing Amendment No. 2 Effective Date.

“PropCo Guarantors” means Notes PropCo and 2019 Extended Term Loan PropCo.

“PropCo Operating License” has the meaning assigned to such term in Section 5.10(8).

“PropCo Subordination Agreements” means each of (a) that certain subordination agreement, dated as of the Amendment No. 2 Effective Date, by and among the Administrative Agent, the representative for the Second Lien Notes, the representative for the Third Lien Notes and any other parties party thereto from time to time, and acknowledged by 2019 Extended Term Loan PropCo, as amended, restated, supplemented or otherwise modified from time to time, and (b) that certain subordination agreement, dated as of the Amendment No. 2 Effective Date, by and among the Administrative Agent, the representative for the Second Lien Notes, the representative for the Third Lien Notes and any other parties party thereto from time to time, and acknowledged by Notes PropCo, as amended, restated, supplemented or otherwise modified from time to time.

“Public Lender” has the meaning assigned to such term in Section 10.17(2).

“Purchase Date” means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

“Purchase Documents” means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

“Purchasing Borrower Party” means Holdings or any Subsidiary of Holdings that becomes an Assignee or Participant pursuant to Section 10.04(14).
“Qualified Counterparty” means any counterparty to any Specified Hedge Agreement that, at the time such Specified Hedge Agreement was entered into or on the Original Closing Date, was an Agent, an Arranger, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of the foregoing.

“Qualified Equity Interests” means any Equity Interests other than Disqualified Stock.

“Qualified IPO” means an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-4 or Form S-8) of the Equity Interests of any Parent Entity which generates cash proceeds of at least $100.0 million.

“Qualified Receivables Financing” means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

1. The Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;

2. All sales of accounts receivable and related assets by the Borrower or any Restricted Subsidiary to the Receivables Subsidiary are made at fair market value (as determined in good faith by a Responsible Officer of the Borrower); and

3. The financing terms, covenants, termination events and other provisions thereof will be market terms (as determined in good faith by a Responsible Officer of the Borrower) and may include Standard Securitization Undertakings. The grant of a security interest in any accounts receivable of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary) to secure any Indebtedness will not be deemed a Qualified Receivables Financing.

“Quarterly Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Ratio Debt” has the meaning assigned to such term in Section 6.01.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Receivables Facility” means one or more receivables financing facilities, as amended, supplemented, modified, extended, renewed, restated, refunded, replaced or refinanced from time to time, the Indebtedness of which is non-recourse (except for standard representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower and the Restricted Subsidiaries pursuant to which the Borrower or any Restricted Subsidiary sells its accounts receivable to either (1) a Person that is not a Restricted Subsidiary or (2) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary. Recapitalization Transaction Documents” has the meaning assigned to “Recapitalization Transaction Documents” in the TSA.

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"Receivables Financing" means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any Restricted Subsidiaries may sell, convey or otherwise transfer. Recapitalization Transactions means, collectively, the transactions to occur pursuant to the Recapitalization Transaction Documents, including:

1. a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary that is not a Receivables Subsidiary); and
2. any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Borrower or any Restricted Subsidiary, and any assets related thereto including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedge Agreements entered into by the Borrower or any such Restricted Subsidiary in connection with such accounts receivable.

"Receivables Repurchase Obligation" means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"Receivables Subsidiary" means a Wholly Owned Subsidiary of the Borrower (or another Person formed solely for the purposes of engaging in a Qualified Receivables Financing with the Borrower and to which the Borrower or any Restricted Subsidiary transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Borrower and its Restricted Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

1. no portion of the Indebtedness or any other obligations (contingent or otherwise): the execution and delivery of the 2019 Extension Amendment and the other Loan Documents, and the creation of the Liens pursuant to the Security Documents;
2. (a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding guarantees of obligations other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings;
3. (b) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or
(e) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and the execution and delivery of any amended or amended and restated ABL Loan Documents, and the creation of the Liens pursuant to the ABL Security Documents;

(3) to which neither the Borrower nor any other Restricted Subsidiary has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results; the execution and delivery of the Second Lien Notes Documents and the issuance of the Second Lien Notes under the Second Lien Notes Indenture, and the creation of the Liens pursuant to the Second Lien Notes Security Agreement;

(4) the execution and delivery of the Third Lien Notes Documents and the issuance of the Third Lien Notes under the Third Lien Notes Indentures, and the creation of the Liens pursuant to the Third Lien Notes Security Agreement;

(5) the execution and delivery of the MYT Holdco Preferred Stock Documents and the issuance of the MYT Holdco Preferred Stock; and

(6) Any such designation by the Board of Directors of the Borrower will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions, the payment of all fees, costs and expenses in connection with the foregoing.

“Recipient” means the Administrative Agent and any Lender, as applicable.

“Refinance” has the meaning assigned to such term in the definition of “Permitted Refinancing Indebtedness,” and the terms “Refinanced” and “Refinancing” will have correlative meanings.

“Refinancing Amendment” means an amendment to this Agreement (and, as necessary, each other Loan Document) executed by each of (1) the Borrowers and Holdings; (2) the Administrative Agent; and (3) each Lender that agrees to provide any portion of the Other Term Loans in accordance with Section 2.19.

“Register” has the meaning assigned to such term in Section 10.04(2)(d).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees and collateral provisions) issued by the Borrower in a dollar for dollar exchange therefor pursuant to an exchange offer registered with the SEC.
“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Reinvestment Deferred Amount” means, with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrowers or a Restricted Subsidiary in connection therewith that are not applied to prepay the Term Loans as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event” means any Asset Sale in respect of which the Lead Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice” means a written notice executed by a Responsible Officer stating that the Borrowers or any Restricted Subsidiary intends and expects to use an amount of funds not to exceed (i) the amount of Net Cash Proceeds of an Asset Sale to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business any Asset Sale of any warehouse or distribution center to (a) make an investment in, or purchase of, a warehouse or distribution center within 12 months following the date of the consummation of such Asset Sale or (b) apply such funds to any investments in, or purchases of, a warehouse or distribution center which were made at any time during the 24 months immediately preceding the date of consummation of such Asset Sale, or (ii) with respect to an Asset Sale of any store or stores, an aggregate amount of $30.0 million to fund capital expenditures incurred within 12 months following the date of the consummation of the applicable Asset Sale.

“Reinvestment Prepayment Amount” means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended by the Borrowers or a Restricted Subsidiary prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business in the manner described in the definition of “Reinvestment Notice”.

“Reinvestment Prepayment Date” means, (i) with respect to any Reinvestment Event in respect of which a Reinvestment Notice is delivered as described in clause (i) of the definition of Reinvestment Notice, the date occurring one year after such Reinvestment Event or, if the Borrower or a Restricted Subsidiary has entered into a legally binding commitment within one year after such Reinvestment Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business, the date occurring two years, and (ii) with respect to any Reinvestment Event in respect of which a Reinvestment Notice is delivered as described in clause (ii) of the definition of “Reinvestment Notice”, the date occurring 12 months after such Reinvestment Event.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Related Persons” has the meaning assigned to such term in Section 6.06(2).
“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, depositing, dispersing, emanating or migrating into or through the environment.

“Remaining Present Value” means, as of any date with respect to any lease, the present value as of such date of the scheduled future lease payments with respect to such lease, determined with a discount rate equal to a market rate of interest for such lease reasonably determined at the time such lease was entered into.

“Remaining Claim” has the meaning assigned to such term in Section 10.22(7).

“Remaining Senior Notes” means any Senior Notes issued pursuant to the Senior Notes Indentures that the holders thereof declined to exchange into Third Lien Notes pursuant to the exchange offer contemplated by the TSA, which remain outstanding on the Amendment No. 2 Effective Date following the consummation of the Recapitalization Transactions.

“Remaining Senior Notes Exchange Indebtedness” means Remaining Senior Notes Third Lien Exchange Indebtedness and Remaining Senior Notes Unsecured Exchange Indebtedness.

“Remaining Senior Notes Exchange Obligations” means the Indebtedness and the related Indebtedness Obligations under the applicable Remaining Senior Notes Exchange Indebtedness and the other Indebtedness Documents related to the applicable Remaining Senior Notes Exchange Indebtedness.

“Remaining Senior Notes Obligations” means the Indebtedness and the related Indebtedness Obligations under the Indebtedness Documents related to the Remaining Senior Notes.

“Remaining Senior Notes Third Lien Exchange Indebtedness” means, any Indebtedness incurred by the issuers of the Senior Notes or issued in exchange for, or the net proceeds of which are used to Refinance the Senior Notes (or any refinancings thereof constituting Permitted Refinancing Indebtedness), provided that:

1. the aggregate principal amount (or accreted value, if applicable) of such Remaining Senior Notes Third Lien Exchange Indebtedness issued shall not exceed an amount equal to 85% of the aggregate outstanding principal amount (or accreted value, if applicable) of the Senior Notes so Refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. such Remaining Senior Notes Third Lien Exchange Indebtedness otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Remaining Senior Notes (except that (a) such Indebtedness and Guarantees thereof may be secured with the same priority on the same Collateral that secures the Third Lien Notes and a Debt Representative acting on behalf of the holders of such Indebtedness shall become (if it is not already) party to or will otherwise be subject to the provisions of the Junior Lien Intercreditor Agreement and ABL/Term Loan/Notes Intercreditor Agreement and (b) such Indebtedness may benefit from the same Guarantees that provide Credit Support to the Third Lien Notes, including by Notes PropCo and 2019 Extended Term Loan PropCo, subject to the Required PropCo Guarantee Priority for Third Lien Notes or otherwise no worse for the Lenders);
such Remaining Senior Notes Third Lien Exchange Indebtedness shall have a cash interest rate not exceeding the cash interest rate on the Third Lien Notes as of the Amendment No. 2 Effective Date;

such Remaining Senior Notes Third Lien Exchange Indebtedness shall not amortize;

such Remaining Senior Notes Third Lien Exchange Indebtedness shall not be subject to any “most favored nation” pricing provisions; and

such Remaining Senior Notes Third Lien Exchange Indebtedness shall mature no earlier than the latest maturity date then applicable to the Third Lien Notes under the Third Lien Notes Indentures.

“Remaining Senior Notes Unsecured Exchange Indebtedness” means, any Indebtedness incurred by the issuers of the Senior Notes or issued in exchange for, or the net proceeds of which are used to Refinance the Senior Notes (or any refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

(1) the aggregate principal amount (or accreted value, if applicable) of such Remaining Senior Notes Unsecured Exchange Indebtedness issued shall not exceed an amount equal to 100% of the aggregate outstanding principal amount (or accreted value, if applicable) of the Senior Notes so Refinanced (including any Guarantees thereof) (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

(2) such Remaining Senior Notes Unsecured Exchange Indebtedness otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Remaining Senior Notes;

(3) such Remaining Senior Notes Unsecured Exchange Indebtedness shall have a cash interest rate not exceeding the weighted average cash interest rate of the Senior Notes outstanding as of the Amendment No. 2 Effective Date;

(4) such Remaining Senior Notes Unsecured Exchange Indebtedness shall not amortize;

(5) such Remaining Senior Notes Unsecured Exchange Indebtedness shall not be subject to any “most favored nation” pricing provisions; and

(6) such Remaining Senior Notes Unsecured Exchange Indebtedness shall mature no earlier than the latest maturity date then applicable to the Third Lien Notes under the Third Lien Notes Indentures.

“Reportable Event” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Repricing Event” means (1) any prepayment of the Term Loans with the proceeds of, or any conversion of Term Loans into, any new or replacement tranche of debt financing bearing interest at an “effective” interest rate less than the “effective” interest rate applicable to the Term Loans and (2) any amendment to the Term Facility that, directly or indirectly, reduces
the “effective” interest rate applicable to the Term Loans (in each case, taking into account original issue discount and upfront fees, which will be deemed to constitute like amounts of original issue discount, being equated to interest rate margins based on an assumed four-year life to maturity); provided that no Repricing Event will be deemed to occur in connection with a Change in Control.

“Required 2019 Extending Term Lenders” means, at any time, Lenders having 2019 Extended Term Loans outstanding that, taken together, represent more than 50.0% of the sum of all 2019 Extended Term Loans outstanding at such time.

“Required Collateral Lien Priority” means, with respect to any Lien on any Collateral, that such Lien on such Collateral has the priority indicated in the table below pursuant to the Intercreditor Agreements or other binding contractual obligation of the applicable secured parties, based on the category of asset subject to such Lien listed at the top of each column and the Indebtedness Obligations secured by such Lien listed at the beginning of each row:

<table>
<thead>
<tr>
<th>2019 Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations</th>
<th>2019 Extended Term Loan Collateral</th>
<th>2013 Collateral</th>
<th>ABL Priority Collateral</th>
<th>Call Right Collateral (pre-Call Right Cap Recovery)</th>
<th>Call Right Collateral (post-Call Right Cap Recovery)</th>
<th>Equity Interests in 2019 Extended Term Loan PropCo</th>
<th>Limited MYT Guarantee Collateral and MYT Account (A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 Extended Term Loan</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>2013 Term Loan Obligations</td>
<td>None</td>
<td>1</td>
<td>2</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>None</td>
</tr>
<tr>
<td>Second Lien Notes Obligations</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2 (B)</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>1(C)</td>
<td>4</td>
<td>3</td>
<td>None</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>1(D)</td>
<td>1(D)</td>
<td>None</td>
<td>3(D)</td>
<td>2(E)</td>
<td>1(D)</td>
<td>None</td>
</tr>
</tbody>
</table>

(A) “MYT Account” shall have the meaning ascribed to it in the Second Lien Notes Indenture. Liens securing the Second Lien Notes Obligations on Limited MYT Guarantee Collateral to be released following the earlier to occur of (i) a MYT Deposit Event (as defined in the Second Lien Notes Indenture) and (ii) the provision of MYT Alternate Security (as defined in the Second Lien Notes Indenture) pursuant to the terms of the Second Lien Notes Indenture.

(B) Recovery not to exceed $200.0 million, together with recovery for Second Lien Notes Obligations.

(C) Recovery not to exceed $200.0 million, together with recovery for Third Lien Notes Obligations.

(D) Priority will be pari passu with the 2019 Extended Term Loan Liens and Liens securing the Non-Participating Term Loan Exchange Obligations (or if there are no 2019 Extended Term Loan Obligations or Non-Participating Term
Loan Exchange Obligations, (i) with respect to the Call Right Collateral prior to the Call Right Cap Recovery, the 2028 Debentures Obligations will retain its Lien priority therein (i.e., third priority) and (ii) with respect to the 2019 Extended Term Loan Collateral, the 2013 Collateral, and the Equity Interests in the 2019 Extended Term Loan PropCo, the Lien priority provided for the 2028 Debentures Obligations will be pari passu with the highest priority Lien remaining on the relevant asset) solely on assets if and to the extent required by the 2028 Debentures Indenture.

(E) To the extent no 2019 Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, if the Call Right Cap Recovery has occurred, priority will be pari passu with the highest priority Lien remaining on the relevant asset, solely on assets if and to the extent required by the 2028 Debentures Indenture.

“Required Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Required Lender Consent Items” has the meaning assigned to such term in Section 10.04(12)(c).

“Required Lenders” means, at any time, Lenders having Term Loans outstanding and unused Commitments that, taken together, represent more than 50.0% of the sum of all Term Loans outstanding and Commitments at such time. The Term Loans and Commitments of any Defaulting Lender will be disregarded in determining Required Lenders, provided that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

(1) any amendment that would disproportionately affect the obligation of the Borrower to make payment of the Term Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same Class of Term Loans or Commitments;

(2) any amendment relating to:

(a) increases in the Commitment of such Defaulting Lender;

(b) reductions of principal, interest, fees or premium applicable to the Term Loans or Commitments of such Defaulting Lender, and

(c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Term Loans or Commitments of such Defaulting Lender; and (3) matters requiring the approval of each Lender under subclauses (v) and (vi) of Section 10.08(2) at such time.

“Required Percentage” means, with respect to any Excess Cash Flow Period, the percentage set forth in the table below based on Senior Secured First Lien Net Leverage Ratio determined as of the last day of such Excess Cash Flow Period:

<table>
<thead>
<tr>
<th>Senior Secured First Lien Net Leverage Ratio</th>
<th>Required Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 4.00 to 1.00</td>
<td>50.0%</td>
</tr>
<tr>
<td>Less than or equal to 4.00 to 1.00 but greater than 3.50 to 1.00</td>
<td>25.0%</td>
</tr>
<tr>
<td>Less than or equal to 3.50 to 1.00</td>
<td>0%</td>
</tr>
</tbody>
</table>
**“Required PropCo Guarantee Priority”** means, with respect to any Guarantee of Permitted PropCo Guaranteed Obligations by Notes PropCo or 2019 Extended Term Loan PropCo, that such Guarantee has the priority indicated in the table below in respect of contractual right of payment, based on the Obligations guaranteed by Notes PropCo and 2019 Extended Term Loan PropCo (as the case may be) listed at the beginning of each row:

<table>
<thead>
<tr>
<th>2019 Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations</th>
<th>Priority of Guarantee by Notes PropCo (pre-Call Right Cap Recovery)</th>
<th>Priority of Guarantee by Notes PropCo (post-Call Right Cap Recovery)</th>
<th>Priority of Guarantee by 2019 Extended Term Loan PropCo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Lien Notes Obligations</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>3</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>2013 Term Loan Obligations</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
</tr>
</tbody>
</table>

To the extent no 2019 Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, after a Call Right Cap Recovery, the priority of the Guarantee by Notes PropCo of 2028 Debenture Obligations will match the priority of the senior-most remaining Guarantee.

**“Responsible Officer”** means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payments”** has the meaning assigned to such term in Section 6.06.

**“Restricted Subsidiary”** means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Borrowers. For the avoidance of doubt, TNMG LLC and The NMG Subsidiary are Restricted Subsidiaries of the Lead Borrower for all purposes hereunder.

**“Retained Percentage”** means, with respect to any Excess Cash Flow Period, 100% minus the Required Percentage with respect to such Excess Cash Flow Period.

**“S&P”** means Standard & Poor’s Ratings Services or any successor entity thereto.

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“Sale and Lease-Back Transaction” has the meaning assigned to such term in Section 6.03.

“SEC” means the Securities and Exchange Commission or any successor thereto.

“Second Lien Notes” means the 14.00% Senior Cash Pay/PIK Second Lien Notes due 2024 issued on or prior to the Amendment No. 2 Effective Date pursuant to the Second Lien Notes Indenture, as amended, restated, supplemented or otherwise modified from time to time.

“Second Lien Notes Collateral Agent” means Ankura Trust Company, LLC, together with its permitted successors and assigns.

“Second Lien Notes Documents” means, collectively, the Second Lien Notes Indenture and all other mortgages, security agreements, indentures, note purchase agreements, promissory notes, Guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of Second Lien Notes or the collateral therefor.

“Second Lien Notes Indenture” means that certain indenture, dated as of June 7, 2019, among the Second Lien Notes Trustee, the issuers party thereto and the guarantors party thereto from time to time, as amended, restated, supplemented or otherwise modified from time to time.

“Second Lien Notes Obligations” means the Indebtedness and the related Indebtedness Obligations under the Second Lien Notes Indenture and the other Indebtedness Documents related to the Second Lien Notes.

“Second Lien Notes Trustee” means Ankura Trust Company, LLC, together with its permitted successors and assigns.

“Secured Notes” means, collectively, the Second Lien Notes and the Third Lien Notes.

“Secured Notes Documents” means, collectively, the Second Lien Notes Documents and the Third Lien Notes Documents.

“Secured Notes Indentures” means, collectively, the Second Lien Notes Indenture and the Third Lien Notes Indentures.

“Secured Parties” means the collective reference to the “Secured Parties” as defined in the Collateral Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Documents” means the Collateral Agreement and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10, including any and all mortgages, deeds of trust and related agreements in respect of Real Property constituting Collateral and any and all Control Agreements.

“Senior Cash Pay Notes” means the 8.00% senior cash pay notes due 2021 issued on or prior to the date hereof pursuant to the Senior Cash Pay Notes Indenture.

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“Senior Cash Pay Notes Indenture” means that certain indenture, dated as of October 21, 2013, among the Senior Cash Pay Notes Trustee, the Lead Borrower and the guarantors party thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Senior Cash Pay Notes Trustee” means U.S. Bank National Association, together with its permitted successors and assigns.

“Senior Notes” means, collectively, the Senior Cash Pay Notes and the Senior PIK Notes.

“Senior Notes Documents” means, collectively, the Senior Notes Indentures and all other loan agreements, indentures, note purchase agreements, promissory notes, guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of Senior Notes.

“Senior Notes Indentures” means, collectively, the Senior Cash Pay Notes Indenture and the Senior PIK Notes Indenture.

“Senior Notes Trustee” means U.S. Bank National Association, together with its permitted successors and assigns.

“Senior PIK Notes” means the 8.75% senior PIK notes due 2021 issued on or prior to the date hereof pursuant to the Senior PIK Notes Indenture, as amended, restated, supplemented or otherwise modified from time to time.

“Senior PIK Notes Indenture” means that certain indenture, dated as of October 21, 2013, among the Senior PIK Notes Trustee, the Lead Borrower and the guarantors party thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Senior PIK Notes Trustee” means U.S. Bank National Association, together with its permitted successors and assigns.

“Senior Priority Obligations” means (a) prior to the Call Right Cap Recovery with respect to any Asset Sale of the Call Right Collateral, (i) the Third Lien Notes Obligations as compared to the Second Lien Notes Obligations and the Obligations and (ii) the Second Lien Notes Obligations as compared to the Obligations and (b) with respect to any Asset Sale of the Non-Call Right Collateral and, after the Call Right Cap Recovery, with respect to any Asset Sale of the Call Right Collateral, (i) the Obligations as compared to the Second Lien Notes Obligations and the Third Lien Notes Obligations and (ii) the Second Lien Notes Obligations as compared to the Third Lien Notes Obligations.

“Senior Priority Term Loans” means, with respect to any Asset Sale of Collateral, the Class of Term Loans with a senior Lien on such Collateral relative to the Lien of any other Class of Term Loans (and/or relative to any Class without any Lien on such assets) in accordance with the Required Collateral Lien Priority; provided that to the extent that (i) the Liens of any Classes of Term Loans have the same priority with respect to the Collateral sold, transferred or disposed of in such Asset Sale, “Senior Priority Term Loans” shall refer to all such Classes of Term Loans and (ii) only one Class of Term Loans is secured by a Lien on such Collateral, “Senior Priority Term Loans” shall refer to such Class of Term Loans.

“Senior Secured First Lien Net Leverage Ratio” means, as of any date, the ratio of Consolidated First Lien Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.
“Similar Business” means, as of any date, any business engaged in by the Lead Borrower and its Restricted Subsidiaries on such date and any business or other activities that are similar, ancillary, complementary, incidental or related to, or an extension, development or expansion of, the businesses in which the Lead Borrower and its Restricted Subsidiaries are engaged in on such date.

“Specified Event of Default” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“Specified Hedge Agreement” means any Hedge Agreement entered into or assumed between or among the Borrowers or any other Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrowers in writing to the Administrative Agent as a “Specified Hedge Agreement” under this Agreement (but only if such Hedge Agreement has not been designated as a “Specified Hedge Agreement” under the ABL Credit Agreement).

“Specified Hedge Obligations” means all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement.

“Specified Merger Agreement Representations” means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders. “Permitted Debt” means (1) Non-Participating Term Loan Exchange Obligations, and (2) Remaining Senior Notes Exchange Indebtedness, and, in each case, any Permitted Refinancing Indebtedness thereof.

“Specified Representations” means the representations and warranties of each of Holdings and Merger Sub set forth in the following sections of this Agreement:

1. Section 3.01(1) and (4) (but solely with respect to its organizational existence and status and organizational power and authority as to the execution, delivery and performance of this Agreement and the Collateral Agreement);
2. Section 3.02(1) (but solely with respect to its authorization of this Agreement and the Collateral Agreement);
3. Section 3.02(2)(a)(i) (but solely with respect to non-conflict of this Agreement and the Collateral Agreement with its certificate or article of incorporation or other charter document);
4. Section 3.02(2)(a)(iii) (but solely with respect to non-conflict of this Agreement and the Collateral Agreement with the Existing 2028 Debentures);
5. Section 3.03 (but solely with respect to execution and delivery by it, and enforceability against it, of this Agreement and the Collateral Agreement);
6. Section 3.08(2) (but solely with respect to use of proceeds on the Closing Date);
7. Section 3.09.
“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Standard Securitization Undertakings” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Borrower or any Subsidiary of the Borrower that a Responsible Officer of the Borrower has determined in good faith to be customary in a Receivables Financing including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation will be deemed to be a Standard Securitization Undertaking.

“Statutory Reserves” means, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Term Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Term Loans in such currency are determined.

“Subagent” has the meaning assigned to such term in Section 9.02.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrowers. For the avoidance of doubt, as of the Amendment No. 2 Effective Date, TNMG LLC and The NMG Subsidiary are Subsidiaries of the Lead Borrower for all purposes hereunder.

“Subsidiary Loan Parties” means (1) each Wholly Owned Domestic Restricted Subsidiary of the Lead Borrower on the Closing Amendment No. 2 Effective Date (other than any Excluded Subsidiary); and (2) each Wholly Owned Domestic Restricted Subsidiary (other than any Excluded Subsidiary) of the Lead Borrower that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date Amendment No. 2 Effective Date; provided, however, that notwithstanding anything herein or in any other Loan Document, any reference to a PropCo Guarantor as a Subsidiary Loan Party in this Agreement or in any other Loan Document shall only mean such Subsidiary Loan Party in its capacity as a Guarantor but not in any capacity as a Grantor (as defined in the Collateral Agreement).
“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Facility**” means the facility and commitments utilized in making Term Loans hereunder. Following the establishment of any Incremental Additional 2019 Extended Term Loans (other than an increase to an existing Term Facility), Other Term Loans or Extended Term Loans, such Incremental Additional 2019 Extended Term Loans, Other Term Loans or Extended Term Loans will be considered a separate Term Facility hereunder. For the avoidance of doubt, (i) as of the Amendment No. 2 Effective Date, there shall be three separate Term Facilities hereunder, consisting of the 2013 Term Loans, the Cash Pay Extended Term Loans and Cash Pay/PIK Extended Term Loans and (ii) any Non-Participating Term Loan Exchange Indebtedness shall be a separate Term Facility from the 2013 Term Loans, the Cash Pay Extended Term Loans, Cash Pay/PIK Extended Term Loans and any Additional 2019 Extended Term Loans.

“**Term Loan Agent**” means “Term Loan Agent” as defined in the Intercreditor Agreement.

“**Term Loan Installment Date**” means, as the context requires, an Original Term Loan Installment Date, an Incremental Term Loan Installment Date, an Other Term Loan Installment Date or an Extended Term Loan Installment Date.

“**Term Loans**” means the term loans made to the Borrower on the Closing Date pursuant hereto, any Incremental 2013 Term Loans, the 2019 Extended Term Loans, any Other Term Loans and any other Extended Term Loans, collectively (or if the context so requires, any of them individually).

“**Term/Note Priority Collateral**” means “Term Loan/Note Priority Collateral” as defined in the ABL/Term Loan/Notes Intercreditor Agreement.

“**The NMG Subsidiary**” has the meaning set forth in the preamble hereto.

“**Third Lien Notes Collateral Agent**” means Wilmington Trust, N.A., together with its permitted successors and assigns.

“**Third Lien Notes Documents**” means, collectively, the Third Lien Notes Indentures and all other mortgages, security agreements, indentures, note purchase agreements, promissory notes, Guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of Third Lien Notes or the collateral therefor.

“**Third Lien Notes**” means, collectively, the 8.00% and 8.75% senior third lien secured notes due October 25, 2024 issued on or prior to the Amendment No. 2 Effective Date pursuant to the Third Lien Notes Indentures, as amended, restated, supplemented or otherwise modified from time to time.

“**Third Lien Notes Indentures**” means (x) that certain indenture with respect to the 8.00% senior third lien secured notes, dated on or about the Amendment No. 2 Effective Date, among the Third Lien Notes Trustee, the issuers party thereto and the guarantors party thereto from time to time, as amended, restated, supplemented or otherwise modified from time to time and (y) that certain indenture with respect to the 8.75% senior third lien secured notes, dated on or about the Amendment No. 2 Effective Date, among the Third Lien Notes Trustee, the issuers party thereto and
the guarantors party thereto from time to time, as amended, restated, supplemented or otherwise modified from time to time.

“Third Lien Notes Obligations” means the Indebtedness and the related Indebtedness Obligations under the Third Lien Notes Indentures and the other Indebtedness Documents related to the Third Lien Notes.

“Third Lien Notes Trustee” means Wilmington Trust, N.A., together with its permitted successors and assigns.

“Total Net Leverage Ratio” means, as of any date, the ratio of Consolidated Total Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“Transaction Documents” means the Purchase Documents, the ABL Loan Documents, the Senior Notes Documents and the Loan Documents.

“Treasury Rate” means, as of any Prepayment Date, the yield to maturity as of such date of the United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such Prepayment Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the first anniversary of the Amendment No. 2 Effective Date; provided, however, that if the period from such date to the first anniversary of the Amendment No. 2 Effective Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used. Any such Treasury Rate shall be determined, and the information required to be obtained for its calculation shall be obtained, by the Borrowers in consultation with the Administrative Agent.

“Transactions” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

(1) the consummation of the Merger;

(2) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;

(3) the Equity Contribution;

(4) the execution and delivery of the ABL Loan Documents, the creation of the Liens pursuant to the ABL Security Documents and the initial borrowings under the ABL Credit Agreement;

(5) the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indentures;

(6) the Closing Date Refinancing;

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the Closing Date Conversions; and

(8) the payment of all fees, costs and expenses in connection with the foregoing.

“Type” means, when used in respect of any Term Loan or Borrowing, the Rate by reference to which interest on such Term Loan or on the Term Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” means Adjusted LIBO Rate or ABR, as applicable.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Cash” means, as of any date, all cash and Cash Equivalents of the Borrowers and their Restricted Subsidiaries as of such date that would not appear as “restricted” on the Required Financial Statements, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Unrestricted Subsidiary” means any Subsidiary of Holdings (other than the Borrower) designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; provided that the Borrower will only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date or subsequently re-designate any such Unrestricted Subsidiary as a Restricted Subsidiary (by written notice to the Administrative Agent) if: (1) no Event of Default is continuing; (2) such designation or re-designation would not cause an Event of Default; and (3) compliance with a Fixed Charge Coverage Ratio of 1.0 to 1.0, determined on a Pro Forma Basis.

The designation of any Restricted Subsidiary as an Unrestricted Subsidiary will constitute an Investment for purposes of Section 6.04. The redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary will be deemed to be an incurrence at the time of such designation of Indebtedness of such Unrestricted Subsidiary and the Liens on the assets of such Unrestricted Subsidiary, in each case outstanding on the date of such redesignation.

“USA 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)).

“Voting Stock” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.
“Weighted Average Life to Maturity” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“Wholly Owned Domestic Subsidiary” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrowers.

“Wholly Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrowers.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I ofSubtitle E of Title IV of ERISA.

“Working Capital” means, with respect to the Borrowers and their Subsidiaries on a consolidated basis as of any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided that, for purposes of calculating Excess Cash Flow, increases or decreases in Working Capital will be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) reclassification after the date hereof in accordance with GAAP of assets or liabilities, as applicable, between current and non-current or (b) the effects of purchase accounting.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise,

(1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”

(2) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including;”

(3) the word “will” will be construed to have the same meaning and effect as the word “shall;”

(4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);
the word “or” will be construed to mean “and/or;”

any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and

the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means, unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of the Company or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; provided that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrowers at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Lead Borrower or the Administrative Agent (acting upon the request of the Required Lenders), the Borrowers, the Administrative Agent and the Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrowers’ financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; provided that provisions of this Agreement in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. “Accounting Change” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by Holdings or the Borrowers.

SECTION 1.04. Effectuation of Transfers. Each of the representations and warranties of Holdings and the Borrowers contained in this Agreement (and all corresponding definitions) is made after giving effect to the Recapitalization Transactions, unless the context otherwise requires.

SECTION 1.05. Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06. Required Financial Statements. With respect to the determination of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage
Ratio, the Fixed Charge Coverage Ratio or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) made on or prior to the date on which Required Financial Statements have been delivered for the first fiscal quarter ending after the Closing Amendment No. 2 Effective Date, such calculation will be determined for the period of four consecutive fiscal quarters most recently ended prior to the Closing Amendment No. 2 Effective Date, and calculated on a Pro Forma Basis.

SECTION 1.07. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Term Loans and Borrowings.

(1) Subject to the terms and conditions set forth in the Existing Credit Agreement, each Lender severally agrees to make with an Original Commitment on the Original Closing Date made to the Borrower Term Loans denominated in Dollars equal to such Lender’s Original Commitment on the Original Closing Date. The failure of any Lender to make any Term Loan required to be made by it will not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender’s failure to make Term Loans as required. Amounts paid or prepaid in respect of such Term Loans may not be reborrowed.

(2) Subject to the terms and conditions set forth in the 2019 Extension Amendment, each 2019 Extending Term Lender severally agrees to convert, on the Amendment No. 2 Effective Date, the aggregate principal amount of its Term Loans issued in accordance with Section 2.01(1) above, that is outstanding immediately prior to the Amendment No. 2 Effective Date, into an equal principal amount of, at the option of such Lender, Cash Pay Extended Term Loans or Cash Pay/PIK Extended Term Loans, or combination of both, on the terms and subject to the conditions set forth in the 2019 Extension Amendment. Amounts borrowed, converted or exchanged under this Section 2.01(2) and paid or prepaid may not be reborrowed.

(3) Subject to Sections 2.04(7) and 2.11, each Borrowing is or will be comprised entirely of ABR Loans or Eurocurrency Loans as the Lead Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan; provided that any exercise of such option will not affect the obligation of the Borrowers to repay such Term Loan in accordance with the terms of this Agreement, and such Lender will not be entitled to any amounts payable under Section 2.12 or 2.14 solely in respect of increased costs resulting from, and existing at the time of, such exercise.

(4) Notwithstanding anything to the contrary contained herein, the funded portion of each Term Loan (i.e., the amount advanced in cash to the Borrower on the Closing Date) will
be equal to 99.50% of the principal amount of such Term Loan (it being agreed that the Borrower is obligated to repay 100.00% of the principal amount of each such Term Loan, the Term Loans will amortize based on 100.00% of the principal amount of each such Term Loan and interest will accrue on 100.00% of the principal amount of each such Term Loan, in each case as provided herein). [reserved].

(5) Notwithstanding any other provision of this Agreement, the Borrowers will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.02. Request for Borrowings as of the Amendment No. 2 Effective Date.

The Borrower will deliver to the Administrative Agent a Borrowing Request not later than 12:00 p.m., New York City time, one Business Day prior to the anticipated Closing Date, requesting that the Lenders make Term Loans on the Closing Date. The Borrowing Request must specify:

(1) the principal amount of Term Loans to be borrowed;

(2) the requested date of the Borrowing (which will be a Business Day);

(3) the Type of Term Loans to be borrowed;

(4) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term “Interest Period,” and

(5) the location and number of the Borrower’s account to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified in the applicable Borrowing Request, then the Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurocurrency Borrowing is specified in the applicable Borrowing Request, then the Borrower will be deemed to have selected an Interest Period of one month’s duration. Upon receipt of such Borrowing Request, the Administrative Agent will promptly notify each Lender thereof. The proceeds of the Term Loans requested under this Section 2.02 will be disbursed by the Administrative Agent in immediately available funds by wire transfer to such bank account or accounts as designated by the Borrower in the Borrowing Request.

Schedule 2.01 identifies each of the Lenders and sets forth the principal amount each of Class of Term Loans held by each such Lender as of the Amendment No. 2 Effective Date.

SECTION 2.03. Funding of Borrowings.

(1) Each Lender will make each Term Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Term Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to an account of the Borrower as specified in the Borrowing Request.
Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.03 and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent, forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrowers, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender’s Term Loan included in such Borrowing.

SECTION 2.04. Interest Elections.

(1) Each Borrowing initially of a 2019 Extended Term Loan that was converted from a 2013 Term Loan that was a Eurocurrency Loan immediately prior to such conversion shall initially be deemed to be a Borrowing of a 2019 Extended Term Loan that is a Eurocurrency Loan with an initial Interest Period equal to the remaining duration (as of the Amendment No. 2 Effective Date) of the Interest Period applicable to such Borrowing of a 2013 Term Loan, but accruing interest at the interest rate applicable to the applicable Class of 2019 Extended Term Loans. Each 2013 Term Loan will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, will have an initial Interest Period as specified in such Borrowing Request in effect under the Existing Credit Agreement immediately prior to the Amendment No. 2 Effective Date. Thereafter, the Lead Borrower may elect to convert each Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Lead Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Term Loans comprising such Borrowing, and the Term Loans comprising each such portion will be considered a separate Borrowing; provided that the Term Loans comprising any Borrowing will be in an aggregate principal amount that is an integral multiple of $500,000 and not less than $1,000,000; provided further that there shall not be more than ten Eurocurrency Borrowings outstanding hereunder at any time.

(2) To make an election pursuant to this Section 2.04 following the Original Closing Date, the Lead Borrower will notify the Administrative Agent of such election by telephone (a) in the case of an election to convert to or continue a Eurocurrency Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the effective date of such election or (b) in the case of an election to convert to or continue an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of such election. Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit D and signed by the Lead Borrower.

(3) Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:
(a) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (c) and (d) below will be specified for each resulting Borrowing);

(b) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;

(c) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(d) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of “Interest Period.”

(4) If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Lead Borrower will be deemed to have selected a Eurocurrency Borrowing having an Interest Period of one month’s duration.

(5) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(6) If the Lead Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be automatically converted into an ABR Borrowing.

(7) Any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurocurrency Borrowing.

(8) Notwithstanding any contrary provision hereof but subject to Section 2.10(5) in respect of a Specified Event of Default, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Lead Borrower, then, so long as such Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (b) unless repaid, each Eurocurrency Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.05. Promise to Pay; Evidence of Debt.

(1) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.06.

(2) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Term Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.
(3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Term Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(4) The entries made in the accounts maintained pursuant to paragraph (2) or (3) of this Section 2.05 will be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligation of the Borrowers to repay the Term Loans in accordance with the terms of this Agreement.

(5) Any Lender may request that Term Loans made by it be evidenced by a promissory note (a “Note”). In such event, the Borrowers will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrowers. Thereafter, the Term Loans evidenced by such Note and interest thereon will at all times (including after assignment pursuant to Section 10.04) be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

SECTION 2.06. Repayment of Term Loans.

(1) The Borrowers will repay to the Administrative Agent for the ratable account of the 2013 Term Loan Lenders on the last Business Day of each fiscal quarter of the Borrowers, commencing with the last Business Day of the fiscal quarter of the Borrowers ending in January 2014 after the Amendment No. 2 Effective Date, an aggregate principal amount equal to 0.25% the product of (x) the aggregate principal amount of the 2013 Term Loans outstanding immediately upon and after the effectiveness of the 2019 Extension Amendment and the 2019 Conversion and (y) a percentage (expressed as a decimal) that would cause each of the 2013 Term Loan Lenders to receive quarterly payments pursuant to this Section 2.06(1) at the same effective rate as the 2013 Term Loan Lenders received quarterly payments pursuant to this Section 2.06(1) for the most recently ended fiscal quarter of the Borrowers ended prior to the Amendment No. 2 Effective Date, which payments will be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable (each such date being referred to as an “Original Term Loan Installment Date”).

(2) On the Amendment No. 2 Effective Date, the Borrowers will make the 2019 Prepayment (as defined in the 2019 Extension Amendment).

(3) The Borrowers will repay to the Administrative Agent for the ratable account of the 2019 Extending Term Lenders on the last Business Day of each fiscal quarter of the Borrowers, commencing with the last Business Day of the first full fiscal quarter of the Borrowers ending after the Amendment No. 2 Effective Date, an aggregate principal amount equal to 0.375% of the aggregate principal amount of the 2019 Extended Term Loans outstanding on the Amendment No. 2 Effective Date after giving effect to the 2019 Prepayment, which payments will be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable (each such date being referred to as a “2019 Extended Term Loan Installment Date”).
In the event that any Incremental Term Loans are made, the Borrower will repay Borrowings consisting of Incremental Term Loans on the dates (each an "Incremental Term Loan Installment Date") and in the amounts set forth in the applicable Incremental Facility Amendment. In the event that any Other Term Loans are made, the Borrower will repay Borrowings consisting of Other Term Loans on the dates (each an "Other Term Loan Installment Date") and in the amounts set forth in the applicable Refinancing Amendment and in the event that any Extended Term Loans (other than 2019 Extended Term Loans) are made, the Borrower will repay Borrowings consisting of Extended Term Loans on the dates (each an "Extended Term Loan Installment Date") and in the amounts set forth in the applicable Extension Amendment; and

To the extent not previously paid, all outstanding Term Loans will be due and payable on the applicable Maturity Dates for the applicable Class of Term Loans.

Each repayment pursuant to this Section 2.06 will be accompanied by payment of accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

SECTION 2.07. Optional Prepayment of Term Loans. The Borrower may at any time and from time to time prepay the Term Loans of any Class in whole or in part, without premium or penalty (except as provided in Section 2.21 and subject to Section 2.13), in an aggregate principal amount, (1) in the case of Eurocurrency Loans of any applicable Class, that is an integral multiple of $500,000 and not less than $2.5 million, and (2) in the case of ABR Loans of any applicable Class, that is an integral multiple of $100,000 and not less than $1.0 million, or, in each case, if less, the amount outstanding. The Lead Borrower will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such election not later than 2:00 p.m., New York City time, (a) in the case of a Eurocurrency Borrowing, three Business Days before the anticipated date of such prepayment and (b) in the case of an ABR Borrowing, one Business Day before the anticipated date of such prepayment. Each such notice of prepayment will specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid. All prepayments under this Section 2.07 will be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment. Any such notice may be revocable or conditioned on a refinancing of all or any portion of the Term Facility. Any optional prepayments of Term Loans of any applicable Class pursuant to this Section 2.07 will be applied to the remaining scheduled amortization payments of such Term Loans as directed by the Lead Borrower (or in the absence of such direction, in direct order of maturity) and will be applied ratably to the Term Loans included in the prepaid Borrowing. Notwithstanding anything herein to the contrary, to the extent any Class of the 2019 Extended Term Loans are prepaid pursuant to this Section 2.07, then each Class of 2019 Extended Term Loans shall be prepaid ratably.

Notwithstanding anything to the contrary contained in this Agreement, including this Section 2.07, the Borrowers may not voluntarily prepay any 2013 Term Loans prior to the Maturity Date applicable thereto other than as set forth below, and (ii) shall repurchase, redeem, retire, repay, Refinance or exchange any 2013 Term Loans, whether at maturity or otherwise, as set forth below:
(a) by repurchasing, repaying, exchanging for or refinancing any such 2013 Term Loan Obligations using the proceeds of Non-Participating Term Loan Exchange Indebtedness, unsecured Indebtedness or Junior Lien Indebtedness (including by means of an exchange offer, conversion or modification of the 2013 Term Loan Obligations to become Non-Participating Term Loan Exchange Indebtedness, unsecured Indebtedness or Junior Lien Indebtedness), in each case subject to clauses (1) and (2) of the definition of Permitted Refinancing Indebtedness: provided that the interest rate per annum payable in cash on such unsecured Indebtedness or Junior Lien Indebtedness pursuant to this clause (a) shall not exceed 8.00%;

(b) by repurchasing, repaying, exchanging for or refinancing any such 2013 Term Loan Obligations using (i) the common Equity Interests of, or the cash proceeds of common equity sales by, or common equity contributions to, any Parent Entity, or (ii) any non-cash assets contributed to any Parent Entity in respect of such Parent Entity’s common equity or any cash proceeds received from the sale or disposition of any assets which are contributed to such Parent Entity (including any interests, including Equity Interests of, MYT Holdco so contributed to such Parent Entity, or the cash proceeds of which are contributed to such Parent Entity following a sale or disposition of such interests); or

(c) by repurchasing or repaying all or any portion of any 2013 Term Loan Obligations with cash proceeds from any other source not otherwise described in clauses (a) or (b) above, in an aggregate amount, together with any cash payments or other cash distributions made pursuant to Section 6.09(4)(c), not to exceed $60.0 million for the term of this Agreement; provided that the purchase price or repayment amount of any such 2013 Term Loan Obligations repurchased, repaid, redeemed, retired, acquired, cancelled or terminated pursuant to this subclause (c) more than 45 days prior to the Maturity Date of such 2013 Term Loans may not be greater than 90% of the aggregate principal amount of any such 2013 Term Loans; and

(iii) the Borrowers may not voluntarily prepay any Indebtedness incurred to Refinance any 2013 Term Loans prior to the payment in full of all 2019 Extended Term Loans.

(3) At the Lead Borrower’s election (subject to the prior written consent of the Required 2019 Extending Term Lenders), at any time after the Amendment No. 2 Effective Date, the Borrowers may prepay without premium or penalty on a pro rata basis up to $250.0 million of the aggregate principal amount of 2019 Extended Term Loans at par, with the Net Cash Proceeds from any Real Property monetization or financing transaction consummated after the Amendment No. 2 Effective Date. Such prepayment shall be applied on a pro rata basis to then outstanding principal amount of 2019 Extended Term Loans as of the date of such prepayment.

(4) If, prior to the date that is three (3) years following the Amendment No. 2 Effective Date, (i) the Borrowers make any voluntary prepayment of the 2019 Extended Term Loans pursuant to Section 2.07(1) or otherwise or any prepayment of the 2019 Extended Term Loans pursuant to Section 2.08(1) (other than as a result of a casualty or condemnation event) or Section 2.08(3), or (ii) the 2019 Extended Term Loans shall be accelerated (whether as a result of an Event of Default, by operation of law or otherwise), including as a result of any Event of Default under Sections 8.01(8) or (9), or there shall occur any satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any bankruptcy, insolvency proceeding, foreclosure
(whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any bankruptcy or insolvency proceeding to any Agent or any Lender in full or partial satisfaction of the Obligations (each of the foregoing, a "Premium Event"), then in each case the Borrowers shall pay to the Administrative Agent, for the ratable account of each applicable Lender, a prepayment premium of (x) if such Premium Event occurs prior to the first anniversary of the Amendment No. 2 Effective Date, the Make-Whole Premium with respect to the aggregate principal amount of 2019 Extended Term Loans being prepaid, refinanced, amended, accelerated, satisfied, released, restructured, reorganized, replaced, reinstated, defeased or compromised, as applicable (such Extended Term Loans being "Prepaid" pursuant to each of the foregoing actions), (y) if such Premium Event occurs on or after the first anniversary of the Amendment No. 2 Effective Date and prior to the second anniversary of the Amendment No. 2 Effective Date, 2.00% of the aggregate principal amount of the 2019 Extended Term Loans being Prepaid, as applicable, or (z) if such Premium Event occurs on or after the second anniversary of the Amendment No. 2 Effective Date and prior to the third anniversary of the Amendment No. 2 Effective Date, 1.00% of the aggregate principal amount of the 2019 Extended Term Loans being Prepaid, as applicable.

(5) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if any 2019 Extended Term Loans are accelerated (whether as a result of the occurrence and continuance of any Event of Default, by operation of law or otherwise), any premium applicable thereto pursuant to Section 2.07(4) (the "Applicable Premium"), determined as of the date of acceleration, will also be immediately due and payable as though the applicable 2019 Extended Term Loans were prepaid as of such date and shall constitute part of the Obligations for all purposes herein. The Applicable Premium, if any, shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), by deed in lieu of foreclosure or by any other similar means. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE APPLICABLE PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The parties hereto further acknowledge and agree that the Applicable Premium is not intended to act as a penalty or to punish the Loan Parties for any repayment or prepayment of the 2019 Extended Term Loans. The Loan Parties expressly agree that (i) the Applicable Premium is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel, (ii) the Applicable Premium, if any, shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium, if any, (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.07(5), (v) their agreement to pay the Applicable Premium is a material inducement to the 2019 Extending Term Lenders to make the 2019 Extended Term Loans, and (vi) the Applicable Premium represents a good-faith, reasonable estimate and calculation of the lost profits or damages of the 2019 Extending Term Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to any 2019 Extending Term Lender or profits lost by such 2019 Extending Term Lender as a result of any Premium Event.

SECTION 2.08. Mandatory Prepayment of Term Loans.

(1) The Borrowers will apply all Net Cash Proceeds received in an Asset Sale made pursuant to Section 6.05(2) (other than any ABL Priority Collateral Asset Sale) to the extent that
Net Cash Proceeds of ABL Priority Collateral sold pursuant thereto are required to prepay Revolving Loans (as defined in the ABL Credit Agreement) or cash collateralize Letters of Credit (as defined in the ABL Credit Agreement) to remain in compliance with the “Borrowing Base” (as defined in the ABL Credit Agreement) or otherwise or any Sale and Lease-Back Transaction to prepay Term Loans within three Business Days following receipt of such Net Cash Proceeds, unless the Lead Borrower has delivered a Reinvestment Notice on or prior to such third Business Day; provided that:

(a) if any Event of Default has occurred and is continuing, on or prior to the third Business Day following receipt thereof, such Net Cash Proceeds will be deposited in an Asset Sale Proceeds Account; and

(b) subject to the other provisions of this Section 2.08(1), on each Reinvestment Prepayment Date the Borrowers will apply an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event to the prepayment of the Term Loans or applicable Senior Priority Obligations (together with accrued and unpaid interest thereon) and any Applicable Premium,

(c) if at the time that any such prepayment would be required, the Borrower is required to, or to offer to, repurchase, redeem, repay or prepay Indebtedness secured on a pari passu basis with the Term Loans (any such Indebtedness, “Other First Lien Indebtedness”), then the Borrower may apply such Net Cash Proceeds to redeem, repurchase, repay or prepay Term Loans and Other First Lien Indebtedness on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other First Lien Indebtedness at such time);

provided further, that the portion of such Net Cash Proceeds allocated to the Other First Lien Indebtedness will not exceed the amount of such Net Cash Proceeds required to be allocated to the Other First Lien Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds will be allocated to the prepayment of the Term Loans and Other First Lien Indebtedness, and the amount of the prepayment of the Term Loans that would have otherwise been required pursuant to this clause (1) will be reduced accordingly; provided further, that to the extent the holders of Other First Lien Indebtedness decline to have such Indebtedness repurchased, redeemed, repaid or prepaid with such Net Cash Proceeds, the declined amount of such Net Cash Proceeds will promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof (to the extent such Net Cash Proceeds would otherwise have been required to be so applied if such Other First Lien Indebtedness was not then outstanding).

(2) Commencing with the fiscal year ending July 26, 2015, August 3, 2019, not later than 90 days after the end of each Excess Cash Flow Period, the Borrowers will calculate Excess Cash Flow for such Excess Cash Flow Period and will apply the following amount to the prepayment of Term Loans:

(a) the Required Percentage of such Excess Cash Flow; minus

(b) the amount of any voluntary prepayments during such Excess Cash Flow Period or on or prior to the 90th day after the end of such Excess Cash Flow Period of:

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Term Loans (including Incremental Term Loans, Other Term Loans and Extended Term Loans);

Loans under the ABL Credit Agreement, any ABL Incremental Facility or other revolving credit facility that is secured on a pari passu basis with the Term Loans (to the extent accompanied by a corresponding reduction in the commitments);

Other First Lien Indebtedness;

Permitted Refinancing Indebtedness incurred to Refinance any of the foregoing Indebtedness (or Permitted Refinancing Indebtedness described in this clause (iv)), in each case that is secured on a pari passu basis with the Term Loans;

in each case, to the extent not financed with the proceeds of the issuance or the incurrence of Indebtedness (other than proceeds of revolving loans), the sale or issuance of Equity Interests or Asset Sales; provided that any such voluntary prepayment that is made on or prior to the 90th day after the end of such Excess Cash Flow Period will not reduce Excess Cash Flow for the next succeeding Excess Cash Flow Period pursuant to this clause (b).

Not later than the date on which the Lead Borrower is required to deliver financial statements with respect to the end of each Excess Cash Flow Period under Section 5.04(1), the Lead Borrower will deliver to the Administrative Agent a certificate signed by a Financial Officer of the Lead Borrower setting forth the amount, if any, of Excess Cash Flow for such fiscal year and the calculation thereof in reasonable detail.

The Borrowers will apply 100% of the net cash proceeds from the incurrence, issuance or sale by the Borrowers or any Restricted Subsidiary of any Indebtedness that is not Excluded Indebtedness to the prepayment of Term Loans, on or prior to the date which is five Business Days after the receipt of such net cash proceeds, together with, solely for any such prepayments of 2019 Extended Term Loans made prior to the date that is three years following the Amendment No. 2 Effective Date, any Applicable Premium.

Notwithstanding anything in this Section 2.08 to the contrary, any Lender (such Lender, a “Declining Lender”) may elect, by notice to the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) at least two Business Days prior to the required prepayment date, to decline all or any portion of any mandatory prepayment of its Term Loans pursuant to this Section 2.08 (other than clauses (3) of this Section 2.08), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans but was so declined will be retained by the Borrower and applied for any permitted purpose hereunder. Such prepayments will be applied on a pro rata basis to the then outstanding Class of Term Loans being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurocurrency Loans; provided that if no Lenders exercise the right to waive a given mandatory prepayment of the Term Loans pursuant to this Section 2.08(4), then, with respect to such mandatory prepayment, the amount of such mandatory prepayment will be applied first, with respect to each applicable Class of Term Loans, to Term Loans that are ABR Loans to the full extent thereof before application to Term Loans that are Eurocurrency Loans in a manner that minimizes the amount of any payments required to be made by the Borrowers pursuant to Section 2.13.
The following general provisions shall apply to all prepayments pursuant to this Section 2.08:

(a) The Lead Borrower will deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.08, (a) a certificate signed by a Financial Officer of the Lead Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (b) to the extent practicable, at least three Business Days prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type and Class of each Term Loan being prepaid and the principal amount of each Term Loan (or portion thereof) to be prepaid.

(b) Prepayment of the Term Loans pursuant to this Section 2.08 will be made without premium or penalty, together with any Applicable Premium payable as set forth in Section 2.07(4) and in any case accompanied by accrued and unpaid interest on the principal amount to be prepaid but excluding the date of payment, and applied as directed by the Borrower or, absent such direction, to reduce the Term Loans.

(c) Each prepayment required under this Section 2.08 shall be applied to the 2019 Extended Term Loans (including each Class thereof, ratably, provided proceeds of Call Right Collateral shall be applied ratably to the Additional 2019 Extended Term Loans prior to the other 2019 Extended Term Loans) until the same are paid in full before being applied to any other Term Facilities and shall reduce, (i) with respect to any prepayments required under Section 2.08(2) or Section 2.08(3), in direct order of maturity the next eight quarterly and (ii) with respect to any prepayments required under Section 2.08(1), in inverse order of maturity, in the case of each of the foregoing (i) and (ii), the scheduled amortization payments of Term Loans under Section 2.06(1) and, thereafter, to reduce on a pro rata basis (based on the amount of such amortization payments) the remaining scheduled amortization payments of Term Loans under Section 2.06(1) and will be allocated ratably to the Term Loans included in the prepaid Borrowing, provided that any prepayment of Incremental Term Loans, Other Term Loans or Extended Term Loans will be applied in the order specified in the applicable Permitted Extension Amendment, in each case with respect to the applicable Class of Term Loans.

(d) Subject to the terms of the Junior Lien Intercreditor Agreement, any payments from proceeds of the sale of Call Right Collateral shall be applied to repay in full all outstanding Additional 2019 Extended Term Loans prior to being applied to other Obligations hereunder.

(6) Notwithstanding any provisions of this Section 2.08 to the contrary,

(a) to the extent that any or all of the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 is prohibited or delayed by applicable local
law from being repatriated to the United States, the portion of such Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrowers or the applicable Subsidiary for so long, but only so long, as the applicable local law will not permit repatriation to the United States. Once such repatriation of any of such affected Net Cash Proceeds or Excess Cash Flow is permitted under the applicable local law, such repatriation will be effected promptly and such repatriated Net Cash Proceeds or Excess Cash Flow will be promptly applied (net of additional taxes payable or reserved against as a result thereof) to the prepayment of the Term Loans pursuant to this Section 2.08 to the extent provided herein; provided that the Borrowers hereby agree, and will cause any applicable Subsidiary, to promptly take all commercially reasonable actions required by applicable local law to permit any such repatriation; or

(b) to the extent that a Responsible Officer of the Lead Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 would have an adverse tax cost consequence, the Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrowers or the applicable Subsidiary without being repatriated; provided that, in the case of this subclause (b), on or before the date on which any Net Cash Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this Section 2.08 (or such Excess Cash Flow would have been so required if it were Net Cash Proceeds to be applied to a prepayment):

(i) the Borrowers apply an amount equal to such Net Cash Proceeds or Excess Cash Flow to such reinvestments or prepayments as if such Net Cash Proceeds or Excess Cash Flow had been repatriated, less the amount of additional taxes that would have been payable or reserved against if such Net Cash Proceeds or Excess Cash Flow had been repatriated; or

(ii) such Net Cash Proceeds or Excess Cash Flow are applied towards the permanent extinguishment (including, in the case of a revolving facility, a permanent reduction of commitments only) of Indebtedness of any Subsidiary.

For purposes of this Section 2.08(6), references to “law” mean, with respect to any Person, (1) the common law and any federal, state, local, foreign, multinational or international statutes, laws, treaties, judicial decisions, standards, rules and regulations, guidelines, ordinances, rules, judgments, writs, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions (including administrative or judicial precedents or authorities), in each case whether now or hereafter in effect, and (2) the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

SECTION 2.09. Fees.

(1) The Borrowers agree to pay to the Administrative Agent, for its own account, the “Term Administrative Fee” set forth in the Fee Letter at the times and on the terms specified therein (the “Administrative Agent Fees”).
The Borrowers agree to pay the “Term Loan Lender Consent Fee” and the “Term Loan Lender Cash Joinder Fee” set forth in the TSA at the times and on the terms specified therein (the “Consent Fees”).

All Fees will be paid on the dates due and payable, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders. Once paid, none of the Fees will be refundable under any circumstances.

SECTION 2.10. Interest.

The 2013 Term Loans comprising each ABR Borrowing will bear interest at the ABR plus the Applicable Margin applicable to the 2013 Term Loans.

The 2013 Term Loans comprising each Eurocurrency Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin applicable to the 2013 Term Loans.

The 2019 Extended Term Loans comprising each ABR Borrowing will bear interest at the ABR plus the Applicable Margin applicable to the 2019 Extended Term Loans of the applicable Class.

The 2019 Extended Term Loans comprising each Eurocurrency Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin applicable to the 2019 Extended Term Loans of the Applicable Class.

Following the occurrence and during the continuation of a Specified Event of Default, the Borrowers will pay interest on overdue amounts (including amounts overdue as a result of on-payment upon acceleration) hereunder at a rate per annum equal to (i) in the case of overdue principal of, or interest on, any Term Loan, 2.0% per annum plus the rate otherwise applicable to such Term Loan as provided in the preceding paragraphs of this Section 2.10 or (ii) in the case of any other overdue amount, 2.0% per annum plus the rate applicable to ABR Loans as provided in clause (1) of this Section 2.10. Following the occurrence and during the continuation of a Specified Event of Default, all Eurocurrency Borrowings shall automatically convert to ABR Borrowings upon the expiry of any then-current Interest Period, with no notice or action by any party, and for so long as such Specified Event of Default continues, the Borrowers shall have no right to make and shall not make, any Interest Election Requests requesting to convert or continue any such Borrowing as a Eurocurrency Borrowing.

Accrued interest on each Term Loan will be payable in arrears (i) on each Interest Payment Date for such Term Loan and (ii) on the applicable Maturity Date; provided that (A) interest accrued pursuant to paragraph (5) of this Section 2.10 will be payable on demand, (B) in the event of any repayment or prepayment of any Term Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Term Loan will be payable on the effective date of such conversion. All interest shall be payable in cash except as provided in Section 2.10(7) below.

One percent (1.0%) per annum of the Applicable Margin payable on the Cash Pay/PIK Extended Term Loans and Cash Pay/PIK Additional 2019 Extended Term Loans, as
applicable, will be payable by adding such accrued and unpaid interest to the then outstanding principal amount of Cash Pay/PIK Extended Term Loans or Cash Pay/PIK Additional 2019 Extended Term Loans, as applicable (such capitalized interest, the “PIK Interest”), in each case, on the applicable Interest Payment Date; provided, such interest may be paid in cash at the election of the Lead Borrower in its sole discretion. For the avoidance of doubt, any such PIK Interest shall be deemed added to the then outstanding principal amount of the Cash Pay/PIK Extended Term Loans or Cash Pay/PIK Additional 2019 Extended Term Loans, as applicable, on each applicable Interest Payment Date and thereafter, shall constitute principal under such Cash Pay/PIK Extended Term Loans or Cash Pay/PIK Additional 2019 Extended Term Loans, as applicable, for all purposes under this Agreement, including the accrual of interest. For the avoidance of doubt, all other interest owing in respect of the Cash Pay/PIK Extended Term Loans and Cash Pay/PIK Additional 2019 Extended Term Loans, as applicable, will be payable in cash.

SECTION 2.11. Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(1) the Administrative Agent determines (which determination will be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(2) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Term Loans included in such Borrowing for such Interest Period;

then the Administrative Agent will give notice thereof to the Lead Borrower and the applicable Lenders by telephone, facsimile transmission or e-mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Lead Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (a) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Borrowing will be ineffective and such Borrowing will be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing and (b) any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing will be made as an ABR Borrowing.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(1) of this Section 2.11 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(1) of this Section have not arisen but either (x) the supervisor for the administrator of the LIBO Rate has made a public statement that the administrator of the LIBO Rate is insolvent (and there is no successor administrator that will continue publication of the LIBO Rate), (y) the administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBO Rate), (v) the supervisor for the
administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate may no longer be used for determining interest rates for loans, then the Administrative Agent and the Lead Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States of America at such time and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that if such alternate rate of interest as so determined would be less than zero, then such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 10.08, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from Required Lenders of each Class stating that such Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this Section 2.11(b) (but, in the case of the circumstances described in clause (ii)(w), clause (ii)(x) or clause (ii)(y) of the first sentence of this Section 2.11(b), only to the extent the LIBO Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.12. Increased Costs.

(1) If any Change in Law:

(a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(b) imposes on any Lender or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Loans made by such Lender; or

(c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Term Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(2) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or the Term Loans made by such Lender, to a level below that which such Lender or such Lender’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s policies...
and the policies of such Lender’s holding company with respect to capital adequacy or liquidity), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(3) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.12 will be delivered to the Lead Borrower and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.12, such Lender will notify the Lead Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 will not constitute a waiver of such Lender’s right to demand such compensation; provided that the Borrowers will not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.13. Break Funding Payments. Except as otherwise set forth herein, the Borrowers will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

(1) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);

(2) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto;

(3) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto; or

(4) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Lead Borrower pursuant to Section 2.16;

provided, however, that no such losses, costs or expenses attributable to (i) the conversion of 2013 Term Loans constituting Eurocurrency Borrowings and outstanding immediately prior to the Amendment No. 2 Effective Date into 2019 Extended Term Loans, (ii) the pay down of 2019 Extended Term Loans pursuant to the 2019 Extension Amendment or (iii) the payment of interest on the 2019 Extended Term Loans or the 2013 Term Loans pursuant to the 2019 Extension Amendment shall be incurred by the Borrowers pursuant to this Section 2.13. Such loss, cost or expense to any Lender will be deemed to be the amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Term Loan (but not including the Applicable Margin applicable thereto), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Loan, for the period that would have been the Interest Period for such Term Loan) over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would
A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 will be delivered to the Lead Borrower and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.


(1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; provided that Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by a Loan Party, then the applicable Loan Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if a Loan Party is required to deduct any Indemnified Taxes or Other Taxes from such payments, then:

(a) the sum payable hereunder will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.14) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made;

(b) such Loan Party will make such deductions; and

(c) such Loan Party will timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(2) In addition, the Loan Parties will timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes.

(3) Each Loan Party will, jointly and severally, indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender (other than as a result of the Administrative Agent’s or any Lender’s gross negligence or willful misconduct), on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, pursuant to this Section 2.14, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.
Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.14(5)(b), 2.14(5)(c), 2.14(5)(d) and 2.14(6) below) will not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the effect of Section 2.14(5)(a) above, each Foreign Lender will deliver to the Lead Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), two original copies of whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit F to the effect that such Foreign Lender is not:

- (x) a “bank” within the meaning of Section 881(c)(3)(A) of the Code;
- (y) a “10 percent shareholder” of the Lead Borrower within the meaning of Section 871(h)(3) or 881(c)(3)(B) of the Code; or
- (z) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code; and

(B) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and additional Form W-8IMYs), or Internal Revenue Service Form W-9 as may be required; or
(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made.

(c) Credit Suisse AG, Cayman Islands Branch, in its capacity as the Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession under Section 9.09, if applicable) will also deliver to the Lead Borrower, on or prior to the execution and delivery of this Agreement, (i) two duly completed copies of Internal Revenue Service form W-8ECI with respect to any amounts payable to Credit Suisse AG, Cayman Islands Branch for its own account and (ii) two duly completed copies of Internal Revenue Service Form W-8IMY certifying that it is a “U.S. branch” and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrowers to be treated as a United States person with respect to such payments (and the Borrowers and Credit Suisse AG, Cayman Islands Branch agree to so treat Credit Suisse AG, Cayman Islands Branch as a United States person with respect to such payments), with the effect that the Borrowers can make payments to Credit Suisse AG, Cayman Islands Branch (acting as the Administrative Agent) without deduction or withholding of any taxes imposed by the United States.

(d) In addition, each Lender that is not a Foreign Lender will deliver to the Lead Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this paragraph (d) Section 2.14 that such Lender is not legally able to deliver.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Lead Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient’s
obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.14(6), “FATCA” will include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Lead Borrower and the Administrative Agent in writing of its legal inability to do so.

(7) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund (including a credit in lieu of a refund) of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.14, it will pay over reasonably promptly such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.14 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or such Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in Section 2.14(7), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.14(7) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.14(7) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(8) Each party’s obligations under this Section 2.14 will survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(9) For purposes of this Section 2.14, the term “applicable law” includes FATCA.

SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(1) Unless otherwise specified, the Borrowers will make each payment required to be made by it hereunder (whether of principal, interest, fees or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 10.05 will be made directly to the Persons entitled thereto, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will
make settlements with the Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(2) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrowers to pay fully all amounts of principal, interest and fees then due from the Borrowers hereunder or (b) at any time an Event of Default shall have occurred and be continuing and the Administrative Agent will receive any proceeds of Term Priority Collateral in connection with the exercise of remedies or payments of any kind, such funds will, subject to the Intercreditor Agreements, be applied in accordance with Section 5.02 of the Collateral Agreement (subject to the application of proceeds provisions contained in the Intercreditor Agreement).

(3) Except as otherwise expressly provided in this Agreement, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Class of Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Class of Term Loans than the proportion received by any other Lender in such Class, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of such Class of other Lenders in such Class to the extent necessary so that the benefit of all such payments will be shared by the Lenders in such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans of such Class; provided that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (3) will not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant. The Borrowers consent to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers' rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation. Notwithstanding anything herein to the contrary, the 2019 Extended Term Loans shall constitute a single Class for purposes of this provision, subject to Section 5.02 of the Collateral Agreement with respect to proceeds of Call Right Collateral.

(4) Unless the Administrative Agent has received notice from the Lead Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such
amount is distributed to it but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(5) If any Lender fails to make any payment required to be made by it pursuant to Section 2.03(1) or 2.15(3), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender’s obligations under Section 2.03(1) or 2.15(3), as applicable, until all such unsatisfied obligations are fully paid.

SECTION 2.16. Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.12, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.12, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then the Borrowers may, at its sole expense, upon notice to such Lender and the Administrative Agent, either (a) prepay such Lender’s outstanding Term Loans hereunder in full on a non-pro rata basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that will assume such obligations which assignee may be another Lender, if a Lender accepts such assignment; provided that (i) in the case of clause (b) above, the Lead Borrower has received the prior written consent of the Administrative Agent, which consent will not unreasonably be withheld, if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such assignee, (ii) such Lender has received payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.16 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

(3) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 10.08, requires the consent of such Lender and with respect to which the Required Lenders have granted their consent, then the Borrowers will have the right (unless such Non-Consenting Lender
grants such consent) at its sole expense, to either (a) prepay such Lender’s outstanding Term Loans hereunder in full on a non-pro rata basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Term Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such assignee; provided that (i) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.12, 2.13 or 2.14) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such removal or assignment and (ii) in the case of clause (b) above, the replacement Lender will purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, in the case of clause (b) above, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrowers, the Administrative Agent, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; provided that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Lead Borrower’s request, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.17. Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Original Closing Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Eurocurrency Loans, then, upon notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans or to convert ABR Borrowings to Eurocurrency Borrowings will be suspended until such Lender notifies the Administrative Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Lead Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Loans. Upon any such prepayment or conversion, the Borrowers will also pay accrued interest on the amount so prepaid or converted.


(1) Notice. At any time and from time to time, on one or more occasions, following the occurrence and during the continuance of an Event of Default and subject to the terms and conditions set forth herein, the Borrower may, by notice to 2019 Extending Term Lenders may fund, and cause the Borrowers to borrow, the Additional 2019 Extended Term Loans, by delivery of a notice of election in respect thereof and a proposed date of consummation of the Call Right through the Administrative Agent, increase the aggregate principal amount of any outstanding tranche of Term Loans or add one or more additional tranches of term loans under the Loan Documents (the “Incremental Term Loans,” each such increase or tranche, an “Incremental Facility”) to (i) the Lead Borrower and (ii) the Junior Lien Representatives (as defined in the Junior Lien Intercreditor Agreement), in accordance with the terms of the Junior Lien Intercreditor Agreement, which notice shall be delivered not more than 30 Business Days and not fewer than 5 Business Days prior to such proposed date of
Incremental Term Loans may, at the discretion of the Borrower, be secured or unsecured. If Incremental Term Loans are secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Incremental Term Loans, will become party or otherwise subject to the provisions of a Junior Lien Intercreditor Agreement. Additional 2019 Extended Term Loans shall be secured by the Collateral on a ratable basis with the 2019 Extended Term Loans; provided that any (a) payments from proceeds of the Call Right Collateral in connection with the exercise of remedies or otherwise and (b) payments received on account of the unsecured Guarantee by Notes PropCo of the Obligations, shall be applied to satisfy the Obligations in respect of Additional 2019 Extended Term Loans until paid in full prior to application to the Obligations in respect of the other 2019 Extended Term Loan Obligations.

Size. The principal amount of Incremental Facilities incurred pursuant to this Section 2.18 and Incremental Equivalent Term Debt incurred pursuant to Section 6.01(1) will not exceed, in the aggregate, an amount equal to $650.0 million (the “Non-Ratio Based Incremental Facility Cap”); provided that the Borrower may incur additional Incremental Facilities and Incremental Equivalent Term Debt without regard to the Non-Ratio Based Incremental Facility Cap so long as (a) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be secured on a pari passu basis with the Term Loans, the Senior Secured First Lien Net Leverage Ratio (determined on the date on which the applicable Incremental Facilities or Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Facility or Incremental Equivalent Term Debt) is equal to or less than 4.25 to 1.00; and (b) with respect to any such Incremental Facility to be secured on a junior basis to the Term Loans, subordinated in right of payment to the Term Loans or unsecured and pari passu in the exercise of remedies and otherwise and (b) payments received on account of the unsecured Guarantee by Notes PropCo of the Obligations, shall be applied to satisfy the Obligations in respect of Additional 2019 Extended Term Loans until paid in full prior to application to the Obligations in respect of the other 2019 Extended Term Loan Obligations.

Each tranche of Incremental Term Loans will be in an integral multiple of $1.0 million and in an aggregate principal amount that is not less than $15.0 million (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); provided that such amount may be less than the applicable minimum amount or integral multiple amount if such amount represents all the remaining availability under the Available Incremental Term Loan Facility Amount.

Incremental Additional 2019 Extended Term Loan Lenders. Incremental Additional 2019 Extended Term Loans may be provided by any existing Lenders or by participating 2019 Extending Term Lenders, at their election (it being understood that no existing Lender 2019 Extending Term Lenders shall have an obligation to provide Incremental Additional 2019 Extended Term Loans).
Term Loans) or any Additional Lender, provided that the Administrative Agent shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender’s providing such Incremental Term Loans if such consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such Additional Lender. Additional 2019 Extended Term Loans, with each having a ratable right of participation (and the ratable right to take up any portion not funded by other Lenders).

(5) Incremental Facility/Additional 2019 Extended Term Loans Amendments. Each Incremental Facility/Additional 2019 Extended Term Loans will become effective pursuant to an amendment (each, an "Incremental Facility Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrowers, each Lender or Additional 2019 Extending Term Lender providing such Incremental Facility/Additional 2019 Extended Term Loans Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility/Additional 2019 Extended Term Loans Amendment, this Agreement and the other Loan Documents, as applicable, will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Facility and the Incremental Additional 2019 Extended Term Loans evidenced thereby.

(6) Conditions. The availability of Incremental Term Loans will be subject solely to the following conditions:

(a) no Default or Event of Default shall have occurred and be continuing on the date such Incremental Term Loans are incurred or would exist immediately after giving effect thereto;

(b) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Term Loans; and

(c) such other conditions (if any) as may be required by the Incremental Lenders providing such Incremental Term Loans, unless such other conditions are waived by such Incremental Lenders;

provided that if the proceeds of such Incremental Term Loans will be used to finance, in whole or in part, the acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or the merger, consolidation or amalgamation with, a Person or division or line of business of a Person,

(i) the condition in the foregoing clause (a) may be waived (or not required) by the Incremental Lenders providing such Incremental Term Loans; and
the condition in the foregoing clause (b) may be limited to the accuracy in all material respects of (A) the Specified Representations and (B) any representations and warranties made with respect to such Person, division or line of business in the agreement governing such acquisition, merger, consolidation or amalgamation to the extent the breach of such representations and warranties is material to the interests of the Lenders; provided that the failure of any such representation or warranty will not result in a failure of the conditions set forth in the foregoing clause (b) unless such breach results in a failure of a condition precedent of the obligations of the Borrower or a Restricted Subsidiary to consummate such acquisition, merger, consolidation or amalgamation or permits the Borrower or a Restricted Subsidiary to terminate such agreement (after giving effect to any applicable notice and cure provisions).

(6) Terms. Each notice delivered pursuant to this Section 2.18 will set forth the amount and proposed terms of the relevant Incremental Term Loans. The terms of each tranche of Incremental Term Loans will be as agreed between the Borrower and the Incremental Lenders providing such Incremental Term Loans; provided that: Subject to clause (2) above, the terms of the Additional 2019 Extended Term Loans shall be identical to the terms of the applicable existing 2019 Extended Term Loans; provided that (i) each of the Cash Pay Additional 2019 Extended Term Loans and Cash Pay/PIK Additional 2019 Extended Term Loans shall be a separate Class of Term Loans and a separate Term Facility hereunder, and (ii) the Additional 2019 Extended Term Loans shall not amortize but shall have the same Maturity Date as the other 2019 Extended Term Loans and share ratably in mandatory and voluntary prepayments.

(a) the final maturity date of such Incremental Term Loans will be no earlier than the Latest Maturity Date of the Term Loans;
(b) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of the Term Loans; and
(c) such Incremental Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any voluntary or mandatory repayments or prepayments of the Term Loans.

(7) Use of Proceeds. Upon exercise of the Call Right and funding of the Additional 2019 Extended Term Loans, the Lead Borrower shall cause the applicable Junior Financing to be redeemed in accordance with the terms thereof, it being understood the Loan Parties shall pay any accrued and unpaid interest on the Indebtedness redeemed and bear any costs and expenses from their cash on hand or other sources of liquidity. Upon consummation of the Call Right and the redemption of the applicable Indebtedness, (i) any Liens on Call Right Collateral securing the remaining Third Lien Notes Obligations and Second Lien Notes Obligations not so redeemed shall be subordinated to the Liens on the Call Right Collateral securing the First Lien Obligations as defined in, and in accordance with Section 2.1 of, the Junior Lien Intercreditor Agreement, (ii) the Call Right Collateral shall become Senior Priority Collateral (as defined in the Junior Lien Intercreditor Agreement) in support of the Obligations, (iii) the Call Right Collateral shall thereafter be subject to substantially similar
provisions as other Collateral securing the 2019 Extended Term Loans, subject to exceptions as set forth in the Junior Lien Intercreditor Agreement and the Collateral Agreement. (iv) Guarantees provided by Notes PropCo shall have the priorities set forth in the “post-Call Right Cap Recovery” column in the definition of “Required PropCo Guarantee Priority” and (v) the amount funded by such Lenders of 2019 Extended Term Loans to finance the Call Right shall be treated for all purposes under this Agreement as “Obligations” and under the Junior Lien Intercreditor Agreement as “Additional First Lien Obligations”. Capitalized terms used in this clause (7) but not otherwise defined in this Agreement shall have the meanings assigned to such terms in the Junior Lien Intercreditor Agreement.

(8) Pricing. The interest rate, fees and original issue discount for any Incremental Term Loans will be as determined by a Responsible Officer of the Borrower and the Incremental Lenders providing such Incremental Term Loans, provided that if the yield (as determined below) on any such Incremental Term Loans that are secured on a pari passu basis with the Term Loans (such yield, the “Incremental Yield”) exceeds the yield (as determined below) on the Term Loans incurred on the Closing Date by more than 50 basis points, then the interest margins for the Term Loans incurred on the Closing Date will automatically be increased to a level such that the yield on the Term Loans incurred on the Closing Date will be 50 basis points below the Incremental Yield on such Incremental Term Loans. Any increase in yield on the Term Loans incurred on the Closing Date required pursuant to this Section 2.18(8) and resulting from the application of an Adjusted LIBO Rate or ABR “floor” on any Incremental Term Loans will be effected solely through an increase in such “floor” (or an implementation thereof, as applicable) in respect of the Term Loans. In determining whether the Incremental Yield on Incremental Term Loans exceeds the yield on the Term Loans incurred on the Closing Date by more than 50 basis points, such determination will take into account interest margins, minimum Adjusted LIBO Rate, minimum ABR, upfront fees and original issue discount on the applicable Term Loans, with upfront fees and original issue discount being equated to interest margins based on an assumed four year life to maturity, but will exclude any arrangement, syndication, structuring, commitment or other fees payable in connection therewith. Additional 2019 Extended Term Loans shall bear interest, at the election of each Additional 2019 Extended Term Loan Lender, at a rate equal to either (i) the rate applicable to the Cash Pay Extended Term Loans (such Additional 2019 Extended Term Loans, the “Cash Pay Additional 2019 Extended Term Loans”) or (ii) the rate applicable to the Cash Pay/PIK Extended Term Loans (such Additional 2019 Extended Term Loans, the “Cash Pay/PIK Additional 2019 Extended Term Loans”), as set forth in the Additional 2019 Extended Term Loans Amendment.

SECTION 2.19. Other Term Loans.

(1) Other Term Loans. Credit Agreement Refinancing Indebtedness may, at the election of the Borrowers, take the form of new Term Loans under an additional Term Facility hereunder (“Other Term Loans”) pursuant to a Refinancing Amendment. For the avoidance of doubt, Other Term Loans shall only be incurred if such Other Term Loans satisfy the requirements set forth in the definition of “Credit Agreement Refinancing Indebtedness”.

(2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction or waiver on the date thereof of each of the conditions set forth in Section 4.02 the following conditions: (i) the absence of any Default or Event of Default, (ii) a customary bring-down of each of the representations and warranties contained in Article III.
hereof, and (iii) such other customary conditions as may be requested by the providers of Other Term Loans, and the parties hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Term Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Other Term Loans).

(3) **Required Consents.** Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrowers and the Lenders or Additional Lenders providing Other Term Loans, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the provisions of this Section 2.19. This Section 2.19 supersedes any provisions in Section 10.08 to the contrary.

(4) **Providers of Other Term Loans.** Any Lender approached to provide all or a portion of Other Term Loans may elect or decline, in its sole discretion, to provide such Other Term Loans (it being understood that there is no obligation to approach any existing Lenders to provide Other Term Loans). The consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) will be required in respect of any Person providing Other Term Loans if such consent would be required under Section 10.04 for an assignment of Term Loans to such Person. For the avoidance of doubt, any Affiliated Lender shall be permitted to provide all or a portion of Other Term Loans, subject to the applicable limitations set forth in Section 10.04(10) with respect to Term Loans held by Affiliated Lenders.

**SECTION 2.20. Extensions of Term Loans.**

(1) **Extension Offers.** Pursuant to one or more offers (each, an “Extension Offer”) made from time to time by the Borrowers to all Lenders of Term Loans with a like Maturity Date, the Borrowers may extend the Maturity Date of Term Loans and otherwise modify the terms of Term Loans pursuant to the terms set forth in the relevant Extension Offer (each, an “Extension,” and each group of Term Loans so extended, as well as the original Term Loans not so extended, being a “tranche”). Each Extension Offer will specify the minimum amount of Term Loans with respect to which an Extension Offer may be accepted, which will be an integral multiple of $1.0 million and an aggregate principal amount that is not less than $125.0 million (or (a) if less, the aggregate principal amount of such Term Loans or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and will be made on a pro rata basis to all Lenders of Term Loans with a like Maturity Date. If the aggregate outstanding principal amount of Term Loans (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Term Loans offered to be extended pursuant to an Extension Offer, then the Term Loans of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. Each Lender accepting an Extension Offer is referred to herein as an “Extending Term Lender,” and the Term Loans held by such Lender accepting an Extension Offer is referred to herein as “Extended Term Loans.”
Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an “Extension Amendment”) with the Borrowers as may be necessary in order to establish new tranches in respect of Term Loans extended pursuant to an Extension Offer and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrowers in connection with the establishment of such new tranches. This Section 2.20 supersedes any provisions in Section 10.08 to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

Terms of Extension Offers and Extension Amendments. The terms of any Extended Term Loans will be set forth in an Extension Offer and as agreed between the Borrowers and the Extending Term Lenders accepting such Extension Offer; provided that:

(a) the final maturity date of such Extended Term Loans will be no earlier than the Latest Maturity Date of the Term Loans subject to such Extension Offer;

(b) the Weighted Average Life to Maturity of such Extended Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;

(c) such Extended Term Loans may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any voluntary or mandatory repayments or prepayments of Term Loans;

(d) such Extended Term Loans are not secured by any assets or property that does not constitute Collateral;

(e) such Extended Term Loans are not guaranteed by any Subsidiary of the Borrowers (or any other Person) other than a Subsidiary Loan Party (or another Guarantor) (unless such entity becomes a Subsidiary Loan Party in connection with the incurrence of such Indebtedness); and

(f) except as to pricing terms (interest rate, fees, funding discounts and prepayment premiums) and maturity, the terms and conditions of such Extended Term Loans are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Term Loans subject to such Extension Offer (or, in the case of any Non-Participating Term Loan Exchange Indebtedness, the 2019 Extended Term Loans), as determined in good faith by a Responsible Officer of the Lead Borrower.

Any Extended Term Loans will constitute a separate tranche of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or condition), the Borrowers and the applicable Extending Term Lender. The transactions contemplated by this Section 2.20 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans) shall be governed by the terms of this Agreement, as amended by the applicable Extension Amendment, by the terms of the other Loan Documents and by the terms of the applicable Extension Offer.
Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.08 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.20 will not apply to any of the transactions effected pursuant to this Section 2.20. For the avoidance of doubt, any Affiliated Lender shall be permitted to accept an Extension Offer and hold all or a portion of Extended Term Loans, subject to the applicable limitations set forth in Section 10.04(10) with respect to Term Loans held by Affiliated Lenders.

(5) 2019 Extended Term Loans. Notwithstanding anything to the contrary contained in this Agreement (including clauses (1) through (4) of this Section 2.20), from and after the Initial Amendment Effective Time (as defined in the 2019 Extension Amendment), the 2013 Term Loans of a 2019 Extending Term Lender may be converted into 2019 Extended Term Loans on the terms and conditions set forth in the 2019 Extension Amendment and as contemplated in this Agreement for any such 2019 Extended Term Loans.

SECTION 2.21. Repricing Event Joint and Several Liability of Borrowers.

(1) Each of the Borrowers hereby accepts joint and several, primary liability for all Obligations hereunder in consideration of the financial accommodations provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each of the Borrowers to accept joint and several liability for the Obligations of each of them under the Loan Documents.

(2) Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all of the Obligations are the joint and several obligations of each of the Borrowers without preferences or distinction among them.

(3) If and to the extent that any of the Borrowers fails to make any payment with respect to any of the Obligations hereunder as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation.

(4) The obligations of each Borrower under the provisions of this Section 2.21 constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets.

(5) Notwithstanding any provision to the contrary contained herein or in any other Loan Document, the obligations of each Borrower hereunder will be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of Title 11 of the United States Code, as now constituted or hereafter amended or any comparable provisions of any applicable state law.

SECTION 2.22. Designation of Lead Borrower. In the event that, prior to the first year anniversary of the Closing Date, the Borrower refinances or makes any prepayment of, or amends the terms of, Term Loans in connection with any Repricing Event, the Borrower will pay to the Administrative Agent, for the ratable account of each applicable Lender, a payment of 1.00% of the aggregate principal amount of the Term Loans so refinanced, prepaid or amended, as the case may be. Each Borrower hereby appoints the Lead Borrower to act as its exclusive agent for all
purposes under this Agreement and the other Loan Documents (including with respect to all matters related to the borrowing and repayment of
Term Loans as described in Article II hereof). Each Borrower (in such capacity) acknowledges and agrees that (1) the Lead Borrower may execute
such documents on behalf of all the Borrowers as the Lead Borrower deems appropriate in its sole discretion and each Borrower (in such capacity)
will be bound by and obligated by all of the terms of any such document executed by the Lead Borrower on its behalf, (2) any notice or other
communication delivered by the Administrative Agent or any Lender hereunder to the Lead Borrower will be deemed to have been delivered to each
Borrower, and (3) the Administrative Agent and each of the Lenders will accept (and will be permitted to rely on) any document or agreement
executed by the Lead Borrower on behalf of the Borrowers (or any of them),

ARTICLE III

Representations and Warranties

Each of Holdings and Merger Sub, each Borrower, represents and warrants to each Agent and to each of the Lenders, with respect to
Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement
Representations and the Specified Representations are true and correct in all material respects. With respect to any Borrowing made after the Closing Date
pursuant to Section 2.18, to the extent required by Section 2.18(6), the Borrower, with respect to itself and each of the Restricted Subsidiaries, and Holdings,
solely with respect to Sections 3.01, 3.02, 3.03 and 3.19, will represent and warrant to each Agent and to each of the Lenders that:

SECTION 3.01. Organization; Powers. Each of Holdings, the each Borrower and each Restricted Subsidiary:

(1) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);

(2) has all requisite power and authority to own its property and assets and to carry on its business as now conducted;

(3) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and

(4) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrowers, to borrow and otherwise obtain credit hereunder.

SECTION 3.02. Authorization. The execution, delivery and performance by the Loan Parties of each of the Loan Documents to which it is a party, the Borrowings hereunder and the Recapitalization Transactions:

(1) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and

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(2) will not:

(a) violate:

(i) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;

(ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or

(iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;

(b) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument; or

(c) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents and Permitted Liens;

except with respect to clauses (a) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrowers and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

(1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally;

(2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(3) implied covenants of good faith and fair dealing; and

(4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the Recapitalization Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

(1) the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;
filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;

filings of deeds of trusts or mortgages with the applicable filing offices;

filings which may be required under Environmental Laws;

filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;

such as have been made or obtained and are in full force and effect;

filings which may be required under Environmental Laws;

filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;

such as have been made or obtained and are in full force and effect;

such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or

filings or other actions listed on Schedule 3.04.

SECTION 3.05. Title to Properties; Possession Under Leases.

Each of the Borrowers and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title, interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

Neither any Borrower nor any of the Restricted Subsidiaries has defaulted under any lease to which it is a party, except for such defaults as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Borrowers’ leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.05(2), on the Closing Amendment No. 2 Effective Date the Borrowers and each of the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.06. Subsidiaries.

Schedule 3.06(1) sets forth as of the Closing Amendment No. 2 Effective Date the name and jurisdiction of incorporation, formation or organization of Holdings, the Borrowers and each Restricted Subsidiary and, as to each Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrowers or by any other Subsidiary of the Borrowers.

As of the Closing Amendment No. 2 Effective Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests owned or held by Holdings, the Borrowers or any Restricted Subsidiary.
SECTION 3.07. **Litigation: Compliance with Laws.**

(1) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Lead Borrower, threatened in writing against or affecting the Borrowers or any Restricted Subsidiary or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.13), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Lead Borrower, none of the Borrowers, the Restricted Subsidiaries or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.13) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.08. **Federal Reserve Regulations.**

(1) None of Holdings, any Borrower or any Restricted Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(2) No part of the proceeds of any Term Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.09. **Investment Company Act.** None of Holdings, any Borrower or any Restricted Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.10. **Use of Proceeds.** The Lead Borrower shall use the proceeds of the Term Loans made on the Original Closing Date to finance a portion of the Original Transactions.

SECTION 3.11. **Tax Returns.** Except as set forth on Schedule 3.11:

(1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of Holdings, the Borrowers and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and

(2) Each of Holdings, the Borrowers and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.11 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Amendment No. 2 Effective Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to

(1) All written factual information and written factual data (other than the Projections, any other projections, estimates and information of a general economic or industry specific nature) concerning Holdings, the Borrowers or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP.

(2) The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of the Borrowers in connection with the Recapitalization Transactions, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by the Borrowers to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:

(a) the Projections are merely a prediction as to future events and are not to be viewed as facts;
(b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings, the Company, the Sponsors, and/or the Bidders;
(c) no assurance can be given that any particular Projections will be realized; and
(d) actual results may differ and such differences may be material.

SECTION 3.13. Environmental Matters. Except as set forth on Schedule 3.13 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(1) each Borrower and each of the Restricted Subsidiaries are in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);

(2) neither any Borrower nor any Restricted Subsidiary has received notice of or is subject to any pending, or to the Lead Borrower’s knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;
to the Lead Borrower’s knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrowers or any Restricted Subsidiary and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrowers or any Restricted Subsidiary and transported to or released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrowers or any Restricted Subsidiaries; and

(4) there are no agreements in which the Borrowers or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.


(1) The Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) legal and valid Liens on the Collateral described therein; and when financing statements in appropriate form are filed in the offices specified on Schedule IV to the Collateral Agreement, a short form grant of security interest in intellectual property (in substantially the form of Exhibit II to the Collateral Agreement (for trademarks), Exhibit III to the Collateral Agreement (for patents) or Exhibit IV to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the Pledged Collateral described in the Collateral Agreement is delivered to the Collateral Agent, the Liens on the Collateral granted pursuant to the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the Loan Parties under the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the Loan Parties thereunder in the domestic intellectual property, in each case prior to and superior in right of the Lien of any other Person (except for Permitted Liens).

(2) When financing statements in appropriate form are filed in the offices specified on Schedule IV to the Collateral Agreement and the Collateral Agreement or a summary thereof or a short form grant of security interest in intellectual property (in substantially the form of Exhibit II to the Collateral Agreement (for trademarks), Exhibit III to the Collateral Agreement (for patents) or Exhibit IV to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, the Liens on the Collateral granted pursuant to the Collateral Agreement shall constitute fully perfected Liens on all right, title and interest of the Loan Parties thereunder in the domestic intellectual property, in each case prior and superior in right to the Lien of any other Person (except for Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the grantors after the Closing Amendment No. 2 Effective Date).

(3) Notwithstanding anything herein (including this Section 3.14) or in any other Loan Document to the contrary, neither (i) makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, in each case, under foreign law, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law or (ii) shall be required to take any action to perfect any Lien in any
intellectual property registered (or where an application for registration has been filed) in any jurisdiction other than the United States of America.

SECTION 3.15. Location of Real Property and Leased Premises.

(1) Schedule 3.15(1) correctly identifies, in all material respects, as of the Closing Amendment No. 2 Effective Date, all material Real Property owned in fee by the Loan Parties. As of the Closing, including all such Real Property required to be subject to a mortgage or deed of trust pursuant to the terms of the TSA, As of the Amendment No. 2 Effective Date, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.15(1).

(2) Schedule 3.15(2) lists correctly in all material respects, as of the Closing Amendment No. 2 Effective Date, all material Real Property (including all leased full-line Neiman Marcus and Bergdorf Goodman stores and all leased warehouses or distribution centers) leased by any Loan Party and the best known addresses thereof. As of the Closing, including any such Real Property required to be subject to a mortgage or deed of trust pursuant to the terms of the TSA, As of the Amendment No. 2 Effective Date, the Loan Parties have in all material respects valid leases in all material Real Property set forth as being leased by them on Schedule 3.15(2).

SECTION 3.16. Solvency. On the Closing Amendment No. 2 Effective Date, after giving effect to the consummation of the Recapitalization Transactions, including the making of the Term Loans hereunder, and after giving effect to the application of the proceeds of such Term Loans:

(1) the fair value of the assets of the Borrowers and their Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities (subordinated, contingent or otherwise);

(2) the present fair saleable value of the property of the Borrowers and their Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities (subordinated, contingent or otherwise) as such debts and other liabilities become absolute and matured;

(3) the Borrowers and their Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (subordinated, contingent or otherwise) as such liabilities become absolute and matured; and

(4) the Borrowers and their Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Section 3.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 3.17. No Material Adverse Effect. Since August 3, 2013, July 28, 2018, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrowers or any Restricted Subsidiary as of the Closing Amendment No. 2 Effective Date. As of such date, such insurance is in full force and effect.
(1) To the extent applicable, each of Holdings, the Borrowers and the Restricted Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.

(2) No part of the proceeds of the Term Loans will be used by Holdings, the Borrowers or any of their respective Subsidiaries, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended ("FCPA").

(3) None of Holdings, the Borrowers or any Restricted Subsidiary is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “Executive Order”);

(b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any applicable laws with respect to terrorism or money laundering;

(d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(e) a Person that is named as a “specially designated national and blocked Person” on the most current list of Specially Designated Nationals and Blocked Persons as published by the U.S. Department of the Treasury’s Office of Foreign Assets Control ("OFAC") at its official website or any replacement official publication of such list and none of the proceeds of the Term Loans will be, directly or knowingly, indirectly, offered, lent, contributed or otherwise made available to any Restricted Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC.

SECTION 3.20. Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.20:

(1) except as would not reasonably be expected to have a Material Adverse Effect, the Borrowers and each Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “Intellectual Property Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

(2) except as would not reasonably be expected to have a Material Adverse Effect, neither the any Borrower nor any of the Restricted Subsidiaries nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by the
(3) no material claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Lead Borrower, threatened.

SECTION 3.21. Employee Benefit Plans. The Borrower and each of its Employees and with respect to Plans the Loan Parties and the ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87, as updated, amended or superseded) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

ARTICLE IV
Conditions of Lending

SECTION 4.01. Conditions Precedent to the Original Closing Date. The agreement of each Lender to make Term Loans on the Original Closing Date is subject solely to the satisfaction or waiver by the Administrative Agent, prior to or concurrently with the making of the Term Loans on the Original Closing Date, of the following conditions precedent:

(1) Loan Documents. The Administrative Agent shall have received this Agreement and the Collateral Agreement, in each case, duly executed and delivered by a Responsible Officer of each of Holdings and Merger Sub.

(2) Borrowing Request. On or prior to the Original Closing Date, the Administrative Agent shall have received a Borrowing Request.

(3) Acquisition Transactions. Merger Sub or Holdings shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Term Loans on the Original Closing Date:

(a) the Original Merger;

(b) the Equity Contribution; and

(c) the Closing Date Refinancing.

(4) Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received a pro forma consolidated balance sheet and income statement of the Company as of August 3, 2013 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Original Transactions as if the Original Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).

(5) Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Original Closing Date

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pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the **Original** Closing Date.

(6) **Solvency Certificate.** The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit B.

(7) **Closing Date Certificates.** The Administrative Agent shall have received a certificate of a Responsible Officer of each of Holdings and Merger Sub dated the **Original** Closing Date and certifying:

(a) that attached thereto is a true and complete copy of the charter or other similar organizational document of Holdings or Merger Sub, as applicable, and each amendment thereto, certified (as of a date reasonably near the **Original** Closing Date) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which Holdings or Merger Sub, as applicable, is organized;

(b) that attached thereto is a true and complete copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which Holdings or Merger Sub, as applicable, is organized, dated reasonably near the **Original** Closing Date, listing the charter or other similar organizational document of such Person and each amendment thereto on file in such office and, if available, certifying that (i) such amendments are the only amendments to such Person’s charter on file in such office, (ii) such Person has paid all franchise taxes to the date of such certificate and (iii) such Person is duly organized and in good standing under the laws of such jurisdiction;

(c) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of Holdings or Merger Sub, as applicable, authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection herewith on the **Original** Closing Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect;

(d) as to the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in Section 4.01(1) (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.01(7)); and

(e) that on the **Original** Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.

(8) **Legal Opinions.** The Administrative Agent shall have received a customary legal opinion of each of (a) Latham & Watkins LLP, special counsel to the Loan Parties and (b) K&L Gates LLP, local counsel to the Loan Parties.

(9) **Pledged Equity Interests; Pledged Notes.** Except as otherwise agreed by the Administrative Agent, the Administrative Agent shall have received the certificates representing the Equity Interests (if such Equity Interests are certificated) of (a) Merger Sub and (b) to the extent obtained by Merger Sub from the Company on or prior to the **Original** Closing Date, the Company and each Subsidiary Loan Party, in each case to the extent such Equity Interests are included in the Collateral and required to be pledged pursuant to the Collateral Agreement (as defined in the Existing Credit Agreement), together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.
Lien Searches. The Administrative Agent shall have received a completed Perfection Certificate dated as of the Original Closing Date and signed by a Responsible Officer of Holdings and the Existing Borrower, together with, if requested by the Administrative Agent at least 21 days prior to the Original Closing Date, the results of a search of Uniform Commercial Code filings made with respect to the Loan Parties (for purposes of this clause (10), giving effect to the Original Transactions) in the applicable jurisdiction of organization of each Loan Party and copies of the financing statements (or similar documents) disclosed by such search.

No Material Adverse Effect. Except as disclosed in the disclosure schedules to the Original Merger Agreement, the audited consolidated financial statements of the Company (including the related notes) at and for the fiscal year ended on August 3, 2013, certified by the Company’s auditors or in the Company SEC Documents (as defined in the Original Merger Agreement) filed with, or furnished to, the SEC prior to the date of the Original Merger Agreement (other than any risk factor disclosures contained in the “Risk Factors” section thereof, sections relating to forward-looking statements and any other disclosures that constitute predictive, cautionary or forward-looking statements), there shall not have occurred any event that has had, or would reasonably be expected to have, a Material Adverse Effect (as defined in the Original Merger Agreement) since August 3, 2013 that would result in a failure of a condition precedent to the obligations of Merger Sub under the Original Merger Agreement.

Know Your Customer and Other Required Information. All documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten calendar days prior to the Purchase Date, will be provided not later than the date that is three Business Days prior to the Purchase Date.

Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations will be true and correct in all material respects; provided that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure gives Merger Sub the right to terminate the Original Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

There are no conditions, implied or otherwise, to the making of Term Loans on the Original Closing Date other than as set forth in the preceding clauses (1) through (13) and upon satisfaction or waiver by the Administrative Agent of such conditions the Term Loans will be made by the Lenders. Notwithstanding anything herein to the contrary, capitalized terms used in this Article IV to the extent not otherwise defined in this Agreement shall have the meaning given such terms in the Existing Credit Agreement.

ARTICLE V

Affirmative Covenants

The Each Borrower covenants and agrees with each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, the Borrowers will, and will cause their Restricted Subsidiaries, to:
SECTION 5.01.  Existence; Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except:

(a) in the case of a Restricted Subsidiary, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or

(b) in connection with a transaction permitted under Section 6.05.

(2) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

(i) as expressly permitted by this Agreement;

(ii) such as may expire, be abandoned or lapse in the ordinary course of business; or

(iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02.  Insurance.

(1) Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Lead Borrower will furnish to the Administrative Agent or Collateral Agent, upon request, information in reasonable detail as to the insurance so maintained. Notwithstanding the foregoing, it is understood and agreed that no Loan Party will be required to maintain flood insurance unless any material Real Property owned by it is required to be so insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because such material Real Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a “special flood hazard area.”

(2) Use commercially reasonable efforts to: (a) if insurance is procured from insurance companies, obtain certificates and endorsements reasonably acceptable to the Administrative Agent with respect to property and casualty insurance; (b) cause each insurance policy referred to in this Section 5.02 and procured from an insurance company to provide that it shall not be cancelled, modified or not renewed (x) by reason of nonpayment of premium except upon not less than 10 days’ prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon not less than 30 days’ prior written notice thereof by the insurer to the Administrative Agent; and (c) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement.
SECTION 5.03. Taxes.

(1) Pay and discharge promptly when due all material Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; provided that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) Holdings, the Borrowers or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

(2) The Loan Parties agree, for U.S. federal (and applicable state and local) income tax purposes, (a) to treat TNMG LLC and The NMG Subsidiary, in each case, as an entity disregarded as separate from the Lead Borrower (b) to treat any Consent Fee as additional consideration realized on the exchange of the 2013 Term Loans for the 2019 Extended Term Loans and (c) the payment of the Consent Fee shall be made in connection with the exchange of the 2013 Term Loans for the 2019 Extended Term Loans without deduction or withholding in respect of taxes or otherwise. None of the Loan Parties shall (and each shall cause its Affiliates not to) take any position inconsistent with the foregoing, or with the treatment of the exchange of the 2013 Term Loans for the 2019 Extended Term Loans as a “recapitalization” qualifying under Section 368(a)(1)(E) of the Code, on any Tax return, Tax form (including, for the avoidance of doubt, on Internal Revenue Service Form 8832 or 8937) or in connection with any Tax proceeding, except to the extent otherwise by a “determination” within the meaning of Section 1313(a) of the Code (or a similar provision of foreign, state or local Law).

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders) (1) within 120 days following the end of the fiscal year ending August 2, 2014, and, subject to customary confidentiality undertakings, make available to potential Lenders/assignees:

(1) within 90 days following the end of each fiscal year thereafter (commencing with the fiscal year ending August 3, 2019), a consolidated balance sheet and related statements of operations, cash flows and owners’ equity showing the financial position of the Borrowers and the Restricted Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, starting with the fiscal year ending August 2, 2014, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners’ equity will be audited by independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any “going concern” statement, explanatory note or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrowers and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP (the applicable financial statements delivered pursuant to this clause (1) being the “Annual Financial Statements”);
(2) Within 60 days following the end of the fiscal quarters ending November 2, 2013 and February 1, 2014, and thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year, (commencing with the fiscal quarter ending April 27, 2019), a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrowers and the Restricted Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and related statements of operations and cash flows will be certified by a Responsible Officer of the Lead Borrower on behalf of the Borrowers as fairly presenting, in all material respects, the financial position and results of operations of the Borrowers and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes (the applicable financial statements delivered pursuant to this clause (2) being the “Quarterly Financial Statements” and, together with the Annual Financial Statements, the “Required Financial Statements”);

(3) Together with any such Required Financial Statements, (a) the revenue of the Borrowers and the Restricted Subsidiaries derived from (i) “brick and mortar” or retail stores at owned and leased locations, on the one hand, and (ii) online operations or e-commerce sales, on the other hand, in each case on a current and prior-year period comparable basis and (b) condensed consolidated financial information regarding Holdings, the Borrowers and their subsidiaries in form and substance substantially the same as that disclosed in the Parent Entity’s latest Form 10-K and Form 10-Q prior to the Amendment No. 2 Effective Date (or at the Lead Borrower’s election, as to the businesses conducted as of the Amendment No. 2 Effective Date by Bergdorf Goodman Inc., a New York corporation, Bergdorf Graphics, Inc., a New York corporation, and BG Productions, Inc., a Delaware corporation, on a consolidated basis) irrespective of whether such information is required to be disclosed under law; and

(4) Whether or not NMG or any of its Subsidiaries is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the following reports: (a) together with any such Annual Financial Statements delivered pursuant to Section 5.04(1), a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” containing the information required under such caption of Form 10-K of the Exchange Act, and (b) together with any such Quarterly Financial Statements delivered pursuant to Section 5.04(2), a “Management’s Discussions and Analysis of Financial Condition and Results of Operations” containing the information required under such caption of Form 10-Q of the Exchange Act, and in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter, which shall include, in the case of each of the foregoing (a) and (b), a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million);

(5) Whether or not NMG is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, within the time period specified for filing current reports on Form 8-K by the SEC, all current reports that would be required to be filed with the SEC on Form 8-K if the Lead Borrower were required to file such reports for any of the following events (i) “Entry into a Material Definitive Agreement” pursuant to Item 1.01 on Form 8-K, (ii) “Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant” pursuant to Item 2.03 on Form 8-K, (iii) any significant acquisitions or dispositions by the Lead Borrower or any of its Restricted Subsidiaries, (iv) the bankruptcy of the Lead Borrower or any of its Restricted Subsidiaries, (v) the acceleration of any
Indebtedness of the Lead Borrower or any of its Restricted Subsidiaries having a principal amount in excess of $15.0 million, (vi) a change in any of the Borrowers’ certifying independent auditor, (vii) the appointment or departure of the Chief Executive Officer or Chief Financial Officer (or persons fulfilling similar duties) of the Lead Borrower or any of its Restricted Subsidiaries, (viii) non-reliance on previously issue financial statements of the Lead Borrower or any of its Restricted Subsidiaries, (ix) entering into, materially modifying, or terminating material contracts (to the extent not otherwise required under clause (i) above) of the Lead Borrower or any of its Restricted Subsidiaries (for the avoidance of doubt, excluding officer employment arrangements) and (x) the incurrence of costs associated with exit or disposal activities by the Lead Borrower or any of its Restricted Subsidiaries;

(6) concurrently with any delivery of Required Financial Statements (except that with respect to the fiscal quarter ending April 27, 2019, within 60 days following the end of such fiscal quarter), a certificate of a Financial Officer of the Lead Borrower:

(a) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(b)____ setting forth the calculation and uses of the Available Amount for the fiscal period then ended if the Borrower has used the Available Amount for any purpose during such fiscal period;

(c)____ certifying a list of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (2) of the definition of the term “Immaterial Subsidiary;”

(b) ____ setting forth, in reasonable detail, the calculation of the Senior Secured First Lien Net Leverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of such fiscal year or such fiscal quarter, as applicable; and

(c) ____ certifying a list of all Unrestricted Subsidiaries at such time and that each Subsidiary set forth on such list qualifies as an Unrestricted Subsidiary; and

(d) ____ certifying to the aggregate outstanding principal amount of the Second Lien Notes held by any Sponsor as of the last date of the reporting period covered by such Required Financial Statements;

(7) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by Holdings, the Borrowers or any Restricted Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable;

(8) within 120 days following the end of the fiscal year ending August 2, 2014, and within 90 days following the end of each fiscal year thereafter (commencing with the fiscal year ending August 3, 2019), a consolidated annual budget for such fiscal year in the form customarily prepared by the Borrowers (the “Budget”), which Budget will in each case be accompanied by the statement of a Financial Officer of the Lead Borrower on behalf of the Borrowers.
to the effect that the Budget is based on assumptions believed by the Lead Borrower to be reasonable as of the date of delivery thereof;

(9) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrowers or any Restricted Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender); and

(10) promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Lead Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; provided that if the Lead Borrower or any of its ERISA Affiliates has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Lead Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof; and

(11) promptly, from time to time, copies of all operative Indebtedness Documents (including full and complete schedules and exhibits thereto) with respect to any outstanding Indebtedness of the Lead Borrower and any of its Restricted Subsidiaries whose principal amount (or committed amount) exceeds $25.0 million.

Anything to the contrary notwithstanding, the obligations in clauses (1), (2), (3), (4) and (5) of this Section 5.04 may be satisfied with respect to financial information of the Borrowers and the Restricted Subsidiaries by furnishing (1) the applicable financial statements of Holdings (or any other Parent Entity) or (2) the Borrowers' or Holdings' (or any such other Parent Entity's), as applicable, Form 10-K or 10-Q or 8-K, as applicable, filed with the SEC; provided that with respect to each of the foregoing clauses of this paragraph (a) to the extent such information relates to Holdings (or a Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Borrowers and the Restricted Subsidiaries on a standalone basis, on the other hand, and the information relating to the Borrowers and the Restricted Subsidiaries so long as such financial statements include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results.
Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

Within 10 Business Days of the date the Required Financial Statements for the prior fiscal period have been furnished pursuant to this Section 5.04(1) and (2), as applicable, the Lead Borrower shall cause a Financial Officer of the Lead Borrower and such other members of senior management of the Lead Borrower as the Lead Borrower deems appropriate in consultation with the Administrative Agent, to hold a conference call to which all Lenders and third-party research analysts will be invited, which shall include a reasonable “question and answer” session with the Lenders and the Lenders’ respective representatives and advisors to discuss the state of the Borrowers’ business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; provided that any such conference call shall be held at a reasonable time within the specified ten-Business Day period to be mutually agreed by the Lead Borrower and the Administrative Agent. No fewer than two Business Days prior to the date such conference call is to be held, (a) the Administrative Agent shall inform the Lenders of the time and the date of such conference call and provide the dial-in details of such conference call, and (b) the Lead Borrower will post to its website or a non-public, password-protected website maintained by the Lead Borrower or a third party, an announcement of such quarterly conference call for the benefit of the Lenders, prospective holder of the Term Loans, securities analysts and market making financial institutions, which announcement will contain the time and the date of such conference call and direct the recipients thereof to contact an individual at the Lead Borrower (for whom contact information will be provided in such notice) to obtain information on how to access such quarterly conference call; provided that any Person other than a Lender who attends such conference call with the Lead Borrower will be required to represent to and agree with the Lead Borrower (and by attending such conference call, such person will be deemed to have represented and agreed with the Lead Borrower) to clauses (1) through (6) of the following paragraph.

Without limiting the foregoing obligations of each Borrower to the Lenders pursuant to this Section 5.04, at any time that the Lead Borrower (and any applicable Parent Entity) is not subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act, in lieu of filing the reports contemplated by clauses (1), (2), (3), (4) and (5) of this Section 5.04 with the SEC, the Lead Borrower may make available such information electronically (including by posting to a non-public, password-protected website maintained by the Lead Borrower or a third party) to any bona fide prospective holder of the Term Loans, any bona fide market maker (or person who intends to be a market maker) in the Term Loans or any bona fide securities analyst, in each case, who provides to the Lead Borrower its email address, employer name and other information reasonably requested by the Lead Borrower. Any Person who requests such financial information from the Lead Borrower or seeks to participate in any conference call required by this covenant (excluding for the avoidance of doubt, each Lender) may be excluded to the extent it constitutes a Disqualified Institution and may be required by the Lead Borrower to represent to and agree with the Lead Borrower that:

(1) it is a holder of the Term Loans, a bona fide prospective holder of the Term Loans, a bona fide market maker (or intended market maker) with respect to the Term Loans or a bona fide securities analyst, as applicable;

(2) if it is a prospective holder of the Term Loans, it would meet all the requirements to be a Lender under Section 10.04(2);
(3) it will not use the information in violation of applicable securities laws or regulations;

(4) it will not communicate the information to any Person and will keep the information confidential;

(5) it will use such information only in connection with evaluating an investment in the Term Loans (or, if it is a bona fide market maker or intended market maker, only in connection with making a market in the Term Loans or, if it is a bona fide securities analyst, for preparing analysis for holders of and prospective holders of the Term Loans that otherwise have access to the financial information in compliance with this covenant); and

(6) it (a) will not use such information in any manner intended to compete with the business of the Lead Borrower and (b) is not a Person (which includes such Person’s Affiliates, other than the Affiliates of a bona fide securities research analyst with whom such research analyst does not share such information) that (i) is principally engaged in a Similar Business or (ii) derives a significant portion of its revenues from operating or owning a business substantially Similar Business.

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Lead Borrower obtains actual knowledge thereof:

(1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(2) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings or any of the Restricted Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and

(3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

SECTION 5.06. Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including ERISA, FCPA, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a material liability to a Loan Party.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Permit any Persons designated by the Administrative Agent to visit and inspect the financial records and the properties of the Borrowers at reasonable times, upon reasonable prior notice to the Lead Borrower, and as often as reasonably requested, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Lead Borrower to discuss the affairs, finances and condition of Holdings, the Borrowers or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant’s policies and procedures); provided that the Administrative Agent and/or any group of

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Lenders may not exercise such rights more often than two times during any calendar year in the aggregate unless an Event of Default is continuing and only one such time will be at the Borrowers' expense; and provided, further, that when an Event of Default is continuing, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and upon reasonable advance notice.

Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05, 5.07 and 5.12) or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrowers or any of their Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information, (2) in respect of which disclosure is prohibited by law or any binding agreement, (3) is subject to attorney-client or similar privilege or constitutes attorney work product or (4) creates an unreasonably excessive expense or burden on the Borrowers or any of their Subsidiaries.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Term Loans made on the Original Closing Date to finance, in part, the Original Transactions.

SECTION 5.09. Compliance with Environmental Laws. Comply, and make commercially reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10. Further Assurances; Additional Security.

(1) If (a) a Restricted Subsidiary (other than an Excluded Subsidiary) of the any Borrower is formed or acquired or ceases to be an Excluded Subsidiary after the Closing Amendment No. 2 Effective Date or, (b) an Unrestricted Subsidiary is redesignated as a Restricted Subsidiary within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable, or (c) an Immaterial Subsidiary existing on the Amendment No. 2 Effective Date is not dissolved, liquidated or merged out of existence within 90 days following such date, then, in each case, the Lead Borrower shall promptly notify the Collateral Agent thereof and, within 20 Business Days after the date such Restricted Subsidiary is formed, acquired or redesignated or ceases to be an Excluded Subsidiary (or such longer period as the Collateral Agent agrees), the Lead Borrower will or will cause such Restricted Subsidiary or Immaterial Subsidiary, as applicable, to:

(i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such Restricted Subsidiary;
(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents; and

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder.

(2) (A) If any Loan Party (j)(a) acquires fee simple title in Real Property after the Closing Amendment No. 2 Effective Date or (b) owns fee simple title in Real Property on the date it enters a joinder pursuant to Section 5.10(1)(i) hereof, that, combined with all other Real Property owned in fee simple by the Loan Parties in each case of subclauses (a) and (b) of this clause (A)(i), on the date of such acquisition or joinder, as applicable, has an aggregate individual fair market value (as determined in good faith by a Responsible Officer of the Lead Borrower in consultation with the Collateral Agent) of $50.0 million or more within 20 Business Days 2.5 million or more or (ii)(a) acquires a leasehold interest in Real Property after the Amendment No. 2 Effective Date with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center or (b) owns leasehold title in Real Property with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center on the date it enters a joinder pursuant to Section 5.10(1)(i) hereof or (B) any Non-Mortgageable Lease of a Loan Party with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center ceases to be a Non-Mortgageable Lease hereunder, then in each case of the foregoing clauses (A) and (B) above, within 20 Business Days (unless otherwise agreed by the Required Lenders including through electronic means or e-mail) after such acquisition or entry of a joinder or such Non-Mortgageable Lease ceases to be a Non-Mortgageable Lease hereunder (as applicable):

(a) notify the Collateral Agent thereof;

(b) cause any such acquired Real Property owned in fee simple that has a fair market value (as determined in good faith by a Responsible Officer of the Lead Borrower in consultation with the Collateral Agent) of $2.5 million or more to be subjected to a customary mortgage or deed of trust securing the Obligations (other than the 2013 Term Loan Obligations):
(c) cause any such acquired or owned leasehold Real Property to be subjected to a customary mortgage or deed of trust securing the Obligations (other than the 2013 Term Loan Obligations);

(d) with respect to any such Real Property, to the extent requested by the Collateral Agent in its sole discretion, obtain fully paid American Land Title Association Lender’s Extended Coverage title insurance policies, with endorsements (including a standard survey endorsement or equivalent (only with respect to any such Real Property acquired or owned in fee simple) and zoning endorsements where available) and in customary amounts that in no event shall be less than fair market value of such Real Property (the “Mortgage Policies”);

(e) with respect to any such Real Property acquired or owned in fee simple pursuant to Section 5.10(2)(A), to the extent necessary to issue the Mortgage Policies, obtain American Land Title Association/American Congress on Surveying and Mapping form surveys, dated no more than 30 days before the date of their delivery to the Collateral Agent, certified to the Collateral Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Collateral Agent and sufficient for the issuer of the Mortgage Policies to omit as an exception to each title policy the standard printed survey exception relating to such Real Property;

(f) provide evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Collateral Agent as loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks, as are reasonably available for similar properties in the same geographical area and as are reasonably satisfactory to the Collateral Agent, including the insurance required by the terms of any mortgage or deed of trust;

(g) obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Loan Parties in the states in which such acquired Real Properties owned in fee simple are located; and

(b) take, or cause the applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to perfect such Liens, in each case, at the expense of the Loan Parties, subject to paragraph (5) of this Section 5.10.

(3) Furnish to the Collateral Agent five Business Days prior written notice of any change in any Loan Party’s:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in UCC Section 9-307); or

(d) organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number, except, in the case of each of the foregoing clauses (a) through (e), in connection with the Closing Date Conversions.
The Borrowers will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Loan Party.

(4) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) through (3) and that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrowers, and provide to the Collateral Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(5) Notwithstanding anything herein to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the perfection requirements set forth in the Collateral Agreement;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Lead Borrower and the Administrative Agent; and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case, other than with respect to (1) debt or Equity Interests acquired pursuant to a Permitted Acquisition and (2) Foreign Subsidiaries that are or become Subsidiary Loan Parties; provided, however, that (i) in the event a Responsible Officer of the Lead Borrower (reasonably and in good faith) and the Collateral Agent (in consultation with not fewer than three (3) Lenders holding not less than $500.0 million principal amount of Loans in aggregate) mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking perfections steps in any such foreign jurisdictions outweighs the benefit afforded thereby to the Secured Parties or obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security Documents nor creation or the taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Subsidiary Loan Party and (ii) notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this clause (c), the Lead Borrower and the Collateral Agent (in consultation with not fewer than three (3) Lenders
holding not less than $500.0 million principal amount of Loans in aggregate) shall mutually agree on customary “Agreed Security Principles” and a reasonable and customary timeline to complete such Security Documents and/or filings or perfection actions or steps (which may be longer than the timelines otherwise agreed to in this Section 5.10, but in no event shall be longer than 25 business days unless otherwise agreed by the Required Lenders including through electronic means or e-mail).

(6) Notwithstanding anything herein to the contrary, if Holdings, the Borrowers, or any Restricted Subsidiary consummates a Permitted Acquisition, within 5 business days after the date such Permitted Acquisition is consummated the Lead Borrower shall notify the Collateral Agent thereof and, within 15 Business Days after the date such Permitted Acquisition is consummated (or such longer period as the Collateral Agent agrees but not to exceed 20 Business Days unless otherwise agreed by the Required Lenders including through electronic means or e-mail), the Lead Borrower will or will cause such Restricted Subsidiary to:

(a) pledge the outstanding Equity Interests (regardless of whether otherwise constituting Excluded Equity Interests or Excluded Assets) acquired by Holdings, the Borrowers, or a Restricted Subsidiary in such Permitted Acquisition, and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(b) deliver to the Collateral Agent such other documents and take such other actions reasonably requested by the Collateral Agent to create and perfect the Liens contemplated by this Section 5.10(6); and

(c) obtain all consents and approvals required to be obtained in connection with (A) the execution and delivery of all Security Documents (or supplements thereto), if applicable, in connection with the foregoing clauses (6)(a) and (6)(b) and the granting of the Liens contemplated thereby and (B) the performance of any obligations thereunder;

(7) Notwithstanding anything herein to the contrary, (i) within 15 Business Days of the incurrence of any Indebtedness pursuant to Section 6.01(8) or otherwise (or such longer period agreed by the Required Lenders including through electronic means or e-mail), owing to Holdings, the Borrowers or any Restricted Subsidiary that is a Subsidiary Loan Party by any Restricted Subsidiary that is not a Guarantor, pledge such Indebtedness (other than Excluded Assets), including instruments and promissory notes, if any, evidencing such Indebtedness, and all interest, cash, instruments, and other property from time to time received, receivable or otherwise distributed in exchange for any or all of such Indebtedness, together with duly executed instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof), in each case in form and substance satisfactory to the Collateral Agent and (ii) within 15 Business Days of any Investments made (x) pursuant to Section 6.04(5) (or such longer period as the Collateral Agent agrees but not to exceed 25 Business Days unless otherwise agreed by the Required Lenders including through electronic means or e-mail), by any Loan Party in Restricted Subsidiaries that are not Guarantors and (y) pursuant to Section 6.04(28) (other than Excluded Equity Interests) acquired or obtained by a Loan Party in connection with such Investment, deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a
designated bailee thereof), in each case in form and substance satisfactory to the Collateral Agent.

(8) Notwithstanding anything herein to the contrary, (i) within 15 Business Days of the contribution of any Non-Mortgageable Lease to a PropCo Guarantor (or such longer period as the Collateral Agent agrees but not to exceed 25 Business Days unless otherwise agreed by the Required Lenders including through electronic means or e-mail), the applicable PropCo Guarantor receiving such Non-Mortgageable Lease shall grant a lease or license with respect to such contributed Non-Mortgageable Lease, substantially in the form of Exhibit C or such other form that is approved by the Collateral Agent in consultation with the Lenders and reasonably satisfactory to the Lead Borrower (a “PropCo Operating License”) to each applicable Subsidiary of Holdings to operate on the relevant 2019 Extended Term Loan PropCo Asset or Notes PropCo Asset contributed to such PropCo Guarantor, as applicable, and (ii) from and after the Amendment No. 2 Effective Date, each of 2019 Extended Term Loan PropCo, Notes PropCo, and the Loan Parties shall at all times maintain, preserve, and keep in full force and effect without any amendment thereto that would adversely affect the Lenders in any material respect the PropCo Operating Licenses with respect to any Non-Mortgageable Lease that remains in existence on or after the Amendment No. 2 Effective Date.

(9) Notwithstanding anything herein to the contrary, in the event any MYT Entity is required to be contributed to Holdings or its Subsidiaries, 100% of the Equity Interests of the top-tier MYT Entity (the “Contributed MYT Equity Interests”) held by Holdings or any Subsidiary Loan Party immediately following such contribution shall be required to be pledged as Collateral to the Collateral Agent to secure the 2019 Extended Term Loan Obligations, the 2028 Debentures Obligations and Non-Participating Term Loan Exchange Obligations (if any) on a first-priority basis; provided, however, that notwithstanding the foregoing, such pledge of Contributed MYT Equity Interests shall not affect the MYT Waterfall contemplated herein or the “Distributions Upon Realizations of Value by MYT HoldCo” contemplated in the Offering Circular; provided, further, however that in the event such Contributed MYT Equity Interests are distributed in accordance with clause (12) of Section 6.06, then any such equity pledges or Liens granted on such Contributed MYT Equity Interests contemplated by this Section 5.10(9) shall be automatically and immediately released without any further action by any party.

SECTION 5.11. Credit Ratings. Use commercially reasonable efforts to maintain at all times (a) a credit rating by each of S&P and Moody’s in respect of the Term Facility and (b) a public corporate rating by S&P and a public corporate family rating by Moody’s for the Lead Borrower, in each case with no requirement to maintain any specific minimum rating.

Section 5.12. Lender Calls. Following receipt by the Borrower of a request by the Required Lenders, use commercially reasonable efforts to hold an update call (which call shall take place on or prior to the date that is 10 Business Days following the receipt of such notice) with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders’ respective representatives and advisors to discuss the state of the Borrower’s business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; provided that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the ABL Credit Agreement).
SECTION 5.12. Post-Closing Matters. Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.12 or, in each case, such later date as may be agreed to by Administrative Agent in its sole discretion or, with respect to matters relating primarily to the ABL Priority Collateral, in the sole discretion of the administrative agent under the ABL Credit Agreement. All representations and warranties contained in this Agreement and the other Loan Documents will be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.12 within the time periods specified thereon, rather than as elsewhere provided in the Loan Documents).

ARTICLE VI

Negative Covenants

SECTION 6.01. Indebtedness. Issue, incur or assume any Indebtedness; provided that the Borrowers and the Restricted Subsidiary Guarantors may issue, incur or assume Junior Lien Indebtedness or unsecured Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Interest Coverage Ratio is \( \frac{2.25}{2.00} \) to 1.00 or greater (“Ratio Debt”); and provided, further, that the aggregate principal amount of Ratio Debt incurred by Restricted Subsidiaries that are not Guarantors may not exceed $100.0 million at any time outstanding.

The foregoing limitation will not apply to (collectively, “Permitted Debt”):

1. (a) Indebtedness created under the Loan Documents (including Incremental 2013 Term Loans, Other Term Loans and Extended Term Loans);
   (b) Incremental Equivalent Term Debt and (c) Extended Term Loans, 2019 Extended Term Loans, Additional 2019 Extended Term Loans, and Non-Participating Term Loan Exchange Indebtedness; and (b) Credit Agreement Refinancing Indebtedness (and any Permitted Refinancing Indebtedness in respect thereof) and any Guarantees thereof, in each case incurred by one or more Loan Parties (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

2. (a) Indebtedness incurred pursuant to the ABL Credit Agreement (including Indebtedness created under ABL Incremental Facilities, ABL Other Loans and ABL Extended Revolving Commitments) and any other loan facility, credit agreement or indenture, and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof) up to an aggregate outstanding principal amount as of any date, (b) ABL Incremental Equivalent Debt and (c) ABL Credit Agreement Refinancing Indebtedness, including and (b) all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) in respect thereof (and any
successive Permitted Refinancing Indebtedness), not to exceed the greater of (i) $1,100.0 million and (ii) the Borrowing Base as of the date any such Indebtedness is $1,000.0 million aggregate principal amount outstanding at any one time for all Indebtedness incurred, pursuant to this clause (2), plus, in the case of ABL Credit Agreement Permitted Refinancing Indebtedness in respect thereof, the amount of accrued and unpaid interest, fees and premiums on the Indebtedness being refinanced, and any Guarantees by the Loan Parties of the foregoing (and subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(3) the Senior Notes issued on the Closing Date and any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement; (a) (i) the Second Lien Notes issued on or prior to the Amendment No. 2 Effective Date (and any Second Lien Notes issued under the Second Lien Notes Indenture in respect of interest paid in kind), (ii) any Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i), and (iii) any Guarantee by a Loan Party of the foregoing (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(b) (i) the Third Lien Notes issued on or prior to the Amendment No. 2 Effective Date, (ii) any Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i), and (iii) any Guarantee by a Loan Party of the foregoing (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(c) (i) the 2028 Debentures outstanding on or prior to the Amendment No. 2 Effective Date and the incurrence by 2019 Extended Term Loan PropCo and Notes PropCo of a Guarantee of such 2028 Debentures having the Required PropCo Guarantee Priority and (ii) any Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i); and

(d) (i) the Remaining Senior Notes and (ii) (a) any Remaining Senior Notes Exchange Indebtedness or other Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i) and (b) any Guarantee by a Loan Party of the Indebtedness incurred pursuant to clause (ii)(a) (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(4) Indebtedness existing on the Closing Amendment No. 2 Effective Date (other than Indebtedness described in clause (1), (2), or (3) above), including the Existing 2028 Debentures or clause (5) below), provided that Indebtedness outstanding as of the Amendment No. 2 Effective Date which was incurred or allocated under a specific clause of the definition of “Permitted Debt” under the Existing Credit Agreement shall be deemed to be incurred on the Amendment No. 2 Effective Date under the corresponding specific clause of the definition of “Permitted Debt” under this Agreement, and not under this clause (4);

(5) Capital Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness, (including, for the avoidance of doubt, the Hudson Yards Indebtedness outstanding as of the date hereof) to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the
Borrowers or anyRestricted Subsidiary under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Borrowers or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (5) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) $200.0 million and (b) 2.25% of Consolidated Total Assets as of the date any such Indebtedness is incurred (the “Capital Lease Obligations Cap”); provided that (i) such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness and (ii) the Capital Lease Obligations Cap shall be reduced from time to time by an amount equal to the amount that the Hudson Yards Indebtedness is reduced from time to time (whether by repayment, retirement, recharacterization, discharge or otherwise) after the Amendment No. 2 Effective Date (provided that (x) once so reduced, the Capital Lease Obligations Cap shall not be increased and (y) such reductions shall not result in a Capital Lease Obligations Cap of less than the greater of (a) $100.0 million and (b) 1.125% of Consolidated Total Assets as of the date any such Indebtedness is incurred);

(6) Indebtedness owed to (including obligations in respect of letters of credit or bank Guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; provided that upon the incurrence of any Indebtedness with respect to reimbursement obligations regarding workers’ compensation claims, such obligations are reimbursed not later than 45 days following such incurrence;

(7) Indebtedness arising from agreements of the Borrowers or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Original Transactions, any Permitted Acquisition or the disposition of any business, assets or Restricted Subsidiaries not prohibited by this Agreement, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiaries for the purpose of financing any such Permitted Acquisition;

(8) intercompany Indebtedness between or among the Borrowers and the Restricted Subsidiaries; provided that the aggregate outstanding principal amount of such Indebtedness that is owing by any Restricted Subsidiary that is not a Guarantor to a Loan Party may not exceed the amount, as of the date such Indebtedness is incurred, permitted pursuant to Sections 6.04(5) and (6) Section 6.04(5) and no such Indebtedness owing by 2019 Extended Term Loan PropCo or Notes PropCo shall be incurred hereunder except to the extent permitted pursuant to Section 6.04(5); provided further that (i) such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor shall be subordinated in right of payment to the Obligations or Guarantee of such Loan Party, as applicable, and (ii) any subsequent issuance or transfer of any Equity Interests or any other event that results in such Restricted Subsidiary lending such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to a Loan Party) will be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (8);

(9) Indebtedness pursuant to Hedge Agreements;

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(10) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion Guarantees and similar obligations, in each case, provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(11) Guarantees of Indebtedness of the Borrower or the Restricted Subsidiaries or any other Subsidiary permitted to be incurred under this Agreement to the extent such Guarantees are not prohibited by the provisions of Section 6.04 (other than Section 6.04(20));

(12) (a) Indebtedness incurred or assumed in connection with a Permitted Acquisition and Indebtedness of any Person that becomes a Restricted Subsidiary if such Indebtedness was not created in anticipation or contemplation of such Permitted Acquisition or such Person becoming a Restricted Subsidiary and (b) Indebtedness incurred or assumed in anticipation or contemplation of a Permitted Acquisition; provided that, in each case of the foregoing subclauses (a) and (b):

   (i) no Event of Default is continuing immediately before such Permitted Acquisition or would result therefrom;

   (ii) immediately after giving effect to such Permitted Acquisition, on a Pro Forma Basis, either (A) the Borrowers would be permitted to incur at least $1.00 of Ratio Debt or (B) the Interest Coverage Ratio would increase; and

   (iii) the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) by Restricted Subsidiaries that are not Guarantors, together with any Permitted Refinancing Indebtedness incurred by Restricted Subsidiaries that are not Guarantors to Refinance any Indebtedness originally incurred pursuant to this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed $75.0 million at any one time outstanding as of the date such Indebtedness is incurred;

   (iv) the aggregate principal amount of any Indebtedness incurred or assumed under the foregoing subclauses (a) and (b), together with (x) the aggregate principal amount of any Permitted Refinancing Indebtedness in respect thereof and (y) the aggregate amount of any Investments outstanding under clause (4) of the definition of Permitted Investments, does not exceed the limits set forth in that clause; and

   (v) the assets acquired, if held in a Borrower or a Subsidiary Loan Party (other than a PropCo Guarantor), shall be pledged as Collateral, subject to Liens with the Required Collateral Lien Priority;

(13) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification received by the Borrowers of its incurrence;

(14) Indebtedness supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;
Indebtedness in an aggregate outstanding principal amount not to exceed an amount equal to 100% of the net proceeds received by the Borrower from the issuance or sale of its Equity Interests or as a contribution to its capital, other than (a) proceeds from the issuance or sale of the Borrower’s Disqualified Stock, (b) Excluded Contributions, (c) Cure Amounts and (d) any such proceeds that are used prior to the date of incurrence to (i) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2) (a), in each case utilizing the Available Amount or (ii) make a Restricted Payment under Section 6.06(1) or Section 6.06(2)(b) (any such Indebtedness, “Contribution Indebtedness”); [reserved];

Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

Indebtedness incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings); [reserved];

Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Borrowers or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 6.06;

Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures; provided that the aggregate outstanding principal amount of such Indebtedness, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (20) (and any successive Permitted Refinancing Indebtedness) may not exceed the greater of (a) $50.0 million and (b) 0.50% of Consolidated Total Assets as of the date any such Indebtedness is incurred; [reserved];

Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness incurred by Foreign Subsidiaries to Refinance any Indebtedness originally incurred pursuant to this clause (21) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) $50.0 million and (b) 0.50% of Consolidated Total Assets as of the date any such Indebtedness is incurred; [reserved];

unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrowers or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with the Original Transactions or any Permitted Investment;
any Permitted Refinancing Indebtedness incurred to Refinance Incremental Equivalent Term Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred under clauses (2), (3), (4), (5), (12), (15), (20), (21), clause (4) or this clause (24) or clause (27) of this Section 6.01;

customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

Indebtedness incurred by the Borrowers or any Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business; and

additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant this clause (27) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) $250.0 million and (b) 2.75% of Consolidated Total Assets as of the date $100.0 million; provided that the cash interest rate on any such Indebtedness is incurred pursuant to this clause (27) shall not exceed 8.00% per annum.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be incurred as Ratio Debt, the Borrowers may, in its sole discretion, at the time of incurrence, combine, divide, classify or reclassify, or at any later time combine, divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; provided that (i) all Indebtedness outstanding under the Loan Documents and the ABL Credit Agreement or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred in reliance on the exception in clauses (1) and (2), respectively pursuant to clause (2) of the definition of “Permitted Debt” and shall not be permitted to be reclassified pursuant to this paragraph, (ii) all Indebtedness under the Second Lien Notes or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(a) of the definition of “Permitted Debt,” (iii) all Indebtedness under the Third Lien Notes or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(b) of the definition of “Permitted Debt,” (iv) all Indebtedness under the 2028 Debentures or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(c) of the definition of “Permitted Debt,” and (v) all Indebtedness under the Remaining Senior Notes or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(d) of the definition of “Permitted Debt.” and, in each case of clauses (i) through (v) above, the Borrowers will not be permitted to reclassify at any later date all or any portion of such Indebtedness. All unsecured Permitted Debt Indebtedness originally incurred under clause (5), (20), (21) or (27) of the definition of “Permitted Debt” will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be incurred by the obligor thereon as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including pay-in-kind interest on the Cash Pay/PIK Extended Term Loans, Cash Pay/PIK Additional 2019 Extended Term Loans, Second Lien Notes, or Senior Notes), and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. Guarantees of, or obligations in respect of letters of credit
relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; provided that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

SECTION 6.02. Lien. Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, "Permitted Liens"):

(1) Liens securing Indebtedness incurred in accordance with Sections 6.01(1) or 6.01(2); provided that, in the case of Indebtedness incurred in accordance with Section 6.01(2), the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;

(b) Liens on the Collateral having the Required Collateral Lien Priority for ABL Obligations pursuant to the applicable Intercreditor Agreements securing Indebtedness incurred in accordance with clause (2) of the definition of “Permitted Debt” and ABL Obligations related thereto;

(c) Liens on the Collateral (and on Other Second Lien Collateral (as defined in the Junior Lien Intercreditor Agreement)) having the Required Collateral Lien Priority pursuant to the applicable Intercreditor Agreements securing Second Lien Notes and Indebtedness incurred in accordance with clause (3)(a) of the definition of “Permitted Debt” and the Second Lien Notes Obligations related thereto;

(d) Liens on the Collateral (and on Other Third Lien Collateral (as defined in the Junior Lien Intercreditor Agreement)) having the Required Collateral Lien Priority pursuant to the applicable Intercreditor Agreements securing the Third Lien Notes and Indebtedness incurred in accordance with clause (3)(b) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto;

(e) Liens on the 2028 Debentures Collateral having the Required Collateral Lien Priority pursuant to the applicable Intercreditor Agreements and the Loan Documents securing the 2028 Debentures and Indebtedness incurred in accordance with clause (3)(c) of the definition of “Permitted Debt” and the 2028 Debentures Obligations related thereto.

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(f) Liens on 2013 Collateral securing 2013 Term Loans and 2013 Term Loan Obligations; and

(g) Liens securing any Remaining Senior Notes Third Lien Exchange Indebtedness incurred in accordance with clause (3)(d)(ii) of the definition of “Permitted Debt” and Remaining Senior Notes Exchange Obligations related thereto;

(2) Liens securing Indebtedness existing on the Closing Amendment No. 2 Effective Date; provided that such Liens only secure the obligations that they secure on the Closing Amendment No. 2 Effective Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrowers or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto; provided further that Liens outstanding as of the Amendment No. 2 Effective Date that were incurred or allocated under a specific Liens clause under the Existing Credit Agreement shall be deemed to be incurred on the Amendment No. 2 Effective Date under the corresponding Liens clause under this Agreement, and not under this clause (2);

(3) Liens securing Indebtedness incurred in accordance with Sections 6.01(5); provided that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(4) Liens on accounts receivable and related assets of the type specified in the definition of Qualified Receivables Financing securing Indebtedness incurred in accordance with Section 6.01(17); assets of Foreign Subsidiaries that are not Subsidiary Loan Parties and (b) Junior Liens on assets of Foreign Subsidiaries that are Subsidiary Loan Parties, in either case securing Indebtedness incurred in accordance with Section 6.01(21);

(5) Liens securing Permitted Refinancing Indebtedness incurred in accordance with Section 6.01(24); provided that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto) that secured the Indebtedness so Refinanced and are not higher in priority than the original Lien;

(6) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Borrowers or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrowers or any of the Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor;

(7) [reserved];

(8) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;
Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Original Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

Liens securing judgments that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which Holdings, the Borrowers or any affected Restricted Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;

Liens imposed by law, including landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrowers or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

(a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrowers or any Restricted Subsidiary;

deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers, statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrowers or any Restricted Subsidiary, in each case, in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrowers or any Restricted Subsidiary;
any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrowers or any Restricted Subsidiary in the ordinary course of business;

(16) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Borrowers or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrowers or any Restricted Subsidiary or (b) relating to purchase orders and other agreements entered into with customers of the Borrowers or any Restricted Subsidiary in the ordinary course of business;

(17) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(18) Liens on Equity Interests of any joint venture, to the extent such Equity Interests are Excluded Equity Interests, (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

(19) Liens arising from precautionary Uniform Commercial Code financing statements;

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

(21) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business; [reserved];

(22) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; provided that such defeasance or satisfaction and discharge is not prohibited by this Agreement;

(23) Liens:

(a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;
(b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or

(c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(29) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(30) [reserved];

(31) Liens that rank pari passu with the Liens securing the Obligations if the Senior Secured First Lien Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the Closing Date Senior Secured First Lien Net Leverage Ratio; provided that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and a Junior Lien Intercreditor Agreement;

(32) Liens that rank junior to the Liens securing the Obligations if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the Closing Date Total Net Leverage Ratio; provided that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Intercreditor Agreement and a Junior Lien Intercreditor Agreement;

(33) Liens securing additional obligations in an aggregate outstanding principal amount not to exceed the greater of (a) $250.0 million and (b) 2.75% of Consolidated Total Assets as of the date such Liens are first created; and

(34) Liens securing (a) Specified Hedge Obligations and Cash Management Obligations, which amounts are secured under the Loan Documents, and (b) amounts owing to any Qualified Counterparty (as defined in the ABL Credit Agreement) under any Specified Hedge Agreement (as defined in the ABL Credit Agreement) and Cash Management Obligations (as defined in the ABL Credit Agreement), which amounts are secured under the ABL Loan Documents; provided that, in each case, the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Lead Borrower.

For purposes of this Section 6.02, Indebtedness will not be considered incurred under a subsection or clause of Section 6.01 if it is later reclassified as outstanding under another subsection or clause of Section 6.01 (in which event, and at which time, same will be deemed incurred under the subsection or clause to which reclassified(s) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but may be incurred under any combination

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of such categories (including in part under one such category and in part under any other such category), (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Lead Borrower will, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (z) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (1) or (32) above (giving effect to the incurrence of such portion of such Indebtedness), the Lead Borrower, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (1) or (32) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition. Notwithstanding the foregoing, (A) all Liens securing ABL Obligations shall be incurred under clause (1)(b) of this Section 6.02, (B) all Liens securing Second Lien Notes and other Indebtedness incurred under clause (3)(a) of the definition of “Permitted Debt” and the Second Lien Notes Obligations and other Indebtedness Obligations related thereto shall be incurred under clause (1)(c) of this Section 6.02, (C) all Liens securing Third Lien Notes and other Indebtedness incurred under clause (3)(b) of the definition of “Permitted Debt” and the Third Lien Notes Obligations and other Indebtedness Obligations related thereto shall be incurred under clause (1)(d) of this Section 6.02, (D) all Liens securing the 2028 Debentures and other Indebtedness Obligations incurred under clause (3)(c) of the definition of “Permitted Debt” shall be incurred under clause (1)(e) of this Section 6.02, (E) all Liens securing Remaining Senior Notes Third Lien Exchange Indebtedness incurred under clause (3)(d)(ii) of the definition of “Permitted Debt” and the Indebtedness Obligations related thereto shall be incurred under clause (1)(g) of this Section 6.02, and (F) all Liens securing 2013 Term Loans and the 2013 Term Loan Obligations shall be incurred under clause (1)(f) of this Section 6.02 and, in each case of subclauses (A) through (F) above, such Liens may not be later reallocated.

SECTION 6.03. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a “Sale and Lease-Back Transaction”), except the following:

(1) Sale and Lease-Back Transactions with respect to property owned (a) by the Borrowers or any of its Domestic Subsidiaries that is acquired after the Original Closing Date so long as such Sale and Lease-Back Transaction is consummated within 270 days of the acquisition of such property or (b) by any Foreign Subsidiary of the Borrower regardless of when such property was acquired; and

(2) Sale and Lease-Back Transactions approved by the Required 2019 Extending Term Lenders with respect to any property owned by the Borrowers or any Restricted Subsidiary, if (a) at the time the lease in connection therewith is entered into, and after giving effect to the entering into of such lease, the Remaining Present Value of such lease to the extent that (a) the Net Cash Proceeds would not exceed $200.0 million and (b) the Net Cash Proceeds thereof are applied in accordance with Section 2.08(1) or 2.07(3).

SECTION 6.04. Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, make or permit to exist any investment or any other interest in (each, a “Investment”), any other Person, except the following (collectively, “Permitted Investments”):
the Investments made in order to consummate or complete the Recapitalization Transactions (including payment of the purchase consideration under the Merger Agreement);

loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrowers or any Restricted Subsidiary not to exceed $25.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made); provided that loans and advances to consultants in the form of upfront payments made in connection with employment or consulting arrangements entered into in the ordinary course of business shall not be subject to such $5.0 million cap;

Investments in an amount not to exceed the Available Amount as of the date such Investments are made; provided that no Event of Default has occurred and is continuing immediately prior to making such Investment or would result therefrom made with Available Contribution Proceeds;

Permitted Acquisitions and pre-existing Investments held by Persons acquired in Permitted Acquisitions or acquired in connection with, subject to the additions and limitations described in the definition of “Permitted Acquisitions”;

intercompany Investments among the Borrower and the Restricted Subsidiaries (including intercompany Indebtedness), provided that the sum of (a) among the Borrowers and the Subsidiary Loan Parties (other than Notes PropCo or 2019 Extended Term Loan PropCo; provided, that any Loan Party (other than Notes PropCo and 2019 Extended Term Loan PropCo) shall be permitted to fund, solely in the form of cash equity Investments, lease and other operating payments that are due in the ordinary course of business, or to maintain the legal existence, of Notes PropCo or the 2019 Extended Term Loan PropCo, as applicable), and (ii) among the Loan Parties (other than Notes PropCo and 2019 Extended Term Loan PropCo) and Restricted Subsidiaries that are not Guarantors; provided that (a) the sum of (1) the aggregate fair market value of all such Investments under subclause (ii) (other than intercompany Indebtedness and Guarantees of Indebtedness) made since the Closing Amendment No. 2 Effective Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value) by the Borrower and the Guarantors Loan Parties in Restricted Subsidiaries that are not Guarantors; (b) the aggregate principal amount of Indebtedness owing to the Borrower and the Guarantors Loan Parties by Restricted Subsidiaries that are not Guarantors at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors that is Guaranteed by the Borrower Borrowers and the Guarantors at any time outstanding, may not exceed the greater of (i) $50.0 million at any time outstanding; and (ii) 0.50% of Consolidated Total Assets as of the date any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made) b) any such Investment consisting of an intercompany loan by the Borrowers or the Guarantors in Restricted Subsidiaries that are not Guarantors shall be pledged as Collateral to secure the Obligations, subject to carve outs for Excluded Assets; provided further that Investments by Borrowers or their respective Restricted Subsidiaries in Subsidiaries that are not Wholly Owned Subsidiaries shall be on arm’s-length terms:
Investments in Foreign Subsidiaries, provided that the sum of (a) the aggregate fair market value of all such Investments (other than intercompany Indebtedness and Guarantees of Indebtedness) made by the Borrower and the Restricted Subsidiaries since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value); (b) the aggregate principal amount of Indebtedness of Foreign Subsidiaries owing to the Borrower and the other Restricted Subsidiaries at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Foreign Subsidiaries that is Guaranteed by the Borrower and the other Restricted Subsidiaries at any time outstanding, when taken together with the aggregate amount of payments made with respect to entities that do not become Guarantors pursuant to clause (2) of the definition of Permitted Acquisitions, may not exceed the greater of (i) $100 million and (ii) 1.15% of Consolidated Total Assets as of the date any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made).

Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;

Investments arising out of the receipt by the Borrowers or any of the Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 6.05;

accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

Investments acquired as a result of a foreclosure by the Borrowers or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

Hedge Agreements;

Investments existing on, or contractually committed as of, the Closing Amendment No. 2 Effective Date and set forth on Schedule 6.04 and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (12) is not increased at any time above the amount of such Investments existing or committed on the Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date; Amendment No. 2 Effective Date; provided that Investments outstanding as of the Amendment No. 2 Effective Date which were incurred or allocated under clause (4) of this Section 6.04 under the Existing Credit Agreement shall be deemed incurred on the Amendment No. 2 Effective Date under clause (4) of this Section 6.04 under this Agreement and not under this clause (12));

Investments resulting from pledges and deposits that are Permitted Liens;
intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(21);

acquisitions of obligations of one or more officers or other employees of any Parent Entity, Borrowers or any Subsidiary of the Borrowers in connection with such officer’s or employee’s acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the Borrowers or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

Guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrowers or any Restricted Subsidiary in the ordinary course of business;

Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;

Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

Guarantees permitted under Section 6.01;

advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrowers or any Restricted Subsidiary;

Investments, including loans and advances, to any Parent Entity so long as Borrowers or any Restricted Subsidiary would otherwise be permitted to make a Restricted Payment in such amount; provided that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.06 for all purposes of this Agreement;

Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

Investments in assets useful in the business of the Borrowers or any Restricted Subsidiary made with (or in an amount equal to) any Reinvestment Deferred Amount or Below Threshold Asset Sale Proceeds; provided that if the underlying Asset Sale was with respect to assets of the Borrowers or a Subsidiary Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Loan Party;

any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case in connection with a Qualified Receivables Financing.
including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness; [reserved];

(27) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrowers and their Subsidiaries;

(28) additional Investments; provided that the aggregate fair market value of such Investments made since the Closing Amendment No. 2 Effective Date that remain outstanding (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(c) and Restricted Payments pursuant to Section 6.06(16), does not exceed the greater of (a) $150.0 million and (b) 1.75% of Consolidated Total Assets as of the date any such Investment is made, in each case, plus any returns of capital actually received by the Borrower or any of its Subsidiaries in respect of such Investments.

provided that a Loan Party shall not, directly or indirectly, use any Investments made pursuant to the definition of “Permitted Investments” to (i) provide assets to a Person that incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to purchase, Refinance or otherwise invest in any Indebtedness of Holdings and its Subsidiaries or (ii) make a Restricted Payment.

SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, or sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets, or issue, sell, transfer or otherwise dispose of any Equity Interests of any Restricted Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person, except that this Section 6.05 will not prohibit:

(1) if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing or would result therefrom:

(a) the merger, consolidation or amalgamation of any Restricted Subsidiary into (or with) the Borrowers in a transaction in which the Borrower is the survivor;

(b) the merger, consolidation or amalgamation of any Restricted Subsidiary (other than Notes PropCo and Extended Term Loan PropCo) into or with any Subsidiary Loan Party (other than Notes PropCo and Extended Term Loan PropCo) in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party;
and, in the case of each of the foregoing clauses (a) and (b), no Person other than the Borrower or a Subsidiary Loan Party receives any consideration;

(c) the merger, consolidation or amalgamation of any Restricted Subsidiary that is not a Loan Party into or with any other Restricted Subsidiary that is not a Loan Party;

(d) (i) any transfer of inventory among the Borrowers and its Restricted Subsidiaries or between Restricted Subsidiaries and any other transfer of property or assets among the Borrowers and its Restricted Subsidiaries or between Restricted Subsidiaries, in each case, in the ordinary course of business or (ii) any other transfer of property or assets among the Borrower and any Subsidiary Loan Party (other than a PropCo Guarantor), provided any Collateral so transferred pursuant to this clause (ii) shall remain Collateral subject to valid and perfected Liens in favor of the Collateral Agent;

(e) the liquidation or dissolution or change in form of entity of any Restricted Subsidiary of the Borrower if a Responsible Officer of the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders;

(f) the merger, consolidation or amalgamation of any Restricted Subsidiary with or into any other Person in order to effect a Permitted Investment so long as the continuing or surviving Person will be a Subsidiary Loan Party if the merging, consolidating or amalgamating Subsidiary was a Subsidiary Loan Party and which, together with each of its Subsidiaries, shall have complied with the requirements of Section 5.10; or

(g) the liquidation or dissolution of (i) any Immaterial Subsidiary or (ii) in the event that none of the Notes PropCo Assets constitute Non-Mortgageable Leases, Notes PropCo:

(2) any sale, transfer or other disposition if:

(a) the Net Cash Proceeds therefrom are to be applied in accordance with Section 2.08(1);

(b) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents; and

(c) such sale, transfer or disposition is made for fair market value (as determined by a Responsible Officer of the Lead Borrower in good faith);

provided that each of the following items will be deemed to be cash for purposes of this Section 6.05(2):

(i) any liabilities of the Borrowers or the Restricted Subsidiaries (as shown on the most recent Required Financial Statements or in the notes thereto) (other than liabilities that are by their terms subordinated in right of payment to the Obligations, Junior Financing) that are assumed by the transferee with respect to the applicable disposition and for which the Borrowers and the Restricted Subsidiaries have been validly released by all applicable creditors in writing; and

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any securities received by the Borrowers or any Restricted Subsidiary from such transferee that are converted by the Borrowers or such Restricted Subsidiary into cash (to the extent of the cash received) within 90 days following the closing of the applicable disposition; and

(iii) any Designated Non-Cash Consideration received in respect of such disposition; provided that the aggregate fair market value of all such Designated Non-Cash Consideration, as determined by a Responsible Officer of the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (iii) that is then outstanding, does not exceed the greater of (A) $125.0 million and (B) 1.50% of Consolidated Total Assets as of the date any such Designated Non-Cash Consideration is received, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;

(3) (a) the purchase and sale of inventory in the ordinary course of business, (b) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business, (c) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business or (d) the disposition of Cash Equivalents (or Investments that were Cash Equivalents when made);

(4) Sale and Lease-Back Transactions permitted by Section 6.03;

(5) Investments permitted by Section 6.04, Permitted Liens, and Restricted Payments permitted by Section 6.06;

(6) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;

(7) Permitted Acquisitions, including any merger, consolidation or amalgamation in order to effect a Permitted Acquisition; provided that following any such merger, consolidation or amalgamation:

(a) involving the Borrower, the Borrower is the surviving corporation;

(b) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents or exchanged for other assets of comparable or greater market value or usefulness to the business of the Borrower and the Restricted Subsidiaries, taken as a whole, and the Net Cash Proceeds therefrom are applied in accordance with Section 2.08(1); and

(b) involving a Foreign Subsidiary, the surviving or resulting entity is a Wholly Owned Subsidiary;

(8) leases, licenses, or sublicenses or sublicenses of any real or personal property in the ordinary course of business;

(9) sales, licenses, transfers, abandonments, allowances to lapse or other dispositions of Intellectual Property (as defined in the Collateral Agreement) that is immaterial or no longer
useful or necessary in the operation of the business of the Borrowers or such Restricted Subsidiary, as determined by a Responsible Officer of the Lead Borrower reasonably and in good faith;

(10) sales, leases or other dispositions of inventory of the Borrowers or any Restricted Subsidiary determined by the management of the Borrowers or such Restricted Subsidiary, as determined by a Responsible Officer of the Lead Borrower reasonably and in good faith;

(11) acquisitions and purchases made with Below Threshold Asset Sale Proceeds;

(12) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrowers or any Restricted Subsidiary determined by the management of the Borrowers to be no longer useful or necessary in the operation of the business of the Borrowers or such Restricted Subsidiary, as determined by a Responsible Officer of the Lead Borrower reasonably and in good faith;

(13) any sale, transfer or other disposition, in a single transaction or a series of related transactions, of any asset or assets having a fair market value, as determined by a Responsible Officer of the Lead Borrower reasonably and in good faith, of not more than $100 million;

(14) any sale, transfer or other disposition made to consummate any Real Property monetization or financing transaction consummated after the Amendment No. 2 Effective Date the Net Cash Proceeds of which are applied in accordance with Section 2.07(3); or

(15) any sale, transfer or other disposition made in connection with, and for the sole purpose of the implementation of, the Recapitalization Transactions.

To the extent any Collateral is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than Holdings, the Borrowers or any Guarantor, such Collateral will be free and clear of the Liens created by the Loan Documents, and the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Lead Borrower in order to evidence the foregoing, in each case, in accordance with Section 10.18.

SECTION 6.06. Restricted Payments. Declare or pay any dividend or pay any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, “Restricted Payments”) other than:

(1) the making of any dividends or distributions in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of Equity Interests of the Borrower (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Borrower, other than
Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors (collectively, “Related Persons”) of Holdings, the Borrowers or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (2), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; provided that the aggregate amount of such purchases or redemptions may not exceed:

(a) $30.0 million in any fiscal year (with any unused amounts in any fiscal year being carried over to the next three succeeding fiscal years); plus for purchases or redemptions from Persons that are current Related Persons at the time of such purchase or redemption; plus

(b) $5.0 million in the aggregate from the Amendment No. 2 Effective Date for purchases or redemptions from former Related Persons; plus

(c) the amount of net cash proceeds contributed to the Lead Borrower that were received by any Parent Entity since the Closing Amendment No. 2 Effective Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrowers or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements, other than (a) Excluded Contributions, (b) Cure Amounts and (c) any such proceeds that are used prior to the date of determination to (1) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount, (ii) make a Restricted Payment under Section 6.06(2)(b) or (iii) incur Contribution Indebtedness; plus

(d) the amount of net proceeds of any key man life insurance policies received during such fiscal year; plus

(e) the amount of any bona fide cash bonuses otherwise payable (but not actually paid) to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrowers or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or
and provided, further, that cancellation of Indebtedness owing to the Borrowers or any Restricted Subsidiary from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrowers or any Restricted Subsidiary in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(3) Restricted Payments to consummate the Transactions or to pay any amounts pursuant to the Merger Agreement; [reserved];

(4) at any time after the consummation of a Qualified IPO, Restricted Payments in an amount equal to 6.0% per annum of the net cash proceeds received from any public sale of the Equity Interests of the Borrower or any Parent Entity that are contributed to the Borrower; [reserved];

(5) Restricted Payments to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal or combined or unitary state tax return that includes the Borrowers and the Subsidiaries (or the taxable income thereof), or to any Parent Entity that is a partner or a sole owner of the Lead Borrower in the event the Borrower is treated as a partnership or a “disregarded entity” for U.S. federal income tax purposes, in each case, in an amount not to exceed the amount that the Borrower and its Subsidiaries would have been required to pay in respect of federal, state or local taxes (as the case may be) in respect of such fiscal year if the Borrower and its Subsidiaries paid such taxes directly as a stand-alone taxpayer (or stand-alone group); provided (such amounts, plus any cash actually distributed by an Unrestricted Subsidiary for such period pursuant to the second proviso below, the “Tax Amount”); provided that any amounts paid pursuant to this clause (5) shall actually be used by a Parent Entity to pay taxes to an applicable taxing authority; provided further that Restricted Payments will be permitted in respect of the income of an Unrestricted Subsidiary only to the extent of the amount of cash distributed to the Borrowers or any Restricted Subsidiary by such Unrestricted Subsidiary; provided further that amounts paid under this clause (5) and taken together with any amounts paid in respect of federal, state or local Taxes under clause (16) of Section 6.07 shall not exceed the Tax Amount for any applicable year;

(6) Restricted Payments to permit any Parent Entity to:

(a) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Borrowers and the Restricted Subsidiaries, but not, for the avoidance of doubt, any costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Loan Parties and their respective Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, by any Restricted Payment to a Parent Entity), subject to reasonable pro-ration of joint services, costs, fees and expenses;
(b) pay fees and expenses related to any public offering or private placement of debt or equity securities of, or incurrence of any Indebtedness by, any Parent Entity or any Permitted Investment, whether or not consummated, to the extent the proceeds of any of the foregoing transactions are contributed to the Borrowers;

(c) pay franchise taxes and other fees, income or other taxes and expenses in connection with any Parent Entity’s ownership of any Restricted Subsidiary or the maintenance of its legal existence;

(d) make payments under transactions permitted under Section 6.07 (other than Section 6.07(8)) or Article VII, in each case to the extent such payments are due at the time of such Restricted Payment; or

(e) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Borrowers and the Restricted Subsidiaries, but not, for the avoidance of doubt, any indemnities, costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Loan Parties and their respective Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, by any Restricted Payment to a Parent Entity), incurred after the Amendment No. 2 Effective Date, subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses;

(7) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(8) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;

(9) so long as no Event of Default is continuing, Restricted Payments to any Parent Entity for the purpose of paying (a) monitoring, consulting, management, transaction, advisory, termination or similar fees payable to any Sponsor in accordance with the Management Agreement in an amount not to exceed amounts payable pursuant to the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default shall accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived) and (b) indemnities, reimbursements and reasonable and documented out-of-pocket fees and expenses of any Sponsor; Restricted Payments to any Parent Entity for the purpose of paying indemnities of, and reimbursement of reasonable and documented out-of-pocket fees and expenses to Sponsors, in each case incurred in connection with the provision by Sponsors of bona fide services (including such services provided under the Management Agreement) to any Parent Entity for the benefit of Holdings and its Subsidiaries and not, for the avoidance of doubt, in respect of MYT Entities, the MyTheresa Distribution or any litigation related thereto (other than litigation for defense of
Claims brought against any Parent Entity which may be covered so long as reasonably related to the Loan Parties and their respective Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity, shall not be paid for, directly or indirectly, by any Restricted Payment to a Parent Entity, subject to reasonable pro-ratio of joint services, indemnities, fees, costs and expenses; or

(10) Restricted Payments to the Borrowers or any Restricted Subsidiary (or, in the case of non-Wholly Owned Subsidiaries, to the Borrowers and to each other owner of Equity Interests of such Restricted Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Borrowers or such Restricted Subsidiary) based on their relative ownership interests so long as any repurchase of its Equity Interests from a Person that is not the Borrowers or a Restricted Subsidiary is permitted under Section 6.04);

(11) [reserved]; or

(12) Restricted Payments to any Parent Entity to finance, or to any Parent Entity for the purpose of paying to any other Parent Entity to finance, any Permitted Investment; provided that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such Parent Entity causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or any Restricted Subsidiary of the Borrower or (ii) the merger, consolidation or amalgamation (to the extent permitted by Section 6.05) of the Person formed or acquired into the Borrower or any Restricted Subsidiary of the Borrower in order to consummate such Permitted Investment, in each case, in accordance with the requirements of Section 5.10; of the MyTheresa Assets (or the net cash proceeds received from a sale of the MyTheresa Assets or the MYT Entities) in the event the MyTheresa Assets (or proceeds from such sale) are contributed to Holdings or any of its Subsidiaries on or after the Amendment No. 2 Effective Date to the extent that the MyTheresa Assets (or such proceeds) are required to be distributed in accordance with any settlement, judgment, court order or other resolution of a Claim, Cause of Action or litigation with respect to the MyTheresa Distribution or the MyTheresa Designation, subject to (i) restoration of all terms set forth in the MYT Holdco Preferred Series A Certificate, (ii) compliance by the MYT Entities with all of the MYT Covenants (as defined in the Offering Circular), and (iii) the automatic release of any pledges or Liens on the Contributed MYT Equity Interests contemplated by the definition of “Unrestricted Subsidiary”;

(12) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;

(13) Restricted Payments that are made with Excluded Contributions;

(14) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Borrower or any Restricted Subsidiary by, one or more Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash or Cash Equivalents);
any Restricted Payment in an amount not to exceed the Available Amount on the date such Restricted Payment is made if (a) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (b) the Fixed Charge Coverage Ratio would be at least 2.00 to 1.00 after giving effect thereto; or

additional Restricted Payments in an aggregate amount, when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(c) and Investments made pursuant to Section 6.04(29) that remain outstanding, not to exceed the greater of (a) $100.0 million and (b) 1.15% of Consolidated Total Assets as of the date any such Restricted Payment is made.

SECTION 6.07. Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates in a transaction involving aggregate consideration in excess of $150.0 million, unless such transaction is (i) otherwise permitted (or required) under this Agreement or (ii) upon terms no less favorable to the Borrowers and the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit:

1. transactions between or among (a)(i) the Borrowers and the Restricted Subsidiaries, Subsidiary Loan Parties or (ii) the Borrowers and any Person that becomes a Restricted Subsidiary Loan Party as a result of such transaction (including by way of a merger, consolidation or amalgamation in which a Loan Party is the surviving entity); (b) so long as no Event of Default is continuing, payment of management, monitoring, consulting, transaction, oversight, advisory and similar fees and payment of all expenses and indemnification claims, in each case, in accordance with the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default will accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived); and (b) the Borrowers and any Restricted Subsidiary that is not a Subsidiary Loan Party as of the date of the consummation, so long as (i) such transaction is on an arms’ length basis or (ii) involves the sharing of operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses) in the ordinary course of business;

2. [reserved];

3. any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Borrowers or any Parent Entity in good faith;

4. loans or advances to employees or consultants of any Parent Entity, the Borrowers or any Restricted Subsidiary in accordance with Section 6.04(2);

5. the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Borrowers or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrowers and the Restricted Subsidiaries).
Subsidiaries (which shall be 100% for so long as such Parent Entity owns no assets other than the Equity Interests in the Borrower and assets incidental to the ownership of the Borrower and its Restricted Subsidiaries) and subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses);

(6) the Recapitalization Transactions and transactions pursuant to the Recapitalization Transaction Documents and other transactions, agreements and arrangements in existence on the Closing Amendment No. 2 Effective Date and set forth on Schedule 6.07, or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect as determined in good faith by a Responsible Officer of the Borrower on arm’s-length terms;

(7) (a) any employment agreements entered into by the Borrowers or any of the Restricted Subsidiaries in the ordinary course of business, (b) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(8) Restricted Payments permitted under Section 6.06, including payments to any Parent Entity;

(9) any purchase by any Parent Entity of the Equity Interests of the Borrowers and the purchase by the Borrowers of Equity Interests in any Restricted Subsidiary;

(10) payments to the Sponsors for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of Directors of the Borrower, or a majority of the Disinterested Directors of the Borrower, in good faith;

(11) transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm’s length terms;

(12) any transaction in respect of which the Lead Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of Holdings or the Borrowers from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is (a) in the good faith determination of the Borrowers qualified to render such letter and (b) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrowers or the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate;

(13) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(14) the issuance, sale or transfer of Equity Interests of the Borrowers to any Parent Entity and capital contributions by any Parent Entity to the Borrowers (and payment of reasonable out-of-pocket expenses incurred by the Sponsors in connection therewith);
the issuance of Equity Interests to the management of Holdings, the Borrowers, or any of the Restricted Subsidiaries in connection with the Original Transactions;

payments by Holdings, any Parent Entity, the Borrowers, or any of the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings, any Parent Entity, the Borrowers and any of the Restricted Subsidiaries, which payments would otherwise be permitted under clause (5) of Section 6.06 and shall be subject to the same restrictions as set forth under clause (5) of Section 6.06; provided, that amounts paid under this clause (16) in respect of federal, state or local Taxes taken together with any amounts paid under clause (5) of Section 6.06 shall not exceed the Tax Amount for any applicable year;

payments or loans (or cancellation of loans) to employees or consultants that are:

(a) approved by a majority of the Disinterested Directors of Holdings or the Borrowers in good faith;
(b) made in compliance with applicable law; and
(c) otherwise permitted under this Agreement;

transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, that are fair to the Borrowers and the Restricted Subsidiaries;

transactions between or among the Borrower and the Restricted Subsidiaries and any Person, a director of which is also a director of the Borrower or any Parent Entity, so long as (a) such director abstains from voting or a director of the Borrower or such Parent Entity, as the case may be, on any matter involving such other Person and (b) such Person is not an Affiliate of the Borrower for any reason other than such director’s acting in such capacity;[reserved];

transactions pursuant to, and complying with, the provisions of Section 6.01, Section 6.04 or Section 6.05(1);[reserved];

the existence of, or the performance by any Loan Party of its obligations under the terms of, any customary registration rights agreement to which a Loan Party or any Parent Entity is a party or becomes a party in the future; and

intercompany transactions undertaken in good faith (as certified by a Responsible Officer of the Lead Borrower) for the purpose of improving the consolidated tax efficiency of Holdings and the Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

SECTION 6.08. Business of the Borrowers and their Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by the Borrowers and the Restricted Subsidiaries on the Closing Amendment No. 2 Effective Date (after giving effect to the Recapitalization Transactions) and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto.
SECTION 6.09. Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.

(1) amend or modify in any manner materially adverse to the Lenders the articles or certificate of incorporation (or similar document), by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Borrowers or any Restricted Subsidiary;

(2) make any cash payment or other distribution in cash in respect of, or amend or modify, or permit the amendment or modification of, any provision of, any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposits, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Junior Financing (subject to Section 6.09(4)); except in the case of this clause (2):

(a) payments in respect of Junior Finishings in an amount not to exceed the Available Amount on the date the payments are made if no Event of Default is continuing immediately prior to making such payment or would result therefrom; (i) payments in an amount not to exceed $5.0 million in the aggregate in respect of (a) Senior Notes pursuant to Section 5.10 of the Senior Notes Indentures and/or (b) Third Lien Notes pursuant to the “AHYDO” provisions of the Third Lien Notes Indentures, (ii) for the avoidance of doubt, the redemption of Third Lien Notes in accordance with clause (4)(y) under the MYT Waterfall with the cash or other assets received by in connection with a MYT Secondary Sale, and (iii) the redemption or repurchase of Third Lien Notes Obligations or Second Lien Notes Obligations in accordance with the exercise of the Call Right;

(b) payments in respect of Junior Finishings so long as (i) immediately after giving effect to such payment, the Borrower’s Total Net Leverage Ratio is 4.50 to 1.00 or less and (ii) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom; transactions described in clause (4) of this Section in respect of the Senior Notes;

(c) additional payments in respect of Junior Finishings, when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(29) and Restricted Payments pursuant to Section 6.06(16), in an amount not to exceed the greater of (i) $100.0 million and (ii) 1.15% of Consolidated Total Assets as of the date such payment is made;

(d) (i) the conversion or exchange of any Junior Financing into or for Equity Interests of any Parent Entity or other Junior Financing and (ii) any payment (other than on account of the Senior Notes or Third Lien Notes, as to which clause (a)(i) shall apply) that is intended to prevent any Junior Financing from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code;

(e) (i) payments of regularly scheduled principal and interest; (ii) mandatory offers to repay, repurchase or redeem (including in connection with the Net Cash Proceeds of Asset
Sales; (iii) mandatory prepayments of principal, premium and interest; and (iv) payments of fees, expenses and indemnification obligations, in each case, with respect to such Junior Financing, in accordance with contractual requirements in effect as of the Amendment No. 2 Effective Date or with respect to any refinancing, no less favorable in any material respect to the Lenders than those in effect as of the Amendment No. 2 Effective Date; and

(f) payments or distributions in respect of all or any portion of such Junior Financing with the proceeds contributed directly or indirectly to the Borrower by any Parent Entity using Available Contribution Proceeds from the issuance, sale or exchange by any Parent Entity of Equity Interests made within 18 months prior thereto; or

(3) permit any Material Restricted Subsidiary to enter into any agreement or instrument that by its terms restricts (a) with respect to any such Material Restricted Subsidiary that is not a Guarantor, Restricted Payments from such Material Restricted Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such Material Restricted Subsidiary or (b) with respect to any such Material Restricted Subsidiary that is a Guarantor, the granting of Liens by such Material Restricted Subsidiary pursuant to the Security Documents; except in the case of this clause (3):

(a) restrictions imposed by applicable law;

(b) contractual encumbrances or restrictions:

(i) under the ABL Loan Documents;

(ii) under the Senior Notes Documents;

(iii) under the Secured Notes Documents; or

(iv) under any other agreement relating to Ratio Debt, Indebtedness incurred pursuant to Section 6.01(1), (2), (3), (4), (5), (7), (12), (15), (20), (21), (24) or (27), Indebtedness that is secured on a pari passu basis with Indebtedness under the Loan Documents or Indebtedness under the ABL Credit Agreement, or any Permitted Refinancing Indebtedness in respect thereof, that does not materially expand the scope of any such encumbrance or restriction;

(c) any restriction on a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Restricted Subsidiary pending the closing of such sale or disposition;

(d) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(e) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(f) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

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customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

customary restrictions and conditions contained in any agreement relating to the sale, transfer or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer or other disposition;

customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Lead Borrowers has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrowers and the other Restricted Subsidiaries to meet their ongoing obligations;

any agreement in effect at the time any Person becomes a Restricted Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary;

restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (o) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrowers, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(4) repurchase, redeem, retire, repay, Refinance or exchange Remaining Senior Notes Obligations, whether at maturity or otherwise, except in the case of this clause (4):

repurchasing, repaying, exchanging for or refinancing any such Remaining Senior Notes Obligations using the proceeds of Remaining Senior Notes Exchange Indebtedness (including by means of an exchange offer, conversion or modification)
of the Remaining Senior Notes Obligations to become Remaining Senior Notes Exchange Indebtedness);

(b) repurchasing, repaying, exchanging for or refinancing any such Remaining Senior Notes Obligations using (i) the common Equity Interests of, or the cash proceeds of common equity sales by, or common equity contributions to, Holdings, or (ii) any non-cash assets contributed, exchanged or sold to Holdings in respect of Holding’s common equity or any cash proceeds received from the sale or disposition of any assets which are contributed to Holdings (including any interests, including Equity Interests of, MYT Holdco so contributed to or purchased by Holdings, or the cash proceeds of which are contributed to Holdings following a sale or disposition of such interests); or

(c) repurchasing or repaying all or any portion of any Remaining Senior Notes Obligations with cash proceeds from any other source not otherwise described in clauses (a) or (b) above, in an aggregate amount, together with any cash payments or other cash distributions made pursuant to Section 2.07(2)(c), not to exceed $60.0 million for the term of this Agreement; provided that the total purchase price or repayment amount of any such Remaining Senior Notes Obligations repurchased or repaid (or any portion of which is repurchased or repaid) pursuant to this clause (c) more than 45 days prior to October 15, 2021 may not be greater than 40% of the aggregate face value of any such Remaining Senior Notes.

ARTICLE VII

Holdings Covenant and PropCo Guarantors Covenants

SECTION 7.01. Holdings Covenant. Holdings will not, so long as this Agreement is in effect and until all Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, conduct, transact or otherwise engage in any active trade or business or operations other than through the Borrowers and their Subsidiaries.

The foregoing will not prohibit Holdings from taking actions related to the following (and activities incidental thereto):

(1) its ownership of the Equity Interests of the Lead Borrower;

(2) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance);

(3) the performance of its obligations with respect to the ABL Facility, the Term Facilities, and other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger Agreement;

(4) any offering of its common stock or any other issuance of its Equity Interests;

(5) the making of Restricted Payments; provided that Holdings will not be permitted to make Restricted Payments using the cash from the Borrowers or any Subsidiary unless such cash has been dividdended or otherwise distributed to Holdings as a permitted Restricted Payment;
the incurrence of Permitted Holdings Debt;

(7) making contributions to the capital or acquiring Equity Interests of its Subsidiaries;

(8) guaranteeing the obligations of the Borrowers and their Subsidiaries;

(9) participating in tax, accounting and other administrative matters as a member or parent of the consolidated group;

(10) holding any cash or property (including cash and property received in connection with Restricted Payments made by the Borrowers, but excluding the Equity Interests of any Person other than the Borrowers);

(11) providing indemnification to officers and directors;

(12) the making of Investments consisting of Cash Equivalents or, to the extent not made for speculative purposes, Investment Grade Securities; and

(13) activities incidental to the businesses or, activities or operations described above.

SECTION 7.02. PropCo Guarantors Covenant. No PropCo Guarantor will, so long as this Agreement is in effect and until all Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required 2019 Extending Term Lenders otherwise consent in writing, (i) conduct, transact or otherwise engage in any active trade or business or operations other than own interests in, and perform its obligations pursuant to, any Non-Mortgageable Leases (ii) issue, incur or assume any Indebtedness or Guarantee any Indebtedness of another Person, (iii) create, incur, assume or permit to exist any Lien securing Indebtedness or on any property or assets at the time owned by it, (iv) sell, lease, transfer or otherwise dispose of any of its properties or assets or (v) own or acquire any property or assets other than Non-Mortgageable Leases and immaterial assets incident thereto.

The foregoing will not prohibit either PropCo Guarantor from taking actions related to the following (and activities incidental thereto):

(1) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance);

(2) the performance of its obligations with respect to Permitted PropCo Guaranteed Obligations;

(3) the making of Restricted Payments permitted under Section 6.06;

(4) holding, as applicable, the 2019 Extended Term Loan PropCo Assets and the Notes PropCo Assets and the performance of its obligations with respect to any PropCo Operating License.

(5) participating in tax, accounting and other administrative matters as a member of the consolidated group;

(6) providing indemnification to officers and directors; and
ARTICLE VIII

Events of Default

SECTION 8.01. Events of Default. In case of the happening of any of the following events (each, an “Event of Default”):

(1) any representation or warranty made by Holdings, the Borrowers or any other Loan Party herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made;

(2) default is made in the payment of any principal of any Term Loan when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise;

(3) default is made in the payment of any interest on any Term Loan or in the payment of any Fee or any other amount due under any Loan Document (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of five Business Days;

(4) default is made in the due observance or performance by Holdings, the Borrowers or any Restricted Subsidiary of any covenant, condition or agreement contained in Section 5.01(1), 5.05(1) or 5.08 or in Article VI or Article VII of this Agreement, or in any provision of the 2019 Extension Amendment (in each case solely to the extent applicable to such Person);

(5) default is made in the due observance or performance by Holdings, the Borrowers or any Restricted Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3) and (4) of this Section 8.01), in each case solely to the extent applicable to such Person, and such default continues unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Lead Borrower;

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) 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 or (b) the Borrowers or any Restricted Subsidiary fails to pay the principal of any Material Indebtedness at the stated final maturity thereof; provided that this clause (6) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; provided, further, that such event or condition is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Term Loans pursuant to this Section 8.01; provided, further, that the failure to observe or perform a financial maintenance covenant under the ABL Credit Agreement (a “Financial Covenant Default”) shall not in and of itself constitute an Event of Default hereunder until the later of (1) 90 days following the date of such Financial Covenant Default and (2) the date on which the lenders under the ABL Credit Agreement shall have accelerated payment of the ABL Obligations and terminated the commitments with respect thereto or foreclosed upon the collateral securing the ABL Obligations;
and, provided, further, that prior to the time it becomes an Event of Default hereunder, any Financial Covenant Default may be waived, amended, terminated or otherwise modified from time to time in accordance with the ABL Credit Agreement;

(7) a Change in Control occurs;

(8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:

(a) relief in respect of Holdings, the any Borrower or any of the Material Restricted Subsidiaries, or of a substantial part of the property or assets of Holdings, the Borrowers or any Material Restricted Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law and such proceeding or petition continues undischarged, undismissed or unlaid for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

(b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the any Borrower or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrowers or any Restricted Subsidiary and such appointment occurs and continues undischarged, undismissed or unlaid for 60 calendar days from the date of such appointment; or

(c) the winding up or liquidation of Holdings, the any Borrower or any Material Restricted Subsidiary (except, in the case of any Material Restricted Subsidiary, in a transaction permitted by Section 6.05) and such proceeding or petition continues undischarged, undismissed or unlaid for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

(9) Holdings, the Borrowers or any Material Restricted Subsidiary:

(a) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;

(c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrowers or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrowers or any Material Restricted Subsidiary;

(d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(e) makes a general assignment for the benefit of creditors; or
becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

the Borrowers or any Restricted Subsidiary fails to pay one or more final judgments aggregating in excess of $50.0 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action is legally taken by a judgment creditor to levy upon assets or properties of the Borrowers or any other Subsidiary Loan Party to enforce any such judgment;

(a) a trustee is appointed by a United States district court to administer any Plan or (b) an ERISA Event or ERISA Events occurs with respect to any Plan or Multiemployer Plan, and, in each case, with respect to clauses (a) and (b) above, such event or condition, together with all other such events or conditions, if any, is reasonably expected to have a Material Adverse Effect; or

(a) any material provision of any Loan Document ceases to be, or is asserted in writing by Holdings, the Borrowers or any Restricted Subsidiary not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrowers and the Restricted Subsidiaries on a consolidated basis ceases to be, or is asserted in writing by the Borrowers or any other Loan Party not to be, a valid and perfected security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of validity, perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under a Security Document or to file Uniform Commercial Code continuation statements or take any other action and except to the extent that such loss is covered by a lender’s title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the Guarantees pursuant to the Security Documents by any Loan Party of any of the Obligations cease to be in full force and effect (other than in accordance with the terms thereof) or are asserted in writing by Holdings, the Borrowers or any other Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

then, (i) upon the occurrence of any such Event of Default (other than an Event of Default with respect to the Borrowers described in clause (f) or (9) of this Section 8.01), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the request of the Required Lenders, will, by notice to the Lead Borrower, take any or all of the following actions, at the same or different times: (A) declare the Term Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Term Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities (including the Applicable Premium, if applicable) of the Borrowers accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (B) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, and (ii) in any event with respect to the Borrowers described in clause (f) or (9) of this Section 8.01, the principal of the Term Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities (including any Applicable Premium) of the Borrowers accrued hereunder and under any other Loan Document, will automatically become due and payable, without
ARTICLE IX

The Agents

SECTION 9.01. Appointment.

(1) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby irrevocably designates and appoints the Administrative Agent as agent of such Lender under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, 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 the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender’s behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, 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 the Administrative Agent. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence.

(2) In furtherance of the foregoing, each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on the Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In connection therewith, the Administrative Agent (and any Subagents appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Administrative Agent) shall be entitled to the benefits of this Article IX (including Section 9.07) as though the Administrative Agent (and any
such Subagents) were an “Agent” under the Loan Documents, as if set forth in full herein with respect thereto.

(3) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) irrevocably authorizes the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document

   (i) upon termination of the Commitments and payment in full of all Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted);

   (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document; or

   (iii) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;

(b) to release any Loan Party from its obligations under the Loan Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3).

Upon request by the Administrative Agent at any time, the Required Lenders or Required 2019 Extending Term Lenders, as applicable, will confirm in writing the Administrative Agent’s authority to release its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents.

(4) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation 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 Borrowers) 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 any or all of the 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 and the Agents and any Subagents 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, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender 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, 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 under the Loan Documents. Nothing contained herein shall

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be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

(5) The Lenders and each other holder of an Obligation under a Loan Document shall act collectively through the Administrative Agent with respect to the Obligations and the Loan Documents. Without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders shall direct the Administrative Agent with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders), and the exercise of rights and remedies with respect to (i) the Recapitalization Transactions (as defined in Section 10.22(7)), (ii) any Released Claim (as defined herein and released pursuant to Section 10.22), (iii) the Term Loans and any securities, notes, or other interests issued pursuant to this Agreement or the Existing Credit Agreement, and (iv) any Collateral with respect to the Obligations. Any such rights and remedies shall not be exercised other than through the Administrative Agent; provided that None of the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Term Loans made by it.

SECTION 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “Subagent”) with respect to all or any part of the Collateral; provided that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent’s gross negligence or willful misconduct.

SECTION 9.03. Exculpatory Provisions. None of the Administrative Agent, its Affiliates or any of their respective officers, directors, employees, agents or attorneys-in-fact shall be (1) 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 non-appealable decision of a court of competent jurisdiction to have resulted from its or such
Person’s own gross negligence or willful misconduct) or (2) 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 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. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (1) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (2) the Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of its Affiliates that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into:

(1) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
(2) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
(3) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
(4) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
(5) the value or the sufficiency of any Collateral; or
(6) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 9.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Borrowing that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to Holdings or the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The 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 the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders or the Required 2019 Extending Term Lenders, as applicable (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative 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 the Required 2019 Extending Term Lenders, as applicable (or, if so specified by this Agreement, all or other 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 Term Loans.

SECTION 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender, Holdings or the Lead 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 the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent 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, all or other Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent 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 9.06. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the 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 the Administrative 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 the Administrative Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon the Administrative 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 Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative 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 the Administrative Agent hereunder, the Administrative Agent 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 the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07. Indemnification. The Lenders agree to indemnify each Agent (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), in the amount of its pro rata share (based on its aggregate outstanding Term Loans) (determined at the time such indemnity is sought), 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 Term Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Original 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 the Administrative 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 the Administrative Agent’s gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender’s ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Term Loans and all other amounts payable hereunder.

SECTION 9.08.  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 the Administrative Agent were not the Administrative Agent. With respect to its Term Loans made or renewed 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 the Administrative Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

SECTION 9.09.  Successor Agent. The Administrative Agent (i) may resign as Administrative Agent upon ten days’ notice to the Lenders and the Lead Borrower or (ii) if so directed by the Required Lenders, shall resign, upon ten days’ prior written notice (or such shorter period as agreed to by the Required Lenders and Lead Borrower) by the Required Lenders to the Administrative Agent and the Lead Borrower. If the Administrative Agent resigns as the Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall have the same rights and powers under this Agreement and the other Loan Documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative 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 the Administrative Agent’s gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender’s ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Term Loans and all other amounts payable hereunder.
such successor agent is Cortland Capital Markets, Wilmington Trust, N.A. or Ankura Trust Company, LLC or any of their respective Affiliates) be subject to approval by the Borrowers (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent’s resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10. Arrangers and Co-Managers. None of the Arrangers or Co-Managers will have any duties, responsibilities or liabilities hereunder in their respective capacities as such.

ARTICLE X

Miscellaneous

SECTION 10.01. Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), 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 facsimile or e-mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party or the Administrative Agent, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Lead Borrower 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.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.
Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Lead Borrower posts such documents or provides a link thereto on the Borrowers' website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Lead Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; provided, further, that, upon reasonable request by the Administrative Agent, the Lead Borrower shall also provide a hard copy to the Administrative Agent of any such document; provided, further, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Term Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Term Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.12, 2.14 and 10.05) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03. Binding Effect. This Agreement shall become effective when the 2019 Extension Amendment has been executed by Holdings, Merger Sub, the Borrowers and the Administrative Agent and when the Administrative Agent has received copies thereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrowers, the other Loan Parties, each Agent, each Lender and their respective permitted successors and assigns.

SECTION 10.04. Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (a) the Borrowers may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrowers without such consent shall be null and void), except to the Company pursuant to the Merger, and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto,
their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) (a) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04 (and, with respect to an assignment to Holdings, the Borrower, any Subsidiary or any of their respective Affiliates, any Affiliated Lender, subject to the limitations set forth in Section 10.04(10) or 10.04(14), as applicable), any Lender may assign to one or more assignees (other than a natural person or a Defaulting Lender) (each, an “Assignee”) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(i) the Lead Borrower; provided that no consent of the Lead Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default has occurred and is continuing, any other Person; provided, further, that such consent shall be deemed to have been given if the Lead Borrower has not responded within ten Business Days after delivery of a written request therefor by the Administrative Agent; and

(ii) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(b) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Term Loans, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1.0 million, unless each of the Borrower and the Administrative Agent otherwise consent; provided that (1) no such consent of the Borrowers shall be required if a Specified Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

(ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(iii) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.14; and

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the Assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Term Loan.

For the purposes of this Section 10.04, “Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.14 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

(d) The Administrative Agent, acting for this purpose as the Administrative Agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amount (and stated interest with respect thereto) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender (solely with respect to such Lender’s Term Loans) at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Term Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows:
such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim;

except as set forth in clause (a) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of Holdings, the Borrowers or any Restricted Subsidiary or the performance or observance by Holdings, the Borrowers or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto;

c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance;

d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;

e) the Assignee will independently and without reliance upon the Administrative Agent or the Collateral Agent, such assigning Lender 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 decisions in taking or not taking action under this Agreement;

f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; and

g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(a) Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrowers, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Term Loans owing to it); provided that

(i) such Lender’s obligations under this Agreement shall remain unchanged;

(ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and

(iii) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and, to approve any amendment, modification or waiver of any provision of this

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Agreement and the other Loan Documents, and to exercise any right or remedy with respect to the Term Loans and any securities, notes, or other interests issued pursuant to this Agreement or the Existing Credit Agreement, and any Collateral, provided that (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 10.04(1)(a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; provided that such Participant shall be subject to Section 2.15(3) as though it were a Lender. Any Participant that seeks to receive the foregoing benefits under Sections 2.12, 2.13, 2.14 or 10.06 must act through the Lender that sold the participation to the Participant, and such Lender must comply with all other requirements for seeking such benefits, including complying with Section 9.01(5) of this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Term Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Each Lender shall indemnify the Loan Parties for any Taxes (including any additions to Tax) attributable to or resulting from such Lender’s failure to comply with the provisions of this Section 10.04(4)(a) relating to the maintenance of a Participant Register.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower’s prior written consent. A Participant shall not be entitled to the benefits of Section 2.14 to the extent such Participant fails to comply with Section 2.14(5) as though it were a Lender.

(5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; provided that no such
pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(6) The Borrowers, upon receipt of written notice from the relevant Lender, agree to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04.

(7) If the Borrowers wishes to replace the Term Loans with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days’ advance notice to the Lenders, instead of prepaying the Term Loans to be replaced, to (a) require the Lenders to assign such Term Loans to the Administrative Agent or its designees and (b) amend the terms thereof in accordance with Section 10.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 10.08(4)). Pursuant to any such assignment, all Term Loans to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Term Loans were being optionally prepaid), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 10.05(2). By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Term Loans pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (7) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(8) Notwithstanding the foregoing, no assignment may be made or participation sold to a Disqualified Institution without the prior written consent of the Borrowers; provided that, in connection with a participation, the Lenders shall have received a list of the Disqualified Institutions prior to the execution of such participation right.

(9) Notwithstanding anything to the contrary contained herein, no Non-Debt Fund Affiliate shall have any right to:

(a) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of Holdings or the Borrowers are not then present;

(b) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among Administrative Agent and one or more Lenders, except to the extent such information or materials have been made available to the Borrowers or their representatives (and in any case, other than the right to receive notices of prepayments and other administrative notices in respect of its Term Loans required to be delivered to Lenders pursuant to this Agreement); or

(c) make or bring (or participate in, other than as a passive participant in or recipient of its pro rata benefits of) any claim, in its capacity as a Lender, against Administrative Agent or any other Lender with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Lender under the Loan Documents in the absence, with respect to any such Person, of the gross negligence, bad faith (including a material breach of obligations under the Loan Documents) or willful misconduct by such Person and its Related Parties (as determined by a court of competent jurisdiction by final and non-appealable judgment).
Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Term Loans hereunder to any Person who, after giving effect to such assignment, would be an Affiliated Lender; provided that:

(a) such assignment shall be made pursuant to (i) an open market purchase (including, for the avoidance of doubt, any purchase made during the initial syndication of the Term Loans) on a non-pro rata basis or (ii) a Dutch Auction open to all Lenders of the applicable Class on a pro rata basis;

(b) in the case of an assignment to a Non-Debt Fund Affiliate, the assigning Lender and such Non-Debt Fund Affiliate purchasing such Lender’s Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit E (a “Non-Debt Fund Affiliate Assignment and Acceptance”) in lieu of an Assignment and Acceptance;

(c) in the case of an assignment to a Non-Debt Fund Affiliate, at the time of such assignment and after giving effect to such assignment, Non-Debt Fund Affiliates shall not, in the aggregate, hold Term Loans and participating interests in Term Loans with an aggregate principal amount in excess of 30.0% of the principal amount of all Term Loans (including, for the avoidance of doubt, any Incremental Term Loans, Other Term Loans or Extended Term Loans, if any) then outstanding;

(d) in the case of an assignment to a Non-Debt Fund Affiliate, each Non-Debt Fund Affiliate shall at each of the time of its execution of a written trade confirmation in respect of, and at the time of consummation of, such assignment either (i) make a No MNPI Representation or (ii) if it is not able to make the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investor and is willing to proceed with the assignment;

(e) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases; and

(f) in the case of an assignment to a Non-Debt Fund Affiliate, if such Non-Debt Fund Affiliate subsequently assigns the Term Loans acquired by it in accordance with this Section 10.04(10), such Non-Debt Fund Affiliate shall at the time of such assignment of such Term Loans held by it either (i) affirm the No MNPI Representation or (ii) if it is not able to affirm the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investor and is willing to proceed with the assignment.

To the extent not previously disclosed to the Administrative Agent, the Borrowers shall, upon reasonable request of the Administrative Agent (but not more frequently than once per calendar quarter), report to the Administrative Agent the amount and Class of Term Loans held by Non-Debt Fund Affiliates and the identity of such holders. Notwithstanding the foregoing, any Affiliated Lender shall be permitted to contribute any Term Loan so assigned to such Affiliated Lender pursuant to this Section 10.04(10) to Holdings or any of the Restricted Subsidiaries for purposes of cancellation, which contribution may be made, subject to Section 6.07, in exchange for Equity Interests (other than Disqualified Stock) of any Parent Entity or Indebtedness of the Borrowers to the extent such Indebtedness is permitted to be incurred pursuant to Section 6.01 at such time; provided that any Term Loans so contributed shall be automatically and
permanently canceled upon the effectiveness of such contribution and will thereafter no longer be outstanding for any purpose hereunder.

(12) Notwithstanding anything in Section 10.04 or the definition of “Required Lenders” or “Required 2019 Extending Term Lenders” to the contrary, for purposes of determining whether the Required Lenders, all affected Lenders or all Lenders have:

(a) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom;

(b) otherwise acted on any matter related to any Loan Document; or

(c) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document (collectively, “Required Lender Consent Items”):

(i) a Non-Debt Fund Affiliate shall be deemed to have voted its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Non-Debt Fund Affiliates, unless such Required Lender Consent Item requires the consent of each Lender or each affected Lender or the result of such Required Lender Consent Item would reasonably be expected to deprive such Non-Debt Fund Affiliate of its pro rata share (compared to Lenders which are not Non-Debt Fund Affiliates) of any payments to which such Non-Debt Fund Affiliate is entitled under the Loan Documents without such Non-Debt Fund Affiliate providing its consent or such Non-Debt Fund Affiliate is otherwise adversely affected thereby compared to Term Loan Lenders which are not Non-Debt Fund Affiliates (in which case for purposes of such vote such Non-Debt Fund Affiliate shall have the same voting rights as other Term Loan Lenders which are not Non-Debt Fund Affiliates); and

(ii) Term Loans held by Debt Fund Affiliates may not account for more than 49.9% of the Term Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.04.

(13) Additionally, the Loan Parties and each Non-Debt Fund Affiliate hereby agree that, and each Non-Debt Fund Affiliate Assignment and Acceptance by a Non-Debt Fund Affiliate shall provide a confirmation that, if a case under Title 11 of the United States Code is commenced against any Loan Party, such Loan Party shall seek (and each Non-Debt Fund Affiliate shall consent) to provide that the vote of any Non-Debt Fund Affiliate (in its capacity as a Lender) with respect to any plan of reorganization of such Loan Party shall not be counted except that such Non-Debt Fund Affiliate’s vote (in its capacity as a Lender) may be counted to the extent any such plan of reorganization proposes to treat the Obligations or claims held by such Non-Debt Fund Affiliate in a manner that is less favorable to such Non-Debt Fund Affiliate than the proposed treatment of the Term Loans or claims held by Lenders that are not Affiliates of the Borrower.

(14) Notwithstanding anything to the contrary contained in this Agreement, any Lender may assign all or a portion of its Term Loans to any Purchasing Borrower Party; provided that.
(a) the assigning Lender and the Purchasing Borrower Party purchasing such Lender’s Term Loans, as applicable, shall execute and deliver to the Administrative Agent a Non-Debt Fund Affiliate Assignment and Acceptance in lieu of an Assignment and Acceptance;

(b) such assignment shall be made pursuant to (i) an open market purchase (including, for the avoidance of doubt, any purchase made during the initial syndication of the Term Loans) on a non-pro rata basis or (ii) a Dutch Auction open to all Lenders of the applicable Class on a pro rata basis;

(c) any Term Loans assigned to any Purchasing Borrower Party shall be automatically and permanently cancelled upon the effectiveness of such assignment and will thereafter no longer be outstanding for any purpose hereunder;

(d) at the time of and immediately after giving effect to any such purchase, no Event of Default shall exist;

(e) the applicable Purchasing Borrower Party shall at each of the time of its execution of a written trade confirmation in respect of, and at the time of consummation of, such assignment either (i) make a No MNPI Representation or (ii) if it is not able to make the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investor and is willing to proceed with the assignment; and

(f) the aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans purchased pursuant to this Section 10.04(14) and each principal repayment installment with respect to the Term Loans of such Class shall be reduced pro rata by the aggregate principal amount of Term Loans purchased.

SECTION 10.05. Expenses; Indemnity.

(1) If the Recapitalization Transactions are consummated and the Closing Amendment No. 2 Effective Date occurs, the Borrowers agree to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent and the Arrangers in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent (and, in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrowers or provided for in this Agreement) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Administrative Agent and the Arrangers (which shall be Cravath, Swaine & Moore LLP) and a separate single counsel for the Required 2019 Extending Term Lenders, one firm of local counsel for the Administrative Agent in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the
case of any actual or perceived conflict of interest, one additional firm of counsel for the Administrative Agent, the Arrangers Required 2019 Extending Term Lenders and, in the case of enforcement of this Agreement, the Lenders.

(2) Each Borrower agrees to indemnify the Administrative Agent, each Arranger, each Lender, each of their respective Affiliates and each of their respective successors and permitted assigns (each such Person being called an “Indemnitee”) against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Lead Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for each group of affected Indemnitees similarly situated, taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

(a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Recapitalization Transactions, the MyTheresa Designation, the MyTheresa Distribution, the Nancy Transaction (as defined in Section 10.22) and the other transactions contemplated hereby and thereby;

(b) the use of the proceeds of the Term Loans; or

(c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by Holdings, the Borrowers or any of their Restricted Subsidiaries or Affiliates.

provided that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Administrative Agent or Arrangers or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger or any other similar role under the Term Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this paragraph (2) or (B) claims arising out of any act or omission on the part of Holdings, the Borrowers or their Restricted Subsidiaries.

(3) Subject to and without limiting the generality of the foregoing sentence, the Borrowers agree to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, an
additional counsel for all Indemnitees taken as a whole) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of any claim related to Environmental Laws and the Borrowers or any of the Restricted Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrowers or any Restricted Subsidiaries would reasonably be expected to be held liable under Environmental Laws; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to (a) Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.14 or (b) Taxes that are duplicative of any indemnification or payments required by the Loan Parties under Section 2.14.

(5) To the fullest extent permitted by applicable law, Holdings and the Borrowers shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan and the use of the proceeds thereof, the Recapitalization Transactions, the MyTheresa Designation, the MyTheresa Distribution, the Nancy Transaction (as defined in Section 10.22) and the other transactions contemplated hereby and thereby. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(6) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of Holdings or any Subsidiary Loan Party against any of and all the Obligations of Holdings or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the Obligations may be unmatured. The rights of each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may be exercised only at the direction of the Administrative Agent or the Required Lenders.
SECTION 10.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08. Waivers; Amendment.

(1) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except

(a) as provided in Sections 2.18, 2.19 and 2.20;

(b) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower and the Required Lenders; and

(c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders;

provided, however, that except as provided in Sections 2.18, 2.19 and 2.20, no such agreement shall:

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Term Loan beyond the Maturity Date, without the prior written consent of each Lender directly affected thereby;

(ii) increase or extend the Commitment of any Lender or decrease, forgive, waive or excuse the fees of any Agent without the prior written consent of such Lender or Agent (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase of the Commitments of any Lender);
(iii) extend or waive any Term Loan Installment Date or reduce the amount due on any Term Loan Installment Date or extend any date on which payment of principal or interest on any Term Loan or any Fee is due, without the prior written consent of each Lender adversely affected thereby;

(iv) amend the provisions of Section 2.15(2) or (3) of this Agreement, Section 5.02 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby, without the prior written consent of each Lender adversely affected thereby;

(v) amend or modify the provisions of this Section 10.08 or the definition of the term “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loans are included on the Closing Date); or

(vi) release a material portion of the Collateral, unless pursuant to a transaction permitted by this Agreement, or release any of Holdings, the Borrower or any of the other Subsidiary Loan Parties from their respective Guarantees under the Collateral Agreement, unless, in the case of a Subsidiary Loan Party (other than the Borrower), all or substantially all the Equity Interests of such Subsidiary Loan Party is sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender;

provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

(3) Without the consent of the Administrative Agent or any Lender, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(4) This Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.
Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.18, Refinancing Amendments in accordance with Section 2.19, Extension Amendments in accordance with Section 2.20 and Refinancing Amendments, and such Incremental Facility Amendments, Refinancing Amendments, Extension Amendments and Refinancing Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.

Notwithstanding the foregoing, any amendment or waiver that by its terms affects the rights or duties of Lenders holding Term Loans or Commitments of a particular Class (but not the Lenders holdings Term Loans or Commitments of any other Class) will require only the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto if such Class of Lenders were the only Class of Lenders.

Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent to the extent necessary to integrate any Incremental Facilities on substantially the same basis as the Term Loans, as applicable.

Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

SECTION 10.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “Charges”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Term Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrowers.

SECTION 10.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.
SECTION 10.11. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission (e.g., “PDF” or “TIFF”) shall be as effective as delivery of a manually signed original.

SECTION 10.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15. Jurisdiction; Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York County, and any appellate court from any thereof (collectively, “New York Courts”), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any other court than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.
Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16. Confidentiality. Each of the Lenders and each of the Agents agrees (and agrees to cause each of its Affiliates) to use all information provided to it by or on behalf of Holdings, the Borrowers or its Restricted Subsidiaries under the Loan Documents or otherwise in connection with the Merger or the Original Transactions and the Recapitalization Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that

(1) has become generally available to the public other than as a result of a disclosure by such party;

(2) has been independently developed by such Lender or the Administrative Agent without violating this Section 10.16; or

(3) was available to such Lender or the Administrative Agent from a third party having, to such Person’s knowledge, no obligations of confidentiality to Holdings, the Borrowers or any other Loan Party);

and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Term Loans on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16), except:

(a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(c) to its parent companies, Affiliates or auditors (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(d) in order to enforce its rights under any Loan Document in a legal proceeding;

(e) to any pledgee or assignee under Section 10.04(5) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16); and
to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty’s professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16).

Notwithstanding the foregoing, no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Lead Borrower’s prior written consent.

SECTION 10.17. Platform; Borrower Materials. Each Borrower hereby acknowledges that (1) the Administrative Agent or the Arrangers will make available to the Lenders materials or information provided by or on behalf of the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on IntraLinks or another similar electronic system (the “Platform”), and (2) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrowers or their securities) (each, a “Public Lender”). The Borrowers hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that

(a) all the Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” shall appear prominently on the first page thereof;

(b) by marking Borrower Materials “PUBLIC,” the Borrowers shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and

(d) the Administrative Agent and the Arrangers shall be entitled to treat the Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked “PUBLIC” unless the Borrowers notify the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) any notification of changes in the terms of the Term Loans, (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

SECTION 10.18. Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any of the Equity Interests or assets of any Loan Party (other than Equity Interests of the Lead Borrower) to a Person that is not (and is not required to become) a Loan Party in a transaction not prohibited by Section 6.05, any Liens created by any Loan Document in respect of such Equity Interests or assets shall be automatically released and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrowers and at the Borrowers’ expense in connection with the release of any
Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party (other than the Lead Borrower) in a transaction permitted by Section 6.05 (including through merger, consolidation, amalgamation or otherwise) and as a result of which such Subsidiary Loan Party would cease to be a Restricted Subsidiary, such Subsidiary Loan Party’s obligations under the Collateral Agreement shall be automatically terminated and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrowers to terminate such Subsidiary Loan Party’s obligations under the Collateral Agreement. In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrowers to terminate such Subsidiary Loan Party’s obligations under the Collateral Agreement. In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrowers and at the Borrowers’ expense to terminate the Liens and security interests created by the Loan Documents when all the Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are paid in full and the Commitments are terminated.

SECTION 10.19. USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 10.20. Security Documents and Intercreditor Agreements. (a) The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all ABL Claims, the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the ABL Priority Collateral in any manner that would result in a “Default” or “Event of Default” (as defined in any ABL Loan Document) under the terms and provisions of the ABL Loan Documents. Each Lender hereunder:

(1) consents to the subordination of Liens provided for in the ABL/Term Loan/Notes Intercreditor Agreement and the Junior Lien Intercreditor Agreement;

(2) agrees that it will be bound by and will take no actions contrary to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement or the Junior Lien Intercreditor Agreement; and

(3) authorizes and instructs the Administrative Agent to enter into the ABL/Term Loan/Notes Intercreditor Agreement and the Junior Lien Intercreditor Agreement as Term Loan Agent and on behalf of such Lender.

The foregoing provisions are intended as an inducement to the lenders under the ABL Credit Agreement to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement. The parties hereto authorize the Administrative Agent to enter into any First Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent. The Administrative Agent may from time to time enter into a modification of the Intercreditor Agreement, any First Lien ABL/Term Loan/Notes Intercreditor Agreement or the Junior Lien Intercreditor Agreement, as the case may be, so long as the Administrative Agent reasonably determines that such modification is for the purpose of causing

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new or additional Indebtedness Obligations to become subject thereto, consistent with the terms of this Agreement.

The foregoing provisions are intended as an inducement to the lenders under the ABL Credit Agreement to extend or continue to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the ABL/Term Loan/Notes Intercreditor Agreement or Junior Lien Intercreditor Agreement, as applicable.

(b) The parties hereto authorize the Administrative Agent to enter into the ABL/Term Loan/Notes Intercreditor Agreement and Junior Lien Intercreditor Agreement, each in the form attached hereto.

SECTION 10.21. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of Holdings and the Borrowers acknowledges and agrees that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents and the Arrangers are arm’s-length commercial transactions between Holdings and the Borrowers, on the one hand, and the Agents and the Arrangers, on the other hand; (b) the Borrowers and Holdings have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate; and (c) the Borrowers and Holdings are capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrowers, Holdings or any other Person and (b) none of the Agents or Arrangers has any obligation to the Borrowers, Holdings or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (3) the Agents, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, Holdings and their respective Affiliates, and none of the Agents or any Arranger has any obligation to disclose any of such interests to the Borrowers, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.22. Reaffirmation and Ratification. Notwithstanding anything to the contrary contained herein, each Agent (on behalf of itself and the Lenders), each Lender (in its capacity as a Lender) and each Company Party, and each Related Party of each of the foregoing, by accepting the benefits of this Agreement: hereby ratifies and acknowledges (a) the Recapitalization Transactions, (b) each of the below releases and (c) each of the below covenants not to sue.

(1) Effective as of the Amendment No. 2 Effective Date, each Company Releasing Party, on behalf of itself, and to the extent a Company Releasing Party is not party to this Agreement, the Borrowers or Guarantors on behalf of such Company Releasing Party, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Company Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties, that Holdings, the Borrowers, Subsidiary Loan Parties or any of the Company Releasing Parties...
would have been legally entitled to assert in their or its own right (whether individually or collectively) or on behalf of the holder of any
Claim against, or Equity Security in, a Company Releasing Party or other Entity, based on or relating to, or in any manner arising from, in
whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation,
preparation, dissemination, negotiation, or filing of the TSA, the Definitive Documents, any Recapitalization Transaction, or any contract,
instrument, release, or other agreement or document created or entered into in connection with or pursuant to the TSA or the Definitive
Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including
the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by
the Company Releasing Parties set forth above do not release (1) any party or Entity from any post Amendment No. 2 Effective Date
obligations of any party or Entity under this Agreement, any other Definitive Documents, any Recapitalization Transaction, the
Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding
anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that
is determined by a final non appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct.
Nothing contained in the releases shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or
employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any
Company Party's insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or
like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Company
Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other
Entity in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding anything
to the contrary in this Section 10.22 or otherwise in this Agreement, nothing in this Agreement shall or be deemed to (or is intended to) limit
any of the Company Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any
action to defend itself or themselves, including any defense available under the Bankruptcy Code in connection with any Claim or Cause of
Action (whether direct or indirect) brought by any Entity relating to any of the above-referenced Claims and Causes of Action arising from,
in whole or in part, (i) the formulation, preparation, dissemination, negotiation, or filing of this Agreement, the TSA, the Definitive
Documents, or any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered
into in connection with the TSA or the Definitive Documents, and (y) the pursuit of consummation, the administration and implementation of
the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith.

(2) Effective as of the Amendment No. 2 Effective Date, by accepting the benefits of this Agreement, each Stakeholder Releasing Party, solely in
its capacity as such, severally and not jointly, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise,
and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or
on behalf of the Stakeholder Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action,
including any derivative claims asserted on behalf of any of the Company Releasing Parties or the Stakeholder Releasing Parties, that the
Agents or any of the Stakeholder Releasing Parties would have been legally entitled to assert in its or their own right (whether individually
or collectively) or on behalf of the holder of any Claim against, or
Equity Security in, a Company Releasing Party or other Entity, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the TSA, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the TSA or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Stakeholder Releasing Parties set forth above do not release any party or entity from any post-Amendment No. 2 Effective Date obligations of any party or Entity under this Agreement, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing in this Agreement shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Stakeholder Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Entity in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding anything to the contrary in this Section 10.22, nothing in the releases or this Agreement shall or be deemed to (or is intended to) limit any of the Stakeholder Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under the Bankruptcy Code, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Entity relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (a) the formulation, preparation, dissemination, negotiation, or filing of this Agreement, the TSA, Definitive Documents, the Commitment Letter or any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the TSA or the Definitive Documents, and (b) the pursuit of consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt, the release by the Stakeholder Releasing Parties set forth in this Section 10.22 is hereby granted by or on behalf of each of the Stakeholder Releasing Parties in accordance with the terms and conditions of this Agreement in their capacities and as makers of the Term Loans, and on behalf of their Related Parties, only to the extent that a Lender, acting in its capacity as a Lender, has the authority to bind such Related Party.

(3) Each Releasing Party hereby agrees and acknowledges that, except as expressly provided in this Agreement and the Definitive Documents, no Released Party, in any capacity, has warranted or otherwise made any representations concerning any Released Claim (including any representation or warranty concerning the existence, non-existence, validity, or invalidity of any Released Claim). Notwithstanding the foregoing, nothing contained in this Agreement is intended to impair or otherwise derogate from any of the representations, warranties, or covenants expressly set forth in this Agreement or any of the Definitive Documents.
Each of the Releasing Parties hereby expressly acknowledges that although ordinarily a general release may not extend to any Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, it has carefully considered and taken into account in determining to enter into the releases set forth in this Section 10.22 the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, on behalf of each Lender, the Agents, and, on behalf of each Company Releasing Party, the Borrowers and Guarantors expressly waive and relinquish any and all rights such Releasing Party may have or conferred upon it under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provide that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the releases set forth in this Section 10.22, or which may in any way limit the effect or scope of such releases with respect to the Released Claims, which such Releasing Party did not know or suspect to exist in such Releasing Party's favor at the time of providing such releases, which in each case if known by it may have materially affected its settlement with any Released Party, including any rights under Section 1542 of the California Civil Code or any analogous applicable state or federal law or regulation. Each of the Releasing Parties hereby expressly acknowledges that the releases and covenants not to sue contained in this Agreement are effective regardless of whether those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or foreseeable or unforeseen.

To the extent that the releases set forth above include releases to which Section 1542 of the California Civil Code or similar provisions of other applicable law applies, it is the intention of the parties hereto that the releases described in this Section 10.22 shall be effective as a bar to any and all Claims and Causes of Action of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, specified in this Agreement. In furtherance of this intention, each Lender (in its capacity as a maker of Term Loans) and each Company Releasing Party hereto expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law, which are as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Each Lender (in its capacity as a maker of Term Loans) party hereto (and its permitted successors and assigns), each Agent on behalf of itself and each Lender, and each Company Releasing Party acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. Thus, notwithstanding the provisions of Section 1542 of the California Civil Code, and for the purpose of implementing a full and complete release and discharge of the Released Parties, each Lender (in its capacity as a maker of Term Loans) party hereto (and its permitted successors and assigns), each Agent on behalf of itself and each Lender and each Company Releasing Party hereby expressly acknowledges that this Agreement is intended to include in its effect without limitation all of the Claims, Causes of Action and liabilities which the Releasing Parties, each Lender (in its capacity as a maker of Term Loans) party hereto (and its permitted successors and assigns) and each Agent on behalf of itself the Lenders, do not know or suspect to exist in their favor.
as of the Amendment No. 2 Effective Date, and this Agreement contemplates extinguishment of all such Claims, Causes of Action and liabilities.

(5) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, FROM AND AFTER THE AMENDMENT NO. 2 EFFECTIVE DATE, EACH AGENT AND EACH OF THE RELEASING PARTIES HEREBY AGREES AND COVENANTS NOT TO, AND SHALL NOT, AND SHALL NOT ASSIST OR OTHERWISE AID ANY OTHER ENTITY TO, (A) COMMENCE OR CONTINUE, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION, OR OTHER PROCEEDING; (B) ENFORCE, ATTACH, COLLECT, OR RECOVER IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (C) CREATE, PERFECT, OR ENFORCE ANY LIEN OR ENCUMBRANCE; (D) ASSERT A SETOFF, RIGHT OF SUBROGATION, OR RECoupMENT OF ANY KIND; (E) COMMENCE OR CONTINUE IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, OR (F) ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF ANY CLAIM OR CAUSE OF ACTION, IN EACH CASE, ON ACCOUNT OF OR WITH RESPECT TO ANY RELEASED CLAIM OR ANY CLAIM OR CAUSE OF ACTION THAT WILL BE A RELEASED CLAIM ON THE EFFECTIVE DATE. NOTHING IN THIS AGREEMENT SHALL OR BE DEEMED TO (OR IS INTENDED TO) LIMIT ANY OF THE STAKEHOLDER RELEASING PARTIES’ RIGHTS OR THE COMPANY RELEASING PARTIES’ RIGHTS, AS APPLICABLE, TO ASSERT OR PROSECUTE ANY AFFIRMATIVE DEFENSES OR OTHERWISE RAISE ANY DEFENSE OR TAKE ANY ACTION TO DEFEND ITSELF OR THEMSELVES, INCLUDING ANY DEFENSE AVAILABLE UNDER THE BANKRUPTCY CODE IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION (WHETHER DIRECT OR INDIRECT) BROUGHT BY ANY ENTITY RELATING TO ANY OF THE CLAIMS OR CAUSES OF ACTION ARISING FROM, IN WHOLE OR IN PART, (X) THE FORMULATION, PREPARATION, DISSEMINATION, NEGOTIATION, OR FILING OF THIS AGREEMENT, THE DEFINITIVE DOCUMENTS, OR ANY RECAPITALIZATION TRANSACTION, CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THIS AGREEMENT OR THE DEFINITIVE DOCUMENTS, AND (Y) THE PURSUIT OF CONSUMMATION, THE ADMINISTRATION AND IMPLEMENTATION OF THE RECAPITALIZATION TRANSACTIONS, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES IN CONNECTION THEREWITH.

(6) Subject to the occurrence of the Amendment No. 2 Effective Date, in the event that any Agent on behalf of itself and the Lenders, any Lender (in its capacity as a maker of Term Loans) party hereto (including any permitted successor or assignee thereof), the Borrowers, the Guarantors or any Releasing Party (including any successor or assignee thereof) receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against NMG or the MYT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), the Agents, the Borrowers, the Guarantors or such Releasing Party or Lender shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MYT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of NMG, NMG or the applicable MYT Entity. NMG or the applicable MYT Entity shall distribute any such recoveries turned over or assigned to it in accordance with the MYT Waterfall, to the extent applicable. Notwithstanding anything to the contrary in this Agreement (but subject to the immediately succeeding paragraph), NMG shall be entitled to enforce the provisions of this paragraph on behalf of itself or any MYT Entity. The Releasing Parties, Lenders (in its capacity as a maker
of Term Loans) party hereto (including any permitted successor and assignee thereof) and each Agent on behalf of itself and on behalf of the Lenders will be bound by this paragraph notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

Notwithstanding anything to the contrary in this Agreement, (i) the immediately preceding paragraph of this Section 10.22(6) shall only apply to (x) the Stakeholder Releasing Parties in their capacities as Lenders, or to the Agents in their capacities as such or (y) the Company Releasing Parties in their capacities as Borrowers or Guarantors and shall not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor-in-possession or any similar financing and (ii) to the extent a Releasing Party receives consideration on account of a Claim secured by assets or property of any Company Party or its Subsidiaries (other than, for the avoidance of doubt, the Specified Claims or any such assets or property contributed to or otherwise obtained by any Company Party or its Subsidiaries on account of the Specified Claims), such consideration will not be subject to the immediately preceding paragraph of this Section 10.22(6).

(7) Notwithstanding anything herein to the contrary, capitalized terms used in this Section 10.22 shall have the meanings assigned to such terms below or, if not defined below, as defined in Section 1.01:

“Bankruptcy Code” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Commitment Letter” means that certain Backstop Commitment Letter, dated as of March 25, 2019, by and among the Sponsors and that certain ad hoc committee of certain holders of the Senior Notes outstanding immediately prior to the Amendment No. 2 Effective Date represented by Paul, Weiss, Rifkind Wharton & Garrison, LLP and Houlihan Lokey Capital, Inc.

“Company Parties” means, collectively, Neiman Marcus Group, Inc., a Delaware corporation, and each of its Subsidiaries that has executed and delivered the TSA.

“Company Releasing Party” means each of the Company Parties and, to the maximum extent permitted by law, each of the Company Parties on behalf of its Related Parties.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions, including (i) the material documents governing the Second Lien Notes (including the Second Lien Notes Indenture), (ii) the material documents governing the Third Lien Notes (including the Third Lien Notes Indentures), (iii) the material documents governing the MYT Holdco Preferred Stock (including the applicable certificates of designation and material organizational documents related thereto), (iv) this Agreement, and (v) all other material customary documents delivered in connection with transactions of this type (including any and all material documents necessary to implement the Recapitalization Transactions).

“Entity” means any Person, individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Body or any agency or political subdivision of any Governmental Body, or any other entity, whether acting in an individual, fiduciary, or other capacity.

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“Equity Securities” means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).

“Governmental Body” means any U.S. or non-U.S. federal, state, municipal, or other government, or other department, commission, board, bureau, agency, public authority, or instrumentality thereof, or any other U.S. or non-U.S. court or arbitrator.

“Nancy Transaction” means, collectively, (a) the formation of Nancy Holdings LLC, a Delaware limited liability company (b) all designations prior to March 25, 2019, by any Company Party or any of its Related Parties of Nancy Holdings LLC as an “unrestricted” Subsidiary under the Senior Notes Indentures (as in effect immediately prior to the Amendment No. 2 Effective Date), the Existing Credit Agreement, or the ABL Credit Agreement (as in effect immediately prior to the Amendment No. 2 Effective Date), (c) all contributions, investments, conveyances, or transfers of any real properties or any interests associated with such real properties by any Company Party or any of its Related Parties in or to Nancy Holdings LLC prior to March 25, 2019, (d) all leases of real properties or any interests associated with such real properties between Nancy Holdings LLC as lessee, and any Company Party as lessee, entered into prior to March 25, 2019, and (e) all acts or omissions taken prior to March 25, 2019, by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing.

“Recapitalization Transactions” means the consensual recapitalization of certain of the Company Parties’ outstanding Indebtedness and Equity Interests consisting of the entry into this Agreement, the consummation of the offers to exchange the Senior Notes outstanding prior to the Amendment No. 2 Effective Date for Second Lien Notes or Third Lien Notes, the issuance of the Second Lien Notes and the Third Lien Notes and the issuance of the MYT Holdco Preferred Stock on terms and conditions consistent with the TSA.

“Related Parties” means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity. For the avoidance of doubt, the MYT Entities are Related Parties of the Sponsors; provided however that any Related Party of a Lender is subject to and bound by the terms of the mutual releases set forth under this Section 10.22 only to the extent that a Lender, acting in its capacity as a Lender, has the authority to bind such Related Party.

“Released Claim” means, with respect to any Releasing Party, any Claim, Cause of Action, or any other debt, obligation, right, suit, damage, judgment, action, remedy, or liability which is released by such Releasing Party described under this Section 10.22.
“Released Party” means, collectively, (a) each of the Company Parties, (b) each of the Lenders party hereto, (c) the Sponsors, (d) the Agents and (e) the Related Parties of each of the foregoing Persons in clauses (a), (b), (c) and (d) of this definition.

“Releasing Party” means collectively, to the maximum extent permitted by law, (a) the Stakeholder Releasing Parties and (b) the Company Releasing Parties.

“Stakeholder Releasing Party” means, to the maximum extent permitted by law, (i) each Lender (in its capacity as Lender) and the Sponsors and (ii) each of the Sponsors and each of the Lenders (in their capacities as Lenders) on behalf of their respective Related Parties.

SECTION 10.23. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

   (a) a reduction in full or in part or cancellation of any such liability;

   (b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

   (c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 10.24. Waivers & Amendments with respect to 2019 Extended Term Loans.

(1) Notwithstanding anything to the contrary contained herein or in any other Loan Document, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified to amend or modify the definition of the term “Required 2019 Extending Term Lenders” or any other provision hereof requiring consent of the “Required 2019 Extending Term Lenders”, without the prior written consent of each Lender holding 2019 Extended Term Loans.

(2) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.18, and such Incremental Facility Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.
ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (this “Assignment and Acceptance”) is dated as of the Effective Date set forth below and is entered into by and between [the][each](1) Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each](2) Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees](3) hereunder are several and not joint.]

(4) Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and the other Loan Documents to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law and subject to Section 10.22 of the Credit Agreement, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Loan Documents or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is

(1) For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

(2) For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

(3) Select as appropriate.

(4) Include bracketed language if there are either multiple Assignors or multiple Assignees.
without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by [the] [any] Assignor.

1. **Assignor[s]:**

2. **Assignee[s]:**

3. **Borrowers:** NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, and THE NMG SUBSIDIARY LLC, a Delaware limited liability company.

4. **Administrative Agent:** CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as the administrative agent under the Credit Agreement.

5. **Credit Agreement:** Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed or otherwise modified and in effect from time to time), by and among the Borrowers, MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and Collateral Agent.

6. **Assigned Interest[s]:**

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<th>Assignor<a href="5">s</a></th>
<th>Assignee<a href="6">s</a></th>
<th>Facility Assigned(7)</th>
<th>Aggregate Amount of Commitment / Loans for all Lenders(8)</th>
<th>Amount of Commitment / Loans Assigned(9)</th>
<th>Percentage Assigned of Commitment / Loans(10)</th>
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(5) List each Assignor, as appropriate.

(6) List each Assignee, as appropriate.

(7) Fill in appropriate terminology for each applicable type of facility under the Credit Agreement that is being assigned under this Assignment, i.e., “2019 Extended Term Loans,” “Additional 2019 Extended Term Loans,” “Non-Participating Term Loan Exchange Indebtedness”, “Extended Term Loans” or “Other Term Loans.”

(8) Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

(9) Subject to minimum amount requirements pursuant to Section 10.04(2) of the Credit Agreement.

(10) Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
[7. Trade Date: ______________________ ](11)

Effective Date: __________, 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: ____________________________
Name: __________________________
Title: __________________________

ASSIGNEE
[NAME OF ASSIGNEE]

By: ____________________________
Name: __________________________
Title: __________________________

(11) To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.
[Consented to and](12) Accepted:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent

By:
Name:
Title:

By:
Name:
Title:

[Consented to:](13)

NEIMAN MARCUS GROUP LTD LLC,
as Lead Borrower

By:
Name:
Title:

(12) To the extent required under Section 10.04(2) of the Credit Agreement.

(13) To the extent required under Section 10.04(2) of the Credit Agreement.
Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, and THE NMG SUBSIDIARY LLC, a Delaware limited liability company, as the Borrowers, the Lenders party thereto from time to time, and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and Collateral Agent.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ACCEPTANCE

Representations and Warranties.

Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Loan Parties or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Loan Parties or any other Person of any of their respective obligations under any Loan Document.

Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it is not a Disqualified Institution, (iii) it meets all the requirements to be a Lender under the Credit Agreement (subject to such consents, if any, as may be required under Section 10.04(2) of the Credit Agreement), (iv) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (v) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (vi) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.04 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, (vii) it has, independently and without reliance upon the Administrative Agent, Collateral Agent, or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision.
to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, and (viii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, [the][any] Assignor 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 decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued up to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy or electronically shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be construed in accordance with and governed by the laws of the State of New York.
This Solvency Certificate is being delivered to you pursuant to (i) the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Term Loan Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent and (ii) the Revolving Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “ABL Credit Agreement” and, together with the Term Loan Credit Agreement, the “Credit Agreements”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Deutsche Bank AG New York Branch, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the applicable Credit Agreement.

As of the date hereof, after giving effect to the consummation of the [Transactions], on the date hereof:

(1) The fair value of the assets of the Borrowers and their respective Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;

(2) The present fair saleable value of the property of the Borrowers and their respective Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured;

(3) The Borrowers and their respective Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and

(4) The Borrowers and their respective Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Solvency Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.
IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate on the date first written above.

NEIMAN MARCUS GROUP LTD LLC,
as Lead Borrower

By: ____________________________________________
   Name: _______________________________________
   Title: _______________________________________

EXHIBIT C

SUBLEASE

THIS SUBLEASE (this “Sublease”) is made and entered into as of the day of , 2019, by and between [NMG NOTES PROPCO LLC](1) and [NMG TERM LOAN PROPCO LLC][2], a Delaware limited liability company (hereinafter called “Sublandlord”), and , a (hereinafter called “Subtenant”);

W I T N E S S E T H:

WHEREAS, Sublandlord is a wholly-owned subsidiary of Subtenant;

WHEREAS, Subtenant was party as tenant to that certain [lease, sublease or sub-sublease], dated [   ] with , a as landlord (“Landlord”), as more particularly described on Exhibit A annexed hereto and made a part hereof (hereinafter called the “Prime Lease”);

WHEREAS, Subtenant, as the prior tenant under the Prime Lease, leased the demised premises located at (the “Leased Premises”);

WHEREAS, Subtenant, as assignor, and Sublandlord, as assignee, entered into an Assignment and Assumption of Lease (the “Assignment”) pursuant to which Subtenant assigned to Sublandlord all of Subtenant’s right, title and interest in and to the leasehold interest in the Prime Lease; and

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant, the Leased Premises, of which Subtenant is currently in possession and on which Subtenant is currently operating a [Neiman Marcus] [Bergdorf Goodman] store (hereinafter, the “Store”), all upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. **Demise; Use.** Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord the Leased Premises for the term and rental and upon the other terms and conditions hereinafter set forth, to be used solely for the purposes permitted under the Prime Lease, including operating the Store in accordance with all operating covenants and requirements (including with respect to trade name) of the Prime Lease.

2. **Term.** The term (the “Term”) of this Sublease shall commence on , 2019 (the “Commencement Date”) and, unless sooner terminated pursuant to the provisions hereof, shall terminate on the earlier of the one-year anniversary of the Commencement Date (such date, and each applicable subsequent anniversary following an

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(1) Use for PropCo Assets
(2) Use for New Term Loan Assets
extension pursuant to the proviso to this sentence, the “Scheduled Expiry Date”) and the prior termination of the term of the Prime Lease for any reason whatsoever; provided, the Term shall automatically be extended by an additional year after the Scheduled Expiry Date (subject to prior termination of the Prime Lease) if neither party has delivered to the other written notice of its intent to terminate this Sublease at least ten (10) business days prior to the Scheduled Expiry Date.

3. **Base Rent.**

   (a) Subtenant shall pay to Landlord directly on behalf of Sublandlord annual fixed rental (hereinafter called “Base Rent”) for the
       Leased Premises equal to the [Base Rent] (as defined in the Prime Lease) payable by Sublandlord to Landlord under the Prime Lease. Base Rent
       shall be due and payable pursuant to the terms and provisions of the Prime Lease.

   (b) All Base Rent and Additional Rent (as defined below) shall be paid directly to Landlord at the address designated under the Prime
       Lease or by notice from Landlord or at such other place as Sublandlord may designate by notice to Subtenant.

4. **Additional Rent; Payments; Interest.**

   (a) In addition to Base Rent, Subtenant shall also pay to Sublandlord all other charges, costs, expenses, fees and other amounts,
       including real property taxes and assessments, sewer rents, utilities, common area charges, and percentage or contingent rent, including late
       payments, interest, and costs and fees of collection, including attorney fees (collectively “Additional Rent”) payable by Sublandlord under the Prime
       Lease. Without limiting the foregoing, Subtenant shall maintain and provide to Landlord all reports and accountings with respect to rent, issues and
       profits and percentage rent of Subtenant with respect to the Leased Premises required under the Prime Lease.

   (b) Each amount due pursuant to Subsection 4(a) above and each other amount payable by Subtenant hereunder, unless a date for
       payment of such amount is provided for elsewhere in this Sublease, shall be due and payable no later than the date on which any such amount is due
       and payable under the Prime Lease.

   (c) All amounts other than Base Rent payable to, or on behalf of, Sublandlord under this Sublease shall be deemed to be additional
       rent due under this Sublease. All past due installments of Base Rent and additional rent shall bear interest from the date that is the earlier of the date
       provided in the Prime Lease for the applicable payment or five (5) business days following receipt of written notice thereof from Sublandlord until
       paid at the rate per annum equal to the greater of the rate provided in the Prime Lease or three percent (3%) in excess of the Prime Rate (as
       hereinafter defined) (the “Default Rate”) in effect from time to time, which rate shall change from time to time as of the effective date of each change
       in the Prime Rate, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be
       charged. For the purposes of this Sublease, the term “Prime Rate” shall mean the base rate on corporate loans at large U.S. money centers or
       commercial banks as published from time to time by the Wall Street Journal.
As and to the extent provided in the Prime Lease or as Landlord and Subtenant may otherwise agree, Subtenant shall pay Landlord on the due dates as provided in the Prime Lease or as otherwise agreed by the parties, for all services requested by Subtenant which are billed by Landlord directly to Subtenant rather than Sublandlord, all of which shall constitute Additional Rent.

5. **Condition of Leased Premises.** Subtenant, as the present occupant and operator of the Leased Premises, acknowledges and agrees that it takes the Leased Premises “as is”, “where is” and “with all faults”, and that Sublandlord does not make any warranties, representations or promises with respect to the Leased Premises or the Prime Lease of any kind whatsoever, express or implied, including without limitation with respect to state of title, physical condition or environmental condition, or fitness for any particular use. Subtenant’s taking possession of the Leased Premises pursuant to this Sublease shall be conclusive evidence as against Subtenant that the Leased Premises were in good order and satisfactory condition when Subtenant took possession. No promise of Sublandlord to alter, remodel or improve the Leased Premises, except as may be expressly provided herein, and no representation respecting the condition of the Leased Premises have been made by Sublandlord to Subtenant. Upon the expiration of the term hereof, or upon any earlier termination of the term hereof or of Subtenant’s right to possession (including any rejection of this Sublease in bankruptcy), Subtenant shall surrender the Leased Premises in the condition required pursuant to the Prime Lease (including environmental matters).

6. **The Prime Lease.**

(a) This Sublease and all rights, privileges and interests of Subtenant hereunder and with respect to the Leased Premises are subject to all of the terms, conditions, covenants, warranties, representations and provisions of the Prime Lease. Notwithstanding any provision to the contrary in the Assignment, as between Sublandlord and Subtenant, Subtenant hereby assumes and agrees to perform faithfully and be bound by, with respect to the Leased Premises, all of Sublandlord’s obligations, warranties, representations, covenants, agreements, provisions and liabilities under the Prime Lease and all terms, conditions, provisions and restrictions contained in the Prime Lease. Without limitation of the foregoing:

(i) Subtenant shall not make any changes, alterations or additions in or to the Leased Premises except as otherwise expressly provided in the Prime Lease or herein;

(ii) If Subtenant desires to take any other action and the Prime Lease would require that Sublandlord obtain the consent of Landlord before undertaking any action of the same kind, Subtenant shall not undertake the same without the prior written consent of Landlord and Sublandlord. Sublandlord may condition its consent on the consent of Landlord being obtained and may require Subtenant to contact Landlord directly for such consent. All such consents shall be at the sole cost and expense of Subtenant;

(iii) Sublandlord shall have the right during all normal business hours upon reasonable prior notice to Subtenant to enter upon and inspect the Leased
Premises. Without limiting the foregoing, all rights given to Landlord and its agents and representatives by the Prime Lease to enter and/or inspect the Leased Premises shall inure to the benefit of Sublandlord and their respective agents and representatives with respect to the Leased Premises;

(iv) Sublandlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Landlord under the Prime Lease;

(v) Subtenant shall maintain insurance of the kinds and in the amounts required to be maintained by Sublandlord under the Prime Lease; and

(vi) Subtenant shall not do anything or suffer or permit anything to be done which could result in a default or breach under the Prime Lease or permit the Prime Lease, with the passage of time or the service of notice or both, to be cancelled or terminated (or which could limit or prohibit Sublandlord from exercising any option or right of renewal, first negotiation, first refusal or right of expansion under the Prime Lease).

(b) In addition to the other covenants and obligations under this Sublease and the Prime Lease as incorporated herein, and without limitation of the foregoing, Sublandlord agrees as follows, subject in each case to the due and punctual performance and observance of all covenants and obligations of Subtenant hereunder:

(i) Sublandlord shall not do anything which could reasonably be expected to result in a default under the Prime Lease; provided, however, that Sublandlord shall not be in default of this covenant to the extent the default under the Prime Lease is caused or attributable (in whole or in part) by Subtenant, its shareholders, partners, members, directors, officers, employees, agents, customers or invitees.

(ii) Sublandlord shall not amend, modify or terminate the Prime Lease, without the prior written consent of Subtenant, which may be withheld in its sole discretion to the extent the same could increase Subtenant’s liabilities or obligations under this Sublease.

(iii) If any action to be taken by Subtenant or any other matter would require the consent or approval of Sublandlord under this Sublease, but not Landlord under the Prime Lease, Sublandlord’s consent or approval shall not be unreasonably withheld, conditioned or delayed. If any action to be taken by Subtenant or any other matter would require the consent or approval of Landlord under the Prime Lease, (i) Sublandlord shall be deemed to have consented to or approved such request if Landlord consents to or approves the same, and (ii) Sublandlord shall be deemed not to have consented to or approved such request if Landlord does not consent to or approve the same.

(iv) Sublandlord shall not assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Sublease or any interest in this
Sublease, whether voluntarily, by operation of law or otherwise (including a merger or transfer of voting control in Sublandlord), in each case without the prior written consent of Subtenant, which may be withheld in its sole discretion.

(c) Notwithstanding anything contained herein or in the Prime Lease which may appear to be to the contrary, Sublandlord and Subtenant hereby agree as follows:

(i) Subtenant shall not assign, mortgage, pledge, hypothecate, or otherwise transfer or permit the transfer of this Sublease or any interest of Subtenant in this Sublease, directly or indirectly, by operation of law or otherwise, or permit the use of the Leased Premises or any part thereof by any persons other than Subtenant and Subtenant’s employees, or sublet the Leased Premises or any part thereof;

(ii) in the event of any condemnation or casualty damage or destruction of the Leased Premises, Sublandlord shall have no obligation to restore the Leased Premises, all such obligations (if any) of Sublandlord as the tenant under the Prime Lease (if any) to be performed by Subtenant; provided that neither rental nor additional rent or other payments hereunder shall abate or be suspended by reason of any condemnation, damage to or destruction of the Leased Premises or any part thereof, unless, and then only to the extent that, rental and additional rent and such other payments actually abate under the Prime Lease with respect to the Leased Premises on account of such event;

(iii) Subtenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Leased Premises;

(iv) Subtenant shall not have any right to exercise or have Sublandlord exercise any option under the Prime Lease, including, without limitation, any option or right of first refusal, first negotiation or first offer to extend the term of the Prime Lease or lease additional space; and

(v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of the Prime Lease shall, in all instances, govern and control.

(d) It is expressly understood and agreed that Sublandlord does not assume and shall not have any of the obligations or liabilities of Landlord under the Prime Lease and that Sublandlord is not making the representations or warranties, inducements, rent or other concessions or abatements, allowances, tenant improvements or landlord’s work, if any, made by Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Landlord under the Prime Lease, Sublandlord’s sole obligation with respect thereto shall be to request the same, upon written request from Subtenant, and to use reasonable efforts to obtain the same from Landlord. Sublandlord shall not be liable in any respect, in damages or otherwise, nor
shall rent abate hereunder, for or on account of any failure by Landlord to perform the obligations and duties imposed on it under the Prime Lease.

(e) Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Landlord, unless Subtenant attorns to Landlord by written instrument.

(f) Nothing contained in this Sublease shall be construed to release the Sublandlord of any of its obligations or liabilities owed to Landlord under the Prime Lease.

7. Default by Subtenant.

(a) Upon the happening of any of the following:

(i) Subtenant fails to pay any Base Rent or Additional Rent within five (5) days after the date it is due;

(ii) Subtenant fails to pay any other amount due from Subtenant hereunder and such failure continues for five (5) business days after notice thereof from Sublandlord to Subtenant;

(iii) Subtenant fails to perform or observe any other covenant, obligation or agreement set forth in this Sublease and such failure continues until the earlier of (1) ten (10) business days after notice thereof from Sublandlord to Subtenant or (2) any earlier date specified for default under the Prime Lease, any Superior Interest or any Ancillary Document, as the case may be; or

(iv) any other event occurs which involves Subtenant or the Leased Premises or any part thereof and which would constitute a default under the Prime Lease if it involved Sublandlord (or any agent, representative, officer, director, manager or shareholder of Subtenant) or the Leased Premises, subject to any notice and cure periods thereunder;

Subtenant shall be deemed to be in default hereunder, and Sublandlord may exercise, without any further demand or notice, and without limitation of any other rights and remedies available to it hereunder at law or in equity, all of which rights are hereby expressly reserved, any and all of the equivalent rights and remedies of Landlord set forth in the Prime Lease with respect to the Leased Premises in the event of a default by Sublandlord hereunder (including without limitation the right to terminate this Sublease and recover possession of the Leased Premises free of all rights and interests of Subtenant).

(b) In the event Subtenant fails or refuses to make any payment or perform any covenant, obligation or agreement to be performed hereunder by Subtenant, Sublandlord may make such payment or undertake to perform such covenant, obligation or agreement (but shall not have any obligation to Subtenant to do so). In such event, all amounts so paid and all amounts expended in undertaking such performance, together with all costs, expenses and reasonable attorneys’ fees incurred by Sublandlord or Landlord in connection therewith, together with interest at the Default Rate, shall be additional rent hereunder.
8. **Nonwaiver.** Failure of Sublandlord to declare any default or delay in taking any action, or partial exercise of any rights or remedies, in connection therewith shall not waive such default. No receipt of moneys or performance of obligations by Sublandlord from Subtenant after the termination in any way of the term or of Subtenant’s right of possession hereunder or after the giving of any notice of termination or eviction shall reinstate, continue or extend the term or Subtenant’s right of occupancy or possession or affect any notice given to Subtenant or any suit commenced or judgment entered prior to receipt of such moneys or performance of obligations.

9. **Cumulative Rights and Remedies.** All rights and remedies of Sublandlord under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

10. **Waiver of Claims and Indemnity.**

   (a) Subtenant hereby releases and waives any and all claims against Landlord and Sublandlord and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Leased Premises by Subtenant other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under applicable law.

   (b) Subtenant agrees to indemnify, defend and hold harmless Landlord and its beneficiaries, Sublandlord and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, liabilities, costs and expenses of every kind and nature, including reasonable attorneys’ fees and litigation expenses, arising out of or with respect to or from Subtenant’s use, possession or occupancy (or rights thereto) of the Leased Premises (including such use, possession or occupancy by Subtenant prior to the commencement of the Term in its capacity as prior tenant under the Prime Lease), or any events or occurrences on, under, or about the Leased Premises, Subtenant’s construction or authorization of any work or leasehold improvements in the Leased Premises or from any breach or default on the part of Subtenant in the performance of any agreement, covenant, obligation, warranty or representation of Subtenant to be performed or performed under this Sublease or pursuant to the terms of this Sublease, or from any act or neglect of Subtenant or its agents, officers, employees, guests, servants, invitees or customers in or about the Leased Premises, other than by reason of gross negligence or willful misconduct on the part of any of the foregoing indemnitees. In case any action or proceeding is brought against any of said indemnitees, Subtenant covenants, if requested by Sublandlord, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Sublandlord (and, if provided in the Prime Lease, by Landlord).

   (c) Subtenant acknowledges that prior to the assignment to, and assumption by, Sublandlord of the Prime Lease, Subtenant was the tenant under the Prime Lease, and agrees that all of Subtenant’s liabilities and obligations under this Sublease, including, without limitation, Subtenant’s indemnification obligations under Section 10(b), shall apply to the extent such liabilities or obligations arise from any matter first arising or accruing during Subtenant’s tenancy and occupancy of the Leased Premises under the
Prime Lease (the “Subtenant Occupancy Period”). Sublandlord acknowledges and agrees that such obligations of Subtenant shall not apply to any matter first arising or accruing during the period of time (i) prior to the Subtenant Occupancy Period, or (ii) after the expiration or earlier termination of the Term of this Sublease, except to the extent such liabilities or obligations expressly survive such expiration or termination.

11. **Waiver of Subrogation.** Anything in this Sublease to the contrary notwithstanding, Sublandlord and Subtenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Subtenant hereby waives any and all rights of recovery, claims, actions or causes of action against Landlord and its agents and employees for any loss or damage that may occur to the Leased Premises, or any improvements thereto, or any personal property of any person therein, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies.

12. **Successors and Assigns.** This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublandlord and shall be binding upon and inure to the benefit of the successors of Subtenant and, to the extent any such assignment may be approved, Subtenant’s assigns. The provisions of Subsection 6(e) and Sections 10 and 11 hereof shall inure to the benefit of the successors and assigns of Landlord.

13. **Entire Agreement.** This Sublease contains all the terms, covenants, conditions and agreements between Sublandlord and Subtenant relating in any manner to the rental, use and occupancy of the Leased Premises. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublandlord and Subtenant.

14. **Notices.**

(a) In the event any notice from the Landlord or otherwise relating to the Prime Lease is delivered to the Leased Premises or is otherwise received by Subtenant, Subtenant shall, as soon thereafter as possible deliver such notice to Sublandlord if such notice is written or advise Sublandlord thereof by telephone if such notice is oral.

(b) Notices and demands required or permitted to be given by either party to the other with respect hereto or to the Leased Premises shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided, however, that all notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:

if to Sublandlord:  [ ]
Notices and demands shall be deemed to have been given two (2) days after mailing, if mailed, or, if made by personal delivery or by overnight air courier service, then upon such delivery. Either party may change its address for receipt of notices by giving notice to the other party.

15. **Electronic Transmission; Counterparts.** Sublandlord and Subtenant may deliver executed signature page(s) to this Sublease by electronic transmission to the other party, which electronic copy shall be deemed to be an original executed signature page. This Sublease may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

16. **Superior Interests; Ancillary Documents.** Except as expressly provided herein to the contrary, Subtenant acknowledges and agrees that this Sublease is expressly subject and subordinate to, and Subtenant shall observe and perform, Sublandlord’s obligations with respect to, (a) all superior fee, leasehold and mortgage or security interests affecting the Leased Premises (collectively, “Superior Interests”) existing as of the date hereof until such time as such Superior Interests are terminated or released, (b) all future Superior Interests to the extent expressly provided in Superior Interests existing as of the date hereof until such time such future Superior Interests are terminated or released, and (c) all ancillary agreements and documents (including, without limitation, reciprocal easement and/or operating agreements affecting the Lease Premises as of the date hereof (including any of the same identified on Exhibit A, collectively, the “Ancillary Documents”)), as all such Superior Interests and Ancillary Documents may hereinafter be amended or supplemented from time to time.
IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

SUBLANDLORD:

[NMG NOTES PROPCO LLC] / [NMG TERM LOAN PROPCO LLC]

By: By:

Its: Its:
To: Credit Suisse AG, Cayman Islands Branch,
as Administrative Agent
for the Lenders referred to below

[·], 20[·](1)

Ladies and Gentlemen:

Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Credit Agreement.

This notice constitutes a notice of conversion or notice of continuation, as applicable, under Section 2.04 of the Credit Agreement, and the Borrowers hereby irrevocably notify the Administrative Agent of the following information with respect to the conversion or continuation requested hereby:

a. The Borrowing to which this Interest Election Request applies(2) is [·];

b. The effective date of the election (which shall be a Business Day) made pursuant to this Interest Election Request is [·], 20[·];

c. The resulting Borrowing is to be [an ABR Borrowing][a Eurocurrency Borrowing]; and

(1) Administrative Agent must be notified as indicated in Section 2.04 of the Credit Agreement in the case of an election to convert to or continue a Eurocurrency Borrowing election, not later than 2:00 p.m. New York City time, three Business Days before the effective date of such election or, in the case of an election to convert or continue an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of such election.

(2) If different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information specified pursuant to (d) below shall be specified for each resulting Borrowing).
(3) Include this clause (d) if the resulting Borrowing is a Eurocurrency Borrowing. In the case of a Eurocurrency Borrowing that does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month’s duration.
NEIMAN MARCUS GROUP LTD LLC,
as Lead Borrower

By: 

Name: 
Title: 
[FORM OF]

NON-DEBT FUND AFFILIATE ASSIGNMENT AND ACCEPTANCE

This Non-Debt Fund Affiliate Assignment and Acceptance (this “Assignment and Acceptance”) is dated as of the Effective Date set forth below and is entered into by and between (1) Assignor identified in item 1 below (“Assignor”) and (2) Assignee identified in item 2 below (“Assignee”). It is understood and agreed that the rights and obligations of the Assignors and the Assignees hereunder are several and not joint. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, Assignor hereby irrevocably sells and assigns to Assignee, and Assignee hereby irrevocably purchases and assumes from Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and the other Loan Documents to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable Law and subject to Section 10.22 of the Credit Agreement, all claims, suits, causes of action and any other right of Assignor against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Loan Documents or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by Assignor to Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as “Assigned Interest”). Each such sale and

(1) For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

(2) For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

(3) Select as appropriate.

(4) Include bracketed language if there are either multiple Assignors or multiple Assignees.
assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: ________________________________

2. Assignee[s]: ________________________________

   [and is an Affiliate/Approved Fund of [identify Lender][5]]

3. Borrowers: NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, and THE NMG SUBSIDIARY LLC, a Delaware limited liability company

4. Administrative Agent: CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as the administrative agent under the Credit Agreement

5. Credit Agreement: Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among the Borrowers, MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and Collateral Agent.

6. Assigned Interest[s]:

<table>
<thead>
<tr>
<th>Assignor<a href="6">s</a></th>
<th>Assignee<a href="7">s</a></th>
<th>Facility Assigned(8)</th>
<th>Aggregate Amount of Commitment / Loans for all Lenders(9)</th>
<th>Amount of Commitment / Loans Assigned(10)</th>
<th>Percentage Assigned of Commitment / Loans(11)</th>
<th>CUSIP Number</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
<td>%</td>
<td></td>
</tr>
</tbody>
</table>

(5) Select as applicable.

(6) List each Assignor, as appropriate.

(7) List each Assignee, as appropriate.

(8) Fill in appropriate terminology for each applicable type of facility under the Credit Agreement that is being assigned under this Assignment, i.e., “2019 Extended Term Loans,” “Additional 2019 Extended Term Loans, “Non-Participating Term Loan Exchange Indebtedness”, “Extended Term Loans” or “Other Term Loans.”

(9) Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

(10) Subject to minimum amount requirements pursuant to Section 10.04(2) of the Credit Agreement.

(11) Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: __________________________
Name: _________________________
Title: __________________________

ASSIGNEE
[NAME OF ASSIGNEE]

By: __________________________
Name: _________________________
Title: __________________________

(12) To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.
(13) To the extent required under Section 10.04(2) of the Credit Agreement.

(14) To the extent required under Section 10.04(2) of the Credit Agreement.
ANNEX 1 TO ASSIGNMENT AND ACCEPTANCE

Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIFOZA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, as the Borrowers, the Lenders party thereto from time to time, and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and Collateral Agent.

STANDARD TERMS AND CONDITIONS FOR
NON-DEBT FUND AFFILIATE ASSIGNMENT AND ACCEPTANCE

Representations and Warranties.

Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Loan Parties or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Loan Parties or any other Person of any of their respective obligations under any Loan Document.

Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it is a Non-Debt Fund Affiliate pursuant to Section 10.04(10) of the Credit Agreement, (iii) it meets all the requirements to be a Lender under the Credit Agreement (subject to such consents, if any, as may be required under Section 10.04(2) of the Credit Agreement), (iv) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (v) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (vi) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.04 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, (vii) it has, independently and without reliance upon the Administrative Agent, Collateral Agent, or any other Lender and based on such documents and information as it has deemed appropriate, made its own
credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, and (viii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the] [such] Assignor 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 decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

**Non-Debt Fund Affiliate.**

(a) As of the Effective Date, the Assignee [affirms the No MNPI Representation][that it is unable to affirm the No MNPI Representation and affirms that it is a sophisticated investor and is willing to proceed with the assignment set forth in this Assignment and Acceptance](15).

(b) The Assignee consents to the provisions of Section 10.04 of the Credit Agreement that apply to a Non-Debt Fund Affiliate in its capacity as a Lender with respect to the Assigned Interest.

Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued up to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy or electronically shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance is executed as of the Effective Date.

(15) Select applicable bracketed text.

(16) To be included only if required pursuant to Section 10.04(10)(d) of the Credit Agreement.

(17) Select applicable bracketed text.

(18) Clause (a) applies to Non-Debt Fund Affiliates that are Assignees. Clause (b) applies to Non-Debt Fund Affiliates that are Assignors.
Acceptance shall be construed in accordance with and governed by the laws of the State of New York.
EXHIBIT F

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Credit Agreement.

Pursuant to the provisions of Section 2.14(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Term Loan(s) (as well as any Note(s) evidencing such Term Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Lead Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Lead Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Lead Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Lead Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: 
Name: 
Title: 
Date: , 20[ ]
Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Credit Agreement.

Pursuant to the provisions of Section 2.14(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Lead Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: 

Name: 

Title: 

Date: , 20
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Credit Agreement.

Pursuant to the provisions of Section 2.14(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Lead Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: ________________________________

Name: ________________________________
Title: ________________________________
Date: __________, 20[ ]
EXHIBIT F-4

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Credit Agreement.

Pursuant to the provisions of Section 2.14(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Term Loan(s) (as well as any Note(s) evidencing such Term Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Term Loan(s) (as well as any Note(s) evidencing such Term Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Lead Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Lead Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Lead Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Lead Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.
[NAME OF LENDER]

By: [Name]
    [Title]

Date: [Date], 20[ ]
COMMITMENTS

On file with the Administrative Agent.
None.
POSSESSION UNDER LEASES

None.
<table>
<thead>
<tr>
<th>Holder</th>
<th>Issuer</th>
<th>Type of Organization</th>
<th>Jurisdiction of Organization / Formation</th>
<th>% of Interest Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mariposa Intermediate Holdings LLC</td>
<td>Neiman Marcus Group LTD LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>100%</td>
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<td>Corporation</td>
<td>Delaware</td>
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<td>100%</td>
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<tr>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
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<td>Delaware</td>
<td>100%</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
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<td></td>
<td>10%</td>
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<td>100%</td>
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<td>Corporation</td>
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<td>100%</td>
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<tr>
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<td>BG Productions, Inc.</td>
<td>Corporation</td>
<td>Delaware</td>
<td>100%</td>
</tr>
<tr>
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<td>NM Bermuda, LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>100%</td>
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<tr>
<td>Holder</td>
<td>Issuer</td>
<td>Type of Organization</td>
<td>Jurisdiction of Organization / Formation</td>
<td>% of Interest Owned</td>
</tr>
<tr>
<td>--------</td>
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<td>----------------------</td>
<td>----------------------------------------</td>
<td>---------------------</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NEMA Beverage Parent Corporation</td>
<td>Corporation</td>
<td>Texas</td>
<td>100%</td>
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<td>Bergdorf Goodman Inc.</td>
<td>Corporation</td>
<td>New York</td>
<td>100%</td>
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<td>Corporation</td>
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<td>100%</td>
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<tr>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>Neiman Marcus Bermuda, L.P.</td>
<td>Limited Partnership</td>
<td>Bermuda</td>
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<tr>
<td>NEMA Beverage Parent Corporation</td>
<td>NEMA Beverage Holding Corporation</td>
<td>Corporation</td>
<td>Texas</td>
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<tr>
<td>NEMA Beverage Parent Corporation</td>
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<td>Texas</td>
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<tr>
<td>Bergdorf Goodman Inc.</td>
<td>Bergdorf Graphics, Inc.</td>
<td>Corporation</td>
<td>New York</td>
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<tr>
<td>The Neiman Marcus Group LLC</td>
<td>NMG Salon Holdings LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
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<td>The Neiman Marcus Group LLC</td>
<td>The NMG Subsidiary LLC</td>
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<td>Holder</td>
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<td>Jurisdiction of Organization / Formation</td>
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<td>Fashionphile Group, LLC</td>
<td>Limited Liability Company</td>
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<td>170,000 Units (13.655% as of 5/17/19)</td>
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<td>NMG Term Loan PropCo LLC</td>
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<td>The Neiman Marcus Group LLC</td>
<td>NMG Notes PropCo LLC</td>
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TAXES

None.
ENVIRONMENTAL MATTERS

None.
# MATERIAL REAL PROPERTY OWNED IN FEE

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<td>The Neiman Marcus Group LLC</td>
<td>Beverly Hills, CA(1)</td>
<td>9700 Wilshire Boulevard Beverly Hills, California 90212</td>
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<td>(&quot;TNMG LLC&quot;)</td>
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<tr>
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<td>150 Stockton Street San Francisco, California 94108</td>
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<td>310 Speen Street Natick, Massachusetts 01760</td>
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<td>(Downtown)</td>
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<td>1618 Main Street Dallas, Texas 75201</td>
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<tr>
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(1) This location is partially leased and owned.
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<td>TNMG LLC (as successor in interest to Nancy Holdings LLC)</td>
<td>San Antonio, TX</td>
<td>15900 La Cantera Parkway Building 14 San Antonio, Texas 78256</td>
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<td>TNMG LLC (as successor in interest to Nancy Holdings LLC)</td>
<td>Longview, TX</td>
<td>2301 Neiman Marcus Parkway Longview, Texas 75602</td>
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<tr>
<td>TNMG LLC (as successor in interest to Nancy Holdings LLC)</td>
<td>Tysons Galleria, VA</td>
<td>2255 International Drive McLean, Virginia 22102</td>
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## 2019 Term Loan Priority Real Estate Assets

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<td>Washington, D.C.</td>
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<td>Tampa, FL</td>
<td>2223 North West Shore Boulevard, Tampa, Florida 33607</td>
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<td>Dallas, TX</td>
<td>1622 Main Street, Dallas, Texas 75201</td>
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<td>(Downtown)</td>
<td>1612 - 1616 Main Street, Dallas, Texas 75201</td>
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<td>1607 Commerce Street, Dallas, Texas 75201</td>
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<td>1603 - 1605 Commerce Street, Dallas, Texas 75201</td>
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<tr>
<td></td>
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<td>1600 Commerce Street, Dallas, Texas 75201</td>
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<td>TNMG LLC</td>
<td>Dallas, TX</td>
<td>400 NorthPark Center (a/k/a 8687 North Central Expressway), Dallas, Texas 75225</td>
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<td></td>
<td>(NorthPark)</td>
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<td>TNMG LLC</td>
<td>Houston, TX</td>
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<td>Bal Harbour, FL</td>
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<td>TNMG LLC</td>
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<td>Fashion Island, CA (Newport Beach)</td>
<td>601 Newport Center Drive&lt;br&gt;Newport Beach, California 92660</td>
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<td>(Westchester) White Plains, NY</td>
<td>2 East Maple Avenue&lt;br&gt;White Plains, New York 10601</td>
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<td>Chicago, IL</td>
<td>737 North Michigan Avenue&lt;br&gt;Chicago, Illinois 60611</td>
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<td>400 Stanford Shopping Center&lt;br&gt;Palo Alto, California 94304</td>
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<td>Short Hills, NJ</td>
<td>1200 Morris Turnpike&lt;br&gt;Short Hills, New Jersey 07078</td>
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<td>Denver, CO</td>
<td>3030 East First Avenue&lt;br&gt;Denver, Colorado 80206</td>
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<td>Scottsdale, AZ</td>
<td>6900 East Camelback Road&lt;br&gt;Scottsdale, Arizona 85251</td>
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<td>King of Prussia, PA</td>
<td>170 North Gulph Road&lt;br&gt;King of Prussia, Pennsylvania 19406</td>
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<td>Ala Moana, HI</td>
<td>1450 Ala Moana Boulevard&lt;br&gt;Honolulu, Hawaii 96814</td>
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<td>Palm Beach, FL</td>
<td>151 Worth Avenue&lt;br&gt;Palm Beach, Florida 33480</td>
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<tr>
<td>Company</td>
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<tr>
<td>TNMG LLC</td>
<td>Paramus, NJ</td>
<td>503 Garden State Plaza Paramus, New Jersey 07652</td>
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<td>TNMG LLC</td>
<td>Boca Raton, FL</td>
<td>5860 Glades Road Boca Raton, Florida 33431</td>
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<tr>
<td>TNMG LLC</td>
<td>New York, New York (Bergdorf Goodman Men’s)</td>
<td>745 Fifth Avenue New York, New York 10151</td>
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<td>TNMG LLC</td>
<td>Fort Worth, TX</td>
<td>5200 Monahans Avenue Fort Worth, Texas 76109</td>
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<td>TNMG LLC</td>
<td>Bellevue, WA</td>
<td>11111 Northeast 8th Street Bellevue, Washington 98004</td>
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<td>TNMG LLC</td>
<td>Garden City, NY</td>
<td>620 Old Country Road Garden City, New York 11530</td>
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<td>TNMG LLC</td>
<td>Dallas, TX</td>
<td>4121 Pinnacle Point Drive Dallas, Texas 75211</td>
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<td>TNMG LLC</td>
<td>Atlanta, GA</td>
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<td>St. Louis, MO</td>
<td>100 Plaza Frontenac Street St. Louis, Missouri 63131</td>
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<td>5000 Northbrook Court Northbrook, Illinois 60062</td>
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<td>NM Nevada Trust</td>
<td>Las Vegas, NV</td>
<td>3200 Las Vegas Boulevard South Las Vegas, Nevada 89109</td>
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<td>TNMG LLC</td>
<td>San Diego, CA</td>
<td>7027 Friars Road San Diego, California 92108</td>
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<td>Oakbrook, IL</td>
<td>6 Oakbrook Center Oak Brook, Illinois 60523</td>
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<td>TNMG LLC</td>
<td>New York, NY</td>
<td>754 Fifth Avenue New York, New York 10019</td>
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<td>TNMG LLC</td>
<td>New York (Hudson Yards), NY</td>
<td>20 Hudson Yards New York, New York 10001</td>
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<td>TNMG LLC</td>
<td>Pittston, PA</td>
<td>450 Centerpoint Blvd. Pittston, Pennsylvania 18640</td>
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<td>Notes Priority Real Estate Assets</td>
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<td>TNMG LLC</td>
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<td>2442 East Sunrise Boulevard Fort Lauderdale, Florida 33304</td>
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<td>Troy, MI</td>
<td>2705 W. Big Beaver Road Troy, Michigan 48084</td>
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<td>TNMG LLC</td>
<td>Charlotte, NC</td>
<td>4400 Sharon Road Charlotte, North Carolina 28211</td>
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INSURANCE

On file with the Administrative Agent.
None.
1. Each Borrower and each Subsidiary Loan Party shall, pursuant to Section 5.10(4), enter into and deliver the Control Agreements with respect to the Controlled Accounts within 90 days after the Amendment No. 2 Effective Date (or such later date as mutually agreed by the Lead Borrower and the Required 2019 Extending Term Lenders (or the Collateral Agent acting at the direction of the Required 2019 Extending Term Lenders)).

2. Within 90 days of the Amendment No. 2 Effective Date (or such later date as mutually agreed by the Lead Borrower and the Required 2019 Extending Term Lenders (or the Administrative Agent acting at the direction of the Required 2019 Extending Term Lenders), cause Nancy Holdings LLC to (i) merge or consolidate with TNMG LLC and (ii) terminate any intercompany lease agreements or licenses between Nancy Holdings LLC and TNMG LLC; provided that the certificate of merger filed with the Secretary of State of the State of Delaware evidencing such merger or consolidation shall be deemed to satisfy this subclause (ii) ((i) and (ii) collectively, the “Nancy Merger”).

3. Within 90 days of the Amendment No. 2 Effective Date (or such later date as mutually agreed by the Lead Borrower and the Required 2019 Extending Term Lenders (or the Administrative Agent acting at the direction of the Required 2019 Extending Term Lenders), the Lead Borrower or its applicable Subsidiaries shall (i) cause the 2019 Term Loan Priority Real Estate Assets and the Notes Priority Real Estate Assets to be subjected to a customary mortgage or deed of trust securing the Obligations (in each case, having the Required Collateral Lien Priority), (ii) to the extent that any 2019 Term Loan Priority Real Estate Assets or any Notes Priority Real Estate Assets is a 2019 Extended Term Loan PropCo Asset or a Notes PropCo Asset, respectively, contribute, assign, or transfer (a) such 2019 Extended Term Loan PropCo Asset to 2019 Extended Term Loan PropCo and (b) such Note PropCo Asset to Notes PropCo, (iii) amend the mortgages granted under the Existing Credit Agreement and existing immediately prior to the Amendment No. 2 Effective Date on Real Property owned in fee simple by TNMG LLC, as necessary to secure the Obligations with the Required Collateral Lien Priority and (iv) cause each Real Property owned by Nancy Holdings LLC in fee simple immediately prior to the consummation of the Nancy Merger and owned in fee simple by TNMG LLC immediately following the consummation of the Nancy Merger to be subjected to a customary mortgage or deed of trust securing the Obligations, in each case having the Required Collateral Lien Priority and, in connection with each of the foregoing clauses (i) through (iv), to and take all actions referred to under Section 5.10(2)(d) (provided that the Required 2019 Extending Term Lenders (or the Administrative Agent acting at the direction of the Required 2019 Extending Term Lenders) shall use reasonable discretion with respect to requesting any such actions under clause (d)), (e) (provided that, for purposes of the foregoing clauses (i) through (iv), whether such action under clause (e) is necessary shall be mutually agreed with the Loan Parties), (f), (g), and (h), as applicable and to the extent such actions have not been taken prior to the Amendment No. 2 Effective Date.

4. Within 10 Business Days of the Amendment No. 2 Effective Date (or such later date as mutually agreed by the Lead Borrower and the Required 2019 Extending Term Lenders (or the Administrative Agent acting at the direction of the Required 2019 Extending Term Lenders), deliver to the Collateral Agent new certificates representing the Equity Interests (which shall reflect the current owner of such Equity Interests), together with stock powers or other instruments of transfer with respect thereto endorsed in blank, of the following Subsidiaries: (a) Mariposa Borrower, Inc., (b) NM Financial Services, Inc., (c) NM Nevada Trust, (d) Worth Avenue Leasing Company, (e) BG Productions, Inc., (f) NEMA Beverage Parent Corporation, (g) Bergdorf Goodman Inc., (h) NMG Global Mobility, Inc., and (i) Bergdorf Graphics, Inc.

5. Within 10 Business Days of the Amendment No. 2 Effective Date (or such later date as determined by the Collateral Agent), the Collateral Agent shall file (and each Grantor (as defined in the Collateral Agreement) hereby authorizes the Collateral Agent to file) with the United States

POST-CLOSING MATTERS
Copyright Office (or any successor office) a copyright security agreement for the purpose of perfecting, continuing, enforcing or protecting the Security Interest (as defined in the Collateral Agreement) granted by each Grantor (as defined in the Collateral Agreement) in the Intellectual Property (as defined in the Collateral Agreement) listed as items #89-95 on Exhibit B to the Perfection Certificate.
INVESTMENTS

1. The Neiman Marcus Group LLC owns 170,000 Units of Fashionphile Group, LLC, a Delaware limited liability company (13.655% as of 5/17/19)
TRANSACTIONS WITH AFFILIATES

1. NM Nevada Trust is a Massachusetts business trust established on December 30, 1996. The trustee is NM Financial Services, Inc. NM Nevada Trust is owned by the Company (90%) and Bergdorf Goodman Inc. (10%) and was established for the purpose of holding the consolidated group’s intangible assets, such as the trademarks and trade names. Inter-company agreements and notes are in place establishing the royalty charges and related interest to The Neiman Marcus Group LLC and Bergdorf Goodman Inc.

2. NMGP, LLC is a Virginia limited liability company established on April 21, 2003. It is a wholly owned subsidiary of the Company, and was established for the purpose of holding and managing the gift card liabilities of the Company and Bergdorf Goodman Inc. Inter-company agreements are in place for the services provided between NMGP, LLC and the Company.
NOTICE INFORMATION

If to any Loan Party:
One Marcus Square 1618 Main Street
Dallas, Texas 75201 Attention: General Counsel Facsimile No: (214) 743-7611
Website: www.neimanmarcusgroup.com

If to the Administrative Agent or Collateral Agent:
Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue New York, NY 10010 Attention: Agency Manager
Telephone No.: (919) 994-6369
Facsimile No.: (212) 322-2291
Email: agency.loanops@credit-suisse.com
AMENDED AND RESTATED TERM LOAN GUARANTEE AND COLLATERAL AGREEMENT,
dated as of June 7, 2019,
among

MARIPOSA INTERMEDIATE HOLDINGS LLC,
as Holdings,

NEIMAN MARCUS GROUP LTD LLC,
as the Lead Borrower,
each other Grantor and/or Guarantor party hereto,

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent and Collateral Agent

Reference is made to the ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “ABL/Term Loan/Notes Intercreditor Agreement”), among Deutsche Bank AG New York Branch as ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Term Loan Agent (as defined therein), Ankura Trust Company, LLC as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings, the Borrowers and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement, the provisions of the ABL/Term Loan/Notes Intercreditor Agreement shall control.

Reference is made to the Junior Lien Intercreditor Agreement dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Junior Lien Intercreditor Agreement”), among Credit Suisse AG, Cayman Islands Branch, as Initial First Lien Representative (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Initial First Lien Collateral Agent (as defined therein), Ankura Trust Company, LLC as Initial Second Lien Representative (as defined therein), Ankura Trust Company, LLC, as Initial Second Lien Collateral Agent (as defined therein), Wilmington Trust, National Association, as 8.000% Notes Representative (as defined therein), Wilmington Trust, National Association, as 8.750% Notes Representative (as defined therein) and Wilmington Trust, National Association, as Initial Third Lien Collateral Agent (as defined therein) and acknowledged by Holdings, the Borrowers and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder and the exercise of any right or remedy by the Collateral Agent,
Agent and the other secured parties hereunder are subject to the provisions of the Junior Lien Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Junior Lien Intercreditor Agreement and this Agreement, the provisions of the Junior Lien Intercreditor Agreement shall control.

Reference is made to that certain Subordination Agreement, dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Extended Term Loan PropCo Subordination Agreement”), by and among 2019 Extended Term Loan PropCo, Credit Suisse AG, Cayman Islands Branch for itself and on behalf of the First Priority Holders (as defined therein), Ankura Trust Company, LLC, for itself and on behalf of the Second Priority Holders (as defined therein), Wilmington Trust, National Association, for itself and on behalf of each series of Third Priority Holders (as defined therein), Wilmington Savings Fund Society, FSB for itself and on behalf of the 2028 Notes Holders (as defined therein), Deutsche Bank AG New York Branch, for itself and on behalf of the ABL Holders (as defined therein), and each other Representative (as defined therein) party thereto from time to time.

Notwithstanding anything herein to the contrary, the applicable guarantees hereunder and the exercise of any right or remedy by the Administrative Agent and the other parties hereunder are subject to the provisions of the Extended Term Loan PropCo Subordination Agreement. In the event of any conflict or inconsistency between the provisions of the Extended Term Loan PropCo Subordination Agreement and this Agreement, the provisions of the Extended Term Loan PropCo Subordination Agreement shall control.

Reference is made to that certain Subordination Agreement, dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Notes PropCo Subordination Agreement” and together with the Extended Term Loan PropCo Subordination Agreement, the “PropCo Subordination Agreements”), if applicable, by and among Notes PropCo, Credit Suisse AG, Cayman Islands Branch for itself and on behalf of the First Priority Holders (as defined therein), Ankura Trust Company, LLC, for itself and on behalf of the Second Priority Holders (as defined therein), Wilmington Trust, National Association, for itself and on behalf of each series of Third Priority Holders (as defined therein), Wilmington Savings Fund Society, FSB for itself and on behalf of the 2028 Notes Holders (as defined therein), Deutsche Bank AG New York Branch, for itself and on behalf of the ABL Holders (as defined therein), and each other Representative (as defined therein) party thereto from time to time. Notwithstanding anything herein to the contrary, the applicable guarantees hereunder and the exercise of any right or remedy by the Administrative Agent and the other parties hereunder are subject to the provisions of the Notes PropCo Subordination Agreement, if applicable. In the event of any conflict or inconsistency between the provisions of the Notes PropCo Subordination Agreement and this Agreement, the provisions of the Notes PropCo Subordination Agreement, if applicable, shall control.
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<td>Section 1.02. Other Defined Terms</td>
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<td>Section 3.05. Voting Rights; Dividends and Interest, Etc</td>
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AMENDED AND RESTATED TERM LOAN GUARANTEE AND COLLATERAL AGREEMENT dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Agreement"), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “Grantor” and, collectively, the “Grantors”), each party identified as a “Guarantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Guarantor as provided herein, each a “Guarantor” and, collectively, the “Guarantors”) and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “Administrative Agent”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “Collateral Agent”).

RECITALS

(1) Reference is made to (a) that certain TERM LOAN CREDIT AGREEMENT, dated as of October 25, 2013 (as amended, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, the Lenders party thereto from time to time and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and as Collateral Agent and (b) that certain Indenture dated as of May 27, 1998 (as amended, amended and restated, supplemented or otherwise modified from time to time, including pursuant to that certain Supplemental Indenture dated as of the date hereof, the “Existing Notes Indenture”), between THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “Existing Notes Issuer”), and WILMINGTON SAVINGS FUND SOCIETY, FSB, as successor trustee (in such capacity, the “Existing Notes Trustee”), pursuant to which the Existing Notes Issuer’s 7.125% Debentures due 2028 in an initial aggregate principal amount of $125,000,000 (the “Existing 2028 Debentures”) were issued.

(2) Pursuant to that certain Extension Amendment and Amendment No. 2 to Credit Agreement, dated as of the date hereof (the “2019 Extension Amendment”), by and among Holdings, the Borrowers, the Subsidiary Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the Lenders party thereto (such Lenders, the “2019 Extending Term Lenders”), the Administrative Agent and the Required Lenders have agreed, inter alia, to amend and restate the Existing Credit Agreement in its entirety (as amended by the 2019 Extension Amendment and hereafter amended or otherwise modified from time to time, the “Credit Agreement”) as of the date hereof.

(3) In consideration of the extensions of credit and other accommodations of the Lenders as set forth in the 2019 Extension Amendment and Credit Agreement, each Guarantor has agreed to guarantee the obligations of the Borrowers under the Credit Agreement and each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents, in each case as set forth herein.
In consideration of the extensions of credit and other accommodations of the holders of the Existing Notes as set forth in the Existing Notes Indenture, each PropCo Guarantor has agreed to guarantee the obligations of the Existing Notes Issuer under the Existing Notes Indenture and each Grantor has agreed to secure such Grantor’s obligations under the Existing Notes Indenture, in each case as set forth herein.

AGREEMENT

Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Credit Agreement.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings assigned to them in the Credit Agreement, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, As-Extracted Collateral, Authenticate, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Deposit Account, Documents, Electronic Chattel Paper, Entitlement Order, Equipment, Farm Products, Financial Asset, Fixtures, Goods, Health-Care-Insurance Receivable, Instruments, Inventory, Letter of Credit Rights, Manufactured Homes, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply, mutatis mutandis, to this Agreement.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“2013 Term Loan Designated Collateral” means all Collateral that is owned by an Original Guarantor or by a Borrower, in each case other than 2013 Term Loan Excluded Assets.

“2013 Term Loan Excluded Assets” means all of the following, whether now owned or hereafter acquired:

(1) Excluded Assets;
(2) all assets owned by any entity other than an Original Guarantor or a Borrower;
(3) all fee and leasehold Real Property interests (other than Real Property interests securing the
2013 Term Loan Obligations immediately prior to the Amendment No. 2 Effective Date), and including, for the avoidance of doubt the 2019 Term Loan Priority Real Estate Assets and the Notes Priority Real Estate Assets;

any Equity Interests in the PropCo Guarantors; and

voting Equity Interests of any Foreign Subsidiary or any FSHCO, in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary or FSHCO.

“2013 Term Loan Secured Parties” means (a) the 2013 Term Loan Lenders, (b) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, solely to the extent related to the 2013 Term Loans, and (c) the successors and permitted assigns of each of the foregoing.

“2019 Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Lead Borrower formed solely to hold Real Property interests consisting of 2019 Extended Term Loan PropCo Assets (as defined in the Credit Agreement).

“ABL Collateral Agent” means Deutsche Bank AG New York Branch, as “Collateral Agent” under the ABL Credit Agreement, and any duly appointed successor in such capacity.

“Administrative Agent” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Agreement” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Article 9 Collateral” has the meaning assigned to such term in Section 4.01(1).

“Capital One Agreements” means the Second Amended and Restated Credit Card Program Agreement, dated as of July 15, 2013, among The Neiman Marcus Group LLC, a Delaware limited liability company, Bergdorf Goodman Inc., a New York Corporation, and Capital One, and all material agreements and instruments entered into in connection therewith, in each case, as amended prior to the date hereof and as may be further amended from time to time in accordance with the terms of the ABL Credit Agreement.

“Capital One Arrangements” means the private label credit card program among The Neiman Marcus Group LLC, a Delaware limited liability company, Bergdorf Goodman Inc., a New York Corporation, and Capital One pursuant to the terms of the Capital One Agreements.

“Capital One Credit Card Receivables Accounts” means any Deposit Accounts containing proceeds of Specified Credit Card Payments or Specified In-Store Credit Card Payments.

“Collateral” means the collective reference to Article 9 Collateral and Pledged Collateral. Notwithstanding the foregoing, and further to the penultimate paragraph of Section
3.01 and the last paragraph of section 4.01(1), for purposes of Section 5.02 the term “Collateral” means the 2013 Term Loan Designated Collateral.

“Collateral Agent” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Consignment Inventory” means any Inventory held by a Grantor on a consignment basis, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Borrowers and their respective Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the Lead Borrower identifies such proceeds as such through a method of tracing reasonably satisfactory to the Collateral Agent.

“Control” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts, in form and substance reasonably satisfactory to the Collateral Agent.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“Copyrights” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

(1) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

(2) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;

(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Credit Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“DDA” means any checking or other demand deposit account maintained by the Grantors.

“Discharge of ABL Claims” has the meaning assigned to such term in the ABL/Term Loan/Notes Intercreditor Agreement.

“Equal and Ratable Provision” means the provision requiring the Existing 2028 Debentures to be secured by “equal and ratable” liens on certain properties, pursuant to and in accordance with the terms of Section 10.16 of the Existing Notes Indenture.

“Event of Default” means a Term Loan Event of Default or an Existing Notes Event of Default.

“Excluded Accounts” means any DDA, Securities Account, Commodity Account or any other Deposit Account of any Grantor (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of $500,000, or in the aggregate with each other account described in this clause (1), in excess of $5.0 million; (2) the balance of which is swept at the end of each Business Day into a Deposit Account, Securities Account or Commodity Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account, Securities Account or Commodity Account is swept into another Deposit Account, Securities Account or Commodity Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account (as defined in the ABL Credit Agreement) or Designated Disbursement Account (as defined in the ABL Credit Agreement); or (4) to the extent that it is cash collateral for letters of credit to the extent permitted under Section 6.02 of the Credit Agreement; provided, in no event shall any Controlled Account be an Excluded Account.

“Excluded Assets” means all of the following, whether now owned or hereafter acquired:

1. all Excluded Equity Interests;
2. all leasehold Real Property interests that do not constitute any Grantor’s interests in (a) full line stores, (b) Bergdorf Goodman store Real Properties or (c) warehouse or distributions centers;
3. all fee simple Real Property interests acquired after the Amendment No. 2 Effective Date with a fair market value (as determined by a Responsible Officer of the Lead Borrower (reasonably and in good faith) and the Collateral Agent of less than or equal to $2.5 million on a per property basis;
4. assets of any Foreign Subsidiary that is existing as of the Amendment No. 2 Effective Date to the extent such Foreign Subsidiary is not required to become a Subsidiary Loan Party pursuant to Section 5.10 of the Credit Agreement;

5. assets of any Foreign Subsidiary or FSHCO, in each case, that is created or acquired after the Amendment No. 2 Effective Date (“Exempted Future Foreign Assets”) to the extent the grant of Liens thereon securing Secured Obligations would result in materially adverse tax consequences or materially adverse regulatory consequences (in each case, “Material Adverse Consequences”), in each case, as reasonably determined by a Responsible Officer of the Lead Borrower (reasonably and in good faith) and the Collateral Agent (it being understood for purposes of the foregoing that any asset may be deemed an Exempted Future Foreign Asset due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Amendment No. 2 Effective Date, including, for the avoidance of doubt, a change to Section 956 of the Code and the Treasury Regulations promulgated thereunder (including the final Treasury Regulations under Section 956 of the Code, published on May 23, 2019);

6. any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;

7. any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;

8. any Excluded Account;

9. vehicles and any other assets subject to certificates of title;

10. any Letter of Credit Rights to the extent not perfected as Supporting Obligations by the filing of a UCC financing statement on the primary Collateral;

11. any Grantor’s right, title or interest in any lease, license, contract or agreement to which such Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than Holdings, any Borrower or any Subsidiary), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity);

12. assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained), after giving effect to the relevant anti-assignment provisions of the Uniform Commercial Code;
any Commercial Tort Claim with an asserted or nominal value not in excess of $5.0 million;

any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as determined by a Responsible Officer of the Lead Borrower reasonably and in good faith and the Administrative Agent;

(a) any assets and proceeds thereof subject to a Lien permitted under Section 6.02(3) of the Credit Agreement to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent or (b) any assets subject to a Lien permitted by Section 6.02(6) of the Credit Agreement so long as the documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent;

the Specified Credit Card Receivables, any Specified Credit Card Payments and any Specified In-Store Credit Card Payments;

the Capital One Credit Card Receivables Accounts;

any Consignment Inventory and any Consignment Proceeds; or

any Leased-Department Inventory and any Leased-Department Proceeds.

In the event any asset described above (a) is an asset described in clauses (1) through (7) or clauses (9) through (14) above and is pledged for the benefit of creditors under any Indebtedness (other than the Secured Obligations) or (b) is an asset described in clause (8) or clauses (16) through (19) above and is pledged for the benefit of any Indebtedness listed in the Required Collateral Lien Priority table set forth in the Credit Agreement (other than the Secured Obligations), in each case of clause (a) and (b), such asset shall cease to be an Excluded Asset; provided, however, in the case of clause (a), any such asset pledged for the benefit of a third-party creditor under any Indebtedness (other than Indebtedness listed in the Required Collateral Lien Priority table set forth in the Credit Agreement) may be pledged on a first-priority basis to such third-party creditor, followed by subordinated Liens in favor of the Secured Obligations otherwise in accordance with the Required Collateral Lien Priority, but reducing the priority of each Lien described in such Required Collateral Lien Priority table set forth in the Credit Agreement by one level of Lien priority and giving effect to the first-priority Liens of such third-party creditor on such subject asset).

A Responsible Officer of the Lead Borrower shall evaluate whether the Material Adverse Consequences still apply to any Exempted Future Foreign Assets pursuant to clause (5) above on no less than a quarterly basis. An Exempted Future Foreign Asset shall no longer be an Excluded Asset under clause (5) above upon the earlier to occur of (A) the tenth Business Day after a Responsible Officer determines that the Material Adverse Consequences no longer apply to such Exempted Future Foreign Asset and (B) the date a Lien on such Exempted Future Foreign Asset is granted to secure any other obligations of any Loan Party.
“Excluded Equity Interests” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

1. interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such Person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of the Credit Agreement);

2. Equity Interests in not-for-profit subsidiaries;

3. to the extent applicable law requires that a Subsidiary of such Grantor issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by Persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by Persons other than Grantors;

4. any Equity Interests (including, without limitation, Equity Interests in captive insurance subsidiaries) if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); provided that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or

5. any Equity Interests of Foreign Subsidiaries or FSHCOs (“Excluded Foreign Equity Interests”) in each case to the extent the grant of Liens thereon securing the Obligations (as defined in the Junior Lien Intercreditor Agreement) would result in Material Adverse Consequences, in each case, as reasonably determined by a Responsible Officer of the Lead Borrower (reasonably and in good faith) and the Collateral Agent (it being understood and agreed for purposes of the foregoing that (x) any Equity Interests may be deemed to be Excluded Foreign Equity Interests due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Amendment No. 2 Effective Date, including, for the avoidance of doubt, a change to the final Treasury Regulations under Section 956 of the Code, published on May 22, 2019 and (y) in the event any Equity Interest of a Foreign Subsidiary or FSHCO would become an Excluded Foreign Equity Interest pursuant to clause (x) such Equity Interest of any Foreign Subsidiary or FSHCO will only be an Excluded Foreign Equity Interest with respect to voting Equity Interests of such Foreign Subsidiary or FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary or FSHCO).

A Responsible Officer of the Lead Borrower shall re-evaluate whether the Material Adverse Consequences still apply to any Excluded Foreign Equity Interests pursuant to clause (5) above on no less than a quarterly basis. An Excluded Foreign Equity Interest shall no longer be an Excluded Foreign Equity Interest under clause (5) above upon the earlier to occur of (A) the tenth Business Day after a Responsible Officer determines that the Material Adverse Consequences no longer apply to such Excluded Foreign Equity
“Excluded Swap Obligation” means, with respect to any Guarantor, (a) as it relates to all or a portion of the guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (b) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Existing 2028 Debentures” has the meaning assigned to such term in the recitals to this Agreement.

“Existing Credit Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Existing Notes Designated Collateral” means the “2028 Notes Collateral”, as defined in the Junior Lien Intercreditor Agreement.

“Existing Notes Event of Default” means any “Event of Default”, as defined in the Existing Notes Indenture.

“Existing Notes Indenture” has the meaning assigned to such term in the recitals to this Agreement.

“Existing Notes Issuer” has the meaning assigned to such term in the recitals to this Agreement.

“Existing Notes Obligations” means (a) the due and punctual payment by the Existing Notes Issuer 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) when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, on the Existing 2028 Debentures and (ii) all other monetary obligations of the Existing Notes Issuer or any other Grantor to any of the Existing Notes Secured Parties under the Existing Notes Indenture and each of the Security Documents related thereto, including fees, costs, expenses and indemnities, 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 the Existing Notes Issuer or any other Grantor to any of the Existing Notes Secured Parties under or pursuant to the Existing Notes Indenture and each of the Security Documents related thereto and (c) the due and punctual payment and performance of all the obligations of each other Grantor to any of the Existing Notes Secured Parties under this Agreement and each of the Security Documents related thereto.

“Existing Notes Secured Parties” means (a) the holders of the Existing 2028 Debentures, (b) each beneficiary of any indemnification obligation undertaken by the Existing Notes Issuer or any other Grantor under the Existing Notes Indenture and (c) the successors and assigns of each of the foregoing.

“Existing Notes Side Letter” means that certain side letter between the Existing Notes Indenture, Neiman Marcus Group, Inc., on behalf of itself and the other “Company Parties” as defined therein, and Davidson Kempner Capital Management LP dated April 10, 2019.

“Existing Notes Trustee” has the meaning assigned to such term in the recitals to this Agreement.

“Extended Term Loan Guarantors” means each Guarantor other than the Original Guarantors, whether or not a Guarantor as of the date hereof and whether or not presently existing.

“Extended Term Loan Obligations” means the Term Loan Obligations other than the 2013 Term Loan Obligations.

“Extended Term Loan Secured Parties” means (a) the 2019 Extending Term Lenders, (b) the Agents, (c) any Lender holding Non-Participating Term Loan Exchange Indebtedness that is secured, (d) each other Lender under the Credit Agreement other than the 2013 Term Loan Lenders, (e) the Cash Management Banks, (f) the Qualified Counterparties, (g) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, solely to the extent related to the parties of clauses (a) through (f) of this definition and (h) the successors and permitted assigns of each of the foregoing.

“Federal Securities Laws” has the meaning assigned to such term in Section 5.05.

“FSHCO” means any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of the equity or indebtedness of one or more direct or indirect Foreign Subsidiaries.

“Grantor” and “Grantors” have the meanings assigned to such terms in the introductory paragraph to this Agreement. For the avoidance of doubt, “Grantors” shall not include any PropCo Guarantor.

“Guarantor” has the meaning assigned to such term in the introductory paragraph to this Agreement.
“**Intellectual Property**” means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

“**Intellectual Property Collateral**” has the meaning assigned to such term in Section 4.02(8).

“**Intellectual Property Security Agreement**” means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.

“**Intercreditor Agreement**” means each of the ABL/Term Loan/Notes Intercreditor Agreement, the Junior Lien Intercreditor Agreement, the Extended Term Loan PropCo Subordination Agreement and the Notes PropCo Subordination Agreement, if applicable. Notwithstanding the foregoing, for purposes of Section 5.02 the term “Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement.

“**IP Agreements**” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including the agreements set forth on Schedule II hereto.

“**Leased-Department Inventory**” means any Inventory relating to a leased department within one of the Grantors’ retail stores, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of Borrowers and their Subsidiaries prepared in accordance with GAAP).

“**Leased-Department Proceeds**” means any proceeds from the sale of any Leased-Department Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Leased-Department Inventory and that the Lead Borrower identifies such proceeds as such through a method of tracing reasonably satisfactory to the Collateral Agent.

“**Original Guarantee and Collateral Agreement**” has the meaning assigned to such term in Section 7.17.

“**Original Guarantors**” means all Guarantors that were party to the Original Guarantee and Collateral Agreement immediately prior to the Amendment No. 2 Effective Date, including those identified as such on Schedule V hereto.

“**Patent License**” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.
“**Patents**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

1. all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;

2. all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

3. all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

4. all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“**Permitted Replacement Credit Card Program**” has the meaning assigned to such term in the ABL Credit Agreement.

“**Pledged Collateral**” has the meaning assigned to such term in Section 3.01(5).

“**Pledged Debt Securities**” has the meaning assigned to such term in Section 3.01.

“**Pledged Securities**” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“**Pledged Stock**” has the meaning assigned to such term in Section 3.01.

“**PropCo Guarantor**” means 2019 Extended Term Loan PropCo and, if applicable, Notes PropCo (as defined in the Credit Agreement).

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation and each other Loan Party that constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by guaranteeing or entering into a keepwell in respect of obligations of such other person under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“**Secured Obligations**” means the Term Loan Obligations and the Existing Notes Obligations.
“Secured Parties” means the Extended Term Loan Secured Parties, the Existing Notes Secured Parties and the 2013 Term Loan Secured Parties.

“Security Interest” has the meaning assigned to such term in Section 4.01(1).

“Specified Credit Card Receivables” means the Accounts, Documents and other rights or claims to receive money which are General Intangibles and that have been or from time to time are sold or otherwise transferred to (a) Capital One pursuant to the Capital One Arrangements or (b) any third party pursuant to any Permitted Replacement Credit Card Program.

“Specified Credit Card Payments” means any payments by the holder of a private label credit card subject to the Capital One Arrangements or any Permitted Replacement Credit Card Program to the issuer of such credit card that are (i) in the case of the Capital One Arrangements, made to a Capital One Credit Card Receivables Account or (ii) in the case of any Permitted Replacement Credit Card Program, made to any account of a Grantor prior to the transition of ownership of such account to the applicable third party in connection with the establishment of the applicable Permitted Replacement Credit Card Program.

“Specified In-Store Credit Card Payments” means any payments made in-person by customers in respect of private label credit cards subject to the Capital One Arrangements or any Permitted Replacement Credit Card Program in one of the Grantors’ retail stores, solely to the extent that such payments are identifiable payments from the holders of such private label credit cards and that the Lead Borrower identifies such payments as such through a method of tracing reasonably satisfactory to the Collateral Agent.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Term Loan Event of Default” means any “Event of Default”, as defined in the Credit Agreement.

“Term Loan Obligations” means the Obligations; provided that the Term Loan Obligations will not include any Excluded Swap Obligations.

“Trademark License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

“Trademarks” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

1. all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and
Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II:

(2) all goodwill associated therewith or symbolized thereby;

(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Trust Account” means any accounts or trusts used solely to hold Trust Funds.

“Trust Funds” means cash, cash equivalents or other assets comprised of:

(1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees;

(2) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer’s share thereof)); and

(3) any other funds which Holdings, the Borrowers or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another Person which is not a Restricted Subsidiary.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

ARTICLE II
GUARANTEE

Section 2.01. Guarantee.

(1) Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, to the Collateral Agent for the benefit of the Extended Term Loan Secured

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Parties as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Extended Term Loan Obligations. Each Guarantor further agrees that the Extended Term Loan Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Extended Term Loan Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Lead Borrower or any other Loan Party of any of the Extended Term Loan Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

(2) Each Original Guarantor unconditionally guarantees, jointly with the other Original Guarantors and severally, to the Collateral Agent for the benefit of the 2013 Term Loan Secured Parties as a primary obligor and not merely as a surety, the due and punctual payment and performance of the 2013 Term Loan Obligations. Each Guarantor further agrees that the 2013 Term Loan Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any 2013 Term Loan Obligation. Each Original Guarantor waives presentment to, demand of payment from and protest to the Lead Borrower or any other Loan Party of any of the 2013 Term Loan Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

(3) Notwithstanding anything to the contrary set forth herein,

(a) any guarantee by a Guarantor of the Existing Notes Obligations shall not be made under this Agreement and shall only be made pursuant to, and shall be subject to the terms and conditions set forth in, the Existing Notes Indenture; and

(b) solely with respect to the 2013 Term Loan Secured Parties and the 2013 Term Loan Obligations, (i) in no event will the 2013 Term Loan Obligations be guaranteed by any Guarantor other than each Original Guarantor and (ii) all references to a "Guarantor" when used in connection with the 2013 Term Loan Secured Parties or the 2013 Term Loan Obligations will be limited to each Original Guarantor.

For the avoidance of doubt, any reference in this Agreement to a Guarantor shall, (a) with respect to the Extended Term Loan Obligations or Extended Term Loan Secured Parties, refer to each Guarantor and the guarantee provided pursuant to clause (1) of this Section 2.01 and (b) with respect to the 2013 Term Loan Obligations, refer solely to each Original Guarantor and the guarantee provided pursuant to clause (2) of this Section 2.01 and in no event will the 2013 Term Loan Obligations be guaranteed by any Extended Term Loan Guarantor.

(4) Notwithstanding anything to the contrary herein or in any other Loan Document or the Existing Notes Indenture, the guarantee provided by the PropCo Guarantors shall not be secured.
Section 2.02. **Guarantee of Payment.** Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other applicable Secured Party to any security held for the payment of the applicable Term Loan Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other applicable Secured Party in favor of any Loan Party or any other Person.

Section 2.03. **No Limitations, Etc.**

(1) Except for termination of a Guarantor’s obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the applicable Term Loan Obligations or otherwise (other than defense of payment or performance). Without limiting the generality of the foregoing, except for termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:

(a) the failure of the Collateral Agent or any other applicable Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;

(c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other applicable Secured Party for the applicable Term Loan Obligations;

(d) any default, failure or delay, willful or otherwise, in the performance of the applicable Term Loan Obligations;

(e) any illegality, lack of validity or enforceability of any applicable Term Loan Obligations;

(f) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy or reorganization of any Loan Party;

(g) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Borrowers, the Collateral Agent, any other applicable Secured Party or any other Person, whether in connection herewith or with the other Loan
Documents or any unrelated transactions; provided that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(h) any action permitted or authorized hereunder; or

(i) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, any Borrower or any Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the applicable Term Loan Obligations).

(2) Each Guarantor expressly authorizes the applicable Secured Parties to take and hold security for the payment and performance of the applicable Term Loan Obligations to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the applicable Term Loan Obligations all without affecting the obligations of any Guarantor hereunder.

(3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof, each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the applicable Term Loan Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash or immediately available funds of all the applicable Term Loan Obligations (other than Term Loan Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted). The Collateral Agent and the other applicable Secured Parties may exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto all applicable Term Loan Obligations have been terminated and paid in full (other than Term Loan Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted). To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, as the case may be, or any security.

Section 2.04. **Reinstatement.** Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated if, at any time, payment, or any part thereof, of any applicable Term Loan Obligations is rescinded or must otherwise be restored by the Collateral Agent or any other applicable Secured Party upon the bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise.
Section 2.05. Agreement To Pay; Contribution; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other applicable Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any applicable Term Loan Obligations when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each applicable Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Term Loan Obligations. Upon payment by any Guarantor of any sums to the Collateral Agent as provided above, all rights of such Guarantor against any Borrower or other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article VI.

Section 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of each Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Term Loan Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that no Agent nor any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 2.07. Maximum Liability. Each Guarantor and, by its acceptance of this guarantee, each Agent and each other Secured Party hereby confirms that it is the intention of all such Persons that the guarantees provided herein and the obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S. Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any similar foreign, federal or state law to the extent applicable to the guarantees provided herein and the obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the obligations of the Guarantors under the guarantees provided herein are limited to the maximum amount that will not result in the obligations of such Guarantor under the guarantees provided herein constituting a fraudulent transfer or conveyance.

Section 2.08. Taxes. Any and all payments by or on account of any obligation of any Guarantor hereunder shall be made free and clear of and without deduction or withholding for Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by a Guarantor, then the applicable Guarantor shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if a Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.08) the Collateral Agent or any Term Loan Secured Party, as applicable, receives an amount equal to the sum it would have received had no such deductions been made. The provisions of Section 2.14 of the Credit Agreement shall apply to each Guarantor mutatis mutandis. Any amounts payable by any Guarantor pursuant to this Section 2.08 shall be made without duplication (including with any amount otherwise payable under Section 2.14 of the Credit Agreement). For the avoidance of doubt, any Guarantor shall not be required to pay any greater amount under this Section 2.08 than such Guarantor would have been required to pay had it been a Loan Party that was a party to the
Section 2.09. **Keepwell.** Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor that would otherwise not be an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder to honor all of its obligations under this Agreement in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 2.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.09 or otherwise under this Agreement voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.09 shall remain in full force and effect until the indefeasible payment in full in cash of all the Secured Obligations (other than obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted). Each Qualified ECP Guarantor intends that this Section 2.09 constitute, and this Section 2.09 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE III
PLEDGE OF SECURITIES

Section 3.01. **Pledge.** As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

1. the Equity Interests (a) directly owned by such Grantor as of the Amendment No. 2 Effective Date and (b) obtained by such Grantor after the Amendment No. 2 Effective Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Stock”);

2. the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Amendment No. 2 Effective Date and (b) issued to any such Grantor after the Amendment No. 2 Effective Date, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Debt Securities”);

3. subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);
subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and

all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.02, collectively, the “Pledged Collateral”).

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (a) none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset, (b) solely with respect to the Existing Notes Secured Parties and the Existing Notes Obligations, (i) in no event will the Existing Notes Secured Parties have any rights in or with respect to any Pledged Collateral, or proceeds from Pledged Collateral, that is not Existing Notes Designated Collateral, (ii) the Pledged Collateral will not include any asset that does not constitute Existing Notes Designated Collateral and (iii) all references to “Pledged Collateral” when used in connection with the Existing Notes Secured Parties or the Existing Notes Obligations will be limited to the Existing Notes Designated Collateral and, where applicable, the proceeds of Existing Notes Designated Collateral and (c) solely with respect to the 2013 Term Loan Secured Parties and the 2013 Term Loan Obligations, (i) in no event will the 2013 Term Loan Secured Parties have any rights in or with respect to any Pledged Collateral, or proceeds from Pledged Collateral, that is not 2013 Term Loan Designated Collateral, (ii) the Pledged Collateral will not include any asset that does not constitute 2013 Term Loan Designated Collateral and (iii) all references to “Pledged Collateral” when used in connection with the 2013 Term Loan Secured Parties or the 2013 Term Loan Obligations will be limited to the 2013 Term Loan Designated Collateral and, where applicable, the proceeds of the 2013 Term Loan Designated Collateral.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Credit Agreement.

Section 3.02. Delivery of the Pledged Collateral.

(1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.

(2) Each Grantor will use its commercially reasonable efforts to cause (x) any Indebtedness for borrowed money having an aggregate principal amount in excess of $5.0 million owed to such Grantor by any Person and (y) accrued intellectual property royalties and other amounts owing to NM Nevada Trust (regardless of whether classified as current), to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, pursuant to the terms hereof; provided that the foregoing requirement will not apply to intercompany current liabilities incurred in the ordinary course of business in connection with the cash
management operations of Holdings, the Borrowers and their Subsidiaries. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

(3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement will be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Collateral Agent may reasonably request. Each delivery of Pledged Securities will be accompanied by a schedule describing the securities, which schedule will be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided that failure to attach any such schedule hereto will not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered will supplement any prior schedules so delivered.

(4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

Section 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants and covenants to and with the Collateral Agent, for the benefit of the Secured Parties that:

(1) Schedule I correctly sets forth, as of the Amendment No. 2 Effective Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments evidencing Indebtedness required to be pledged pursuant to the terms of the Credit Agreement on the Amendment No. 2 Effective Date;

(2) the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy,
insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

(3) except for the security interests granted hereunder, each Grantor:

(a) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;

(b) holds the same free and clear of all Liens, other than Permitted Liens;

(c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Credit Agreement and other than Permitted Liens; and

(d) subject to the rights of such Grantor under the Loan Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all Persons;

(4) other than as set forth in the Credit Agreement or the schedules thereto, and except for restrictions and limitations imposed by the Loan Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Credit Agreement, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Amendment No. 2 Effective Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(6) other than as set forth in the Credit Agreement or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(7) as of the Amendment No. 2 Effective Date, this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof;
as of the Amendment No. 2 Effective Date, none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction; and

the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary of any Loan Party whose Equity Interests are, or are required to be, Collateral in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Loan Party shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby and as otherwise reasonably required by the Collateral Agent to maintain the security interest of the Collateral Agent therein as a valid, perfected security interest with the Required Collateral Lien Priority, and subject to the relative priorities set forth in the Intercreditor Agreements.

Section 3.04. **Registration in Nominee Name; Denominations.** The Collateral Agent, on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the applicable Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. Each Grantor will use its commercially reasonable efforts to cause any Loan Party that is not a party to this Agreement to comply with a request by the Collateral Agent, pursuant to this Section 3.04, to exchange certificates representing Pledged Securities of such Loan Party for certificates of smaller or larger denominations.

Section 3.05. **Voting Rights; Dividends and Interest, Etc.**

1. Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Lead Borrower of the Collateral Agent’s intention to exercise its rights hereunder:

   a. each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; provided that, except as permitted under the Credit Agreement, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other applicable Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the applicable Secured Parties to exercise the same;
(b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and

(c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws; provided that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the applicable Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).

(2) Upon the occurrence and during the continuance of an Event of Default and after at least one (1) Business Day’s prior written notice by the Administrative Agent to the Lead Borrower of the Administrative Agent’s intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the applicable Secured Parties, in the Collateral Agent, which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; provided, however, that even after the occurrence and during the continuance of an Event of Default, and such one at least (1) Business Day’s prior written notice, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclause (6)(a), subclause (6)(c) and subclause (6)(e) of Section 6.06 of the Credit Agreement.

(3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust
for the benefit of the Collateral Agent, for the benefit of the applicable Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (3), subject to the Intercreditor Agreements, will be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and will be applied in accordance with the provisions of Article V hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.

(4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given at least one (1) Business Day’s prior written notice to the Lead Borrower of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the benefit of the applicable Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to the Intercreditor Agreements); provided that unless otherwise directed by the Required Lenders, the Collateral Agent will have the right from time to time following and during the continuance of an Event of Default and such at least one (1) Business Day’s prior written notice to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

ARTICLE IV
SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

Section 4.01. Security Interest.

(1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, a security interest (the “Security Interest”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Article 9 Collateral”):

(a) all Accounts;
(b) all Chattel Paper;
(c) all cash and Deposit Accounts;
(d) all Documents;
(e) all Equipment;
(f) all General Intangibles;
(g) all Instruments;
(h) all Inventory;
(i) all Investment Property;
(j) all Letter of Credit Rights;
(k) all Intellectual Property;
(l) all Commercial Tort Claims, including those described on Schedule IV hereto;
(m) each of the following:
   (i) Securities Accounts;
   (ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;
   (iii) all cash held in any Securities Account or Deposit Account; and
   (iv) all other Money in the possession of the Collateral Agent;
(n) all books and Records pertaining to the Article 9 Collateral; and
(o) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (a) the Article 9 Collateral will not include, this Agreement will not constitute a grant of a security interest in and the security interest granted hereunder will not attach to, any Excluded Asset, (b) solely with respect to the Existing Notes Secured Parties and the Existing Notes Obligations, (i) in no event will the Existing Notes Secured Parties have any rights in or with respect to any Article 9 Collateral, or proceeds from Article 9 Collateral, that is not Existing Notes Designated Collateral, (ii) the Article 9 Collateral will not include any asset that does not constitute Existing Notes Designated Collateral and (iii) all references to “Article 9 Collateral” when used in connection with the Existing Notes Secured Parties or the Existing Notes Obligations will be limited to the Existing Notes Designated Collateral and, where applicable, the proceeds of Existing Notes.
Designated Collateral and (c) solely with respect to the 2013 Term Loan Secured Parties and the 2013 Term Loan Obligations, (i) in no event will the 2013 Term Loan Secured Parties have any rights in or with respect to any Article 9 Collateral, or proceeds from Article 9 Collateral, that is not 2013 Term Loan Designated Collateral, (ii) the Article 9 Collateral will not include any asset that does not constitute 2013 Term Loan Designated Collateral and (iii) all references to “Article 9 Collateral” when used in connection with the 2013 Term Loan Secured Parties or the 2013 Term Loan Obligations will be limited to the 2013 Term Loan Designated Collateral and, where applicable, the proceeds of the 2013 Term Loan Designated Collateral.

(2) Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:

(a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;

(b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and

(c) a description of collateral that describes such property in any other manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

(3) The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

(4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document (but subject to Section 5.10(5)(c) of the Credit Agreement), no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.

(5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.
Notwithstanding anything to the contrary in any Loan Document, no Grantor will be required:

(a) subject to clause (b) below, to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):

(i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;


(iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of $5.0 million; provided that such delivery shall not be required with respect to:

(A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;

(B) checks received in the ordinary course of business; and

(C) notes and debt securities issued in connection with the extension of trade credit by a Grantor in each case with a duration of not more than 364 days;

(iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral; and

(v) entering or causing to be entered into any Control Agreements or similar arrangements with respect to any Controlled Accounts; and

(b) except as set forth in Section 5.10(5)(c) of the Credit Agreement, to take any actions outside the United States to create or perfect any security interests in any Collateral (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction except as contemplated by Section 5.10(5)(c) of the Credit Agreement).

Section 4.02. Representations and Warranties. Each Grantor represents and warrants to the Collateral Agent and the applicable Secured Parties that:

(1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Credit Agreement.
The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Amendment No. 2 Effective Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the applicable Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.

Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Amendment No. 2 Effective Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Original Closing Date or the Amendment No. 2 Effective Date, as applicable, to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.

The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the applicable Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest has and shall have the Required Collateral Lien Priority on any of the Article 9 Collateral subject to Permitted Liens.

The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Amendment No. 2 Effective Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.
None of the Grantors holds any Commercial Tort Claim individually in excess of $5.0 million as of the Amendment No. 2 Effective Date except as indicated on Schedule IV.

The names of the obligors, amounts owing, due dates and other information with respect to each Grantor’s Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Agent by such Grantor from time to time.

As to itself and its Article 9 Collateral consisting of Intellectual Property (the “Intellectual Property Collateral”), to each Grantor’s knowledge, as of the Amendment No. 2 Effective Date:

(a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, registered Trademarks and registered Copyrights owned by such Grantor as of the date hereof (including all such registered with the United States Patent and Trademark Office or United States Copyright Office);

(b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;

(c) Such Grantor has made or performed in the ordinary course of Grantor’s business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(d) With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any
Section 4.03.  Covenants.

(1)  Each Grantor agrees to comply with Section 5.10(3) of the Credit Agreement.

(2)  Subject to the rights of such Grantor under the Loan Documents to dispose of Collateral and except as would otherwise be permitted by the Credit Agreement, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent, for the benefit of the applicable Secured Parties, in the Article 9 Collateral and the Required Collateral Lien Priority thereof against any Lien that is not a Permitted Lien.

(3)  Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.

(4)  If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of $5.0 million is or becomes evidenced by any promissory note or other instrument, such note or instrument, subject to the Intercreditor Agreements, will be promptly pledged and delivered to the Collateral Agent, for the benefit of the applicable Secured Parties, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

(5)  After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any applicable Secured Party.

(6)  None of the Grantors will, without the Collateral Agent’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements.
At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

Each Grantor (rather than the Collateral Agent or any applicable Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.

Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor’s true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, after the occurrence and during the continuation of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys’ fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 4.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, for the benefit of the applicable Secured Parties, the Collateral Agent’s security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor’s own expense, to take the following actions with respect to the following Article 9 Collateral:
(1) **Instruments and Tangible Chattel Paper.** If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of $5.0 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

(2) **Investment Property.** Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably specify. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) as to such security, without further consent of any Grantor or such nominee or (b) cause the issuer to register the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) as the registered owner of such security.

(3) **Commercial Tort Claims.** If any Grantor shall at any time hold or acquire a Commercial Tort Claim with an asserted or nominal value in excess of $5.0 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.05. **Covenants Regarding Patent, Trademark and Copyright Collateral.** Except as permitted by the Credit Agreement:

(1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor’s business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.

(2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor’s business:
(a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
(b) maintain the quality of products and services offered under such Trademark;
(c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
(d) not knowingly use or knowingly permit its licensees’ use of such Trademark in violation of any third-party rights.

(3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.

(4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, regarding such Grantor’s ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.

(5) Each Grantor, either itself or through any agent, employee, licensee or designee, will, upon the reasonable request of the Collateral Agent, execute and deliver any and all agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent’s security interest in each Patent, Trademark, or Copyright listed in each updated Perfection Certificate (or in any applicable specified information contained in the Perfection Certificate) furnished pursuant to Section 5.04(9) of the Credit Agreement.

(6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor’s business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor’s reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it
necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

Section 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Guarantors, the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent’s rights and remedies hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement, the Junior Lien Intercreditor Agreement, the Extended Term Loan PropCo Subordination Agreement and the Notes PropCo Subordination Agreement, if applicable, (2) prior to the Discharge of ABL Claims, any obligation hereunder to physically deliver any ABL Priority Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the ABL Collateral Agent, acting as gratuitous bailee for the Collateral Agent in accordance with the ABL/Term Loan/Notes Intercreditor Agreement and (3) prior to the occurrence of the Call Right Cap Recovery, any obligation hereunder to physically deliver any Call Right Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the Senior Priority Collateral Agent (as defined in the Junior Lien Intercreditor Agreement), acting as gratuitous bailee for the Collateral Agent in accordance with the Junior Lien Intercreditor Agreement. The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of the Intercreditor Agreements or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement regarding the relative priorities of the ABL Collateral Agent, the Collateral Agent, the New Second Lien Notes Agent and the New Third Lien Notes Agent in the Collateral, the terms of the ABL/Term Loan/Notes Intercreditor Agreement shall govern and control. In the event of any conflict or inconsistency between the terms of the Junior Lien Intercreditor Agreement and this Agreement regarding the relative priorities of the Collateral Agent, the Initial Second Lien Representative and the Initial Third Lien Representative in the Collateral, the terms of the Junior Lien Intercreditor Agreement shall govern and control. In the event of any conflict or inconsistency between the terms of the PropCo Subordination Agreements, on the one hand, and this Agreement on the other, regarding the relative priorities of the Collateral Agent, the Initial Second Lien Representative and the Initial Third Lien Representative with respect to payment upon the guarantee of any PropCo Guarantor, the terms of the PropCo Subordination Agreements shall govern and control. Terms used but not defined in this Section 4.06 shall be as defined in the applicable Intercreditor Agreement.

ARTICLE V

REMEDIES

Section 5.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law, to take any of or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the
world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing
arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to
use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9
Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights
afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights
and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the
Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker’s board or on any
securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in
connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to Persons
who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof.
Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the
purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or
right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and
appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors ten Business Days’ written notice (which each Grantor agrees is reasonable notice
within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent’s intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker’s board or on a securities exchange,
shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such
board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent
may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or
in separate parcels in the Collateral Agent’s own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any
Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods
(all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and
absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of
the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private
sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be
made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future
delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral
Agent shall not incur any liability in the event that any such
Section 5.02. Application of Proceeds - 2013 Term Loan Designated Collateral.

(1) Subject to the terms of the Intercreditor Agreement, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the following order of priority:

(a) first, to all amounts owing to the Collateral Agent or the Administrative Agent pursuant to any of the Loan Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in the Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Loan Documents;

(b) second, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to the Administrative Agent or Collateral Agent pursuant to any of the Loan Documents in its capacity as such;
third, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the outstanding Term Loan Obligations and, solely to the extent such Collateral constitutes Existing Notes Designated Collateral, the Existing Notes Obligations shall be paid to the Existing Notes Secured Parties as provided in Section 5.04 below, with each Secured Party receiving an amount equal to its outstanding Secured Obligations or, if the proceeds are insufficient to pay in full all such Secured Obligations, its pro rata share of the amount remaining to be distributed; and

d) fourth, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Loan Party, their successors or assigns, or as a court of competent jurisdiction may otherwise direct or as otherwise required by the Intercreditor Agreement.

If any payment to any Secured Party pursuant to this Section 5.02 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other applicable Secured Parties, with each such Secured Party whose Secured Obligations have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid applicable Secured Obligations of such Secured Party and the denominator of which is the unpaid applicable Secured Obligations of all Secured Parties entitled to such distribution.

Section 5.03. Application of Proceeds - Other Collateral.

1) Subject to the terms of the Intercreditor Agreements, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral (as well as any such Collateral consisting of cash) other than the 2013 Term Loan Designated Collateral, and shall distribute any consideration of any kind or nature received on account of the Secured Obligations (other than consideration on account of the 2013 Term Loan Designated Collateral or the Liens thereon, which shall be subject to Section 5.02), including in connection with any bankruptcy, insolvency, receivership or other similar proceeding, in the following order of priority:

a) first, to all amounts owing to the Collateral Agent or the Administrative Agent pursuant to any of the Loan Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Loan Documents, in each case solely to the extent not satisfied pursuant to the application of Section 5.02(a);

b) second, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to the Administrative Agent or Collateral Agent pursuant to any of the Loan Documents in its capacity as such, in each case solely to the extent not satisfied pursuant to the application of Section 5.02(b);
(c) **third**, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the outstanding Extended Term Loan Obligations and, solely to the extent such Collateral constitutes Existing Notes Designated Collateral (or such consideration is on account of Secured Obligations to the extent of their Liens on Existing Notes Designated Collateral), the Existing Notes Obligations shall be paid to the Existing Notes Secured Parties as provided in Section 5.04 below, with each applicable Secured Party receiving an amount equal to its outstanding Secured Obligations or, if the proceeds are insufficient to pay in full all such Secured Obligations, its pro rata share of the amount remaining to be distributed; and

(d) **fourth**, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Loan Party, their successors or assigns, or as a court of competent jurisdiction may otherwise direct or as otherwise required by the Intercreditor Agreements.

(2) If any payment to any Secured Party pursuant to this Section 5.03 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other applicable Secured Parties, with each such Secured Party whose Secured Obligations have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid applicable Secured Obligations of such Secured Party and the denominator of which is the unpaid applicable Secured Obligations of all Secured Parties entitled to such distribution.

Section 5.04. **Application of Proceeds - General.**

(1) Subject to the terms of the Intercreditor Agreements, all payments required to be made hereunder shall be made to the Collateral Agent for the account of the applicable Secured Parties or as the Collateral Agent may otherwise direct in accordance with the Loan Documents.

(2) The parties hereto agree that the provisions of this Article V shall apply to distributions and/or realizations on account of all assets securing the Secured Obligations, including assets not defined as Collateral hereunder (including, for the avoidance of doubt, all Real Property of the Grantors mortgaged to the Collateral Agent for the benefit of some or all of the Secured Parties), with Section 5.02 applying to all 2013 Collateral (as defined in the Credit Agreement) and Section 5.03 applying to all other Collateral (as defined in the Credit Agreement).

(3) For purposes of applying payments received in accordance with Sections 5.02 and 5.03, the Collateral Agent will be entitled to rely upon (a) the Administrative Agent, (b) the Existing Notes Trustee and (c) the applicable Secured Parties with respect to payments of Specified Hedge Agreements or any Cash Management Obligations (which the Administrative Agent and each other Secured Party agrees (or shall agree) to provide upon
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(4) Subject to the other limitations (if any) set forth herein and in the other Loan Documents, it is understood that the Loan Parties will remain liable (as and to the extent set forth herein except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s gross negligence or willful misconduct) to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations of the Loan Parties.

(5) It is understood and agreed by each Loan Party that the Collateral Agent will have no liability for any determinations made by it in Section 5.02 or Section 5.03 except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence, bad faith or willful misconduct. Each Loan Party also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof and of each Intercreditor Agreements, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.

(6) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Collateral Agent will not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such Guarantee in any particular order.

(7) Notwithstanding the foregoing Sections 5.02 and 5.03, the proceeds of any collection, sale, foreclosure or realization upon any Collateral of any Grantor, including any Collateral consisting of cash, shall not be applied to any Excluded Swap Obligation of such Grantor and shall instead be applied to other applicable Secured Obligations.

(8) Notwithstanding the foregoing Sections 5.02 and 5.03, any amounts distributable thereunder on account of Non-Participating Term Loan Exchange Obligations shall be turned over by the Lenders holding such Term Loan Obligations to the Lenders holding Term Loan Obligations (other than (i) Non-Participating Term Loan Exchange Obligations and (ii) 2013 Term Loan Obligations), until such Term Loan Obligations are paid in full. By becoming party to the Credit Agreements as Lenders, the Lenders holding Non-Participating Term Loan Exchange Obligations shall be deemed to have irrevocably authorized and instructed the Administrative Agent and Collateral Agent to pay amounts distributable to them but for the provisions of this paragraph to the applicable Secured Parties in accordance with, and in satisfaction of their obligations under, this paragraph.

(9) Subject to the terms of the Intercreditor Agreements, notwithstanding the foregoing Sections 5.02 and 5.03 (but subject to clauses (a) and (b) of Section 5.03), following the
Call Right Cap Recovery, the proceeds of any collection, sale, foreclosure or realization upon any Call Right Collateral shall be applied to the Secured Obligations as follows: first, on account of the Additional 2019 Extended Term Loans and related Term Loan Obligations until paid in full; second, on account of the other Term Loan Obligations, other than the 2013 Term Loan Obligations and Non-Participating Term Loan Exchange Obligations, until paid in full; third, on account of the Non-Participating Term Loan Exchange Obligations, until paid in full; fourth, on account of the Existing Notes Obligations, until paid in full; and thereafter in accordance with clause (d) of Section 5.02 or 5.03, as applicable.

Section 5.05. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.05 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE VI
INDEMNITY, SUBROGATION AND SUBORDINATION

Section 6.01. Indemnity. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 6.03 hereof), each Borrower agrees that (a) in the event a payment is made by any Guarantor under this Agreement in respect of any Secured Obligation of such Borrower, such Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the Person
to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor are sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a Secured Obligation of any Borrower, such Borrower will indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

Section 6.02. Contribution and Subrogation. Subject to Section 2.07, each Guarantor (a “Contributing Guarantor”) agrees (subject to Section 6.03 hereof) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any applicable Secured Obligation or assets of any other Guarantor are sold pursuant to any Security Document to satisfy any Secured Obligation owed to any applicable Secured Party and such other Guarantor (the “Claiming Guarantor”) shall not have been fully indemnified by a Borrower as provided in Section 6.01 hereof, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets (the “Indemnified Amount”), as applicable, in each case multiplied by a fraction of which the numerator shall be the net worth of such Contributing Guarantor (without giving effect to any guarantees of Indebtedness of the Borrowers or any other Person) on the date hereof and the denominator will be the aggregate net worth (without giving effect to any guarantees of Indebtedness of the Borrowers or any other Person) of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party hereto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 hereof to the extent of such payment. Notwithstanding the foregoing, to the extent that any Claiming Guarantor’s right to indemnification hereunder arises from a payment or sale of Collateral made to satisfy any Secured Obligation constituting Swap Obligations, only those Contributing Guarantors for whom such Swap Obligations do not constitute Excluded Swap Obligations shall indemnify such Claiming Guarantor, with the fraction set forth in the second preceding sentence being modified as appropriate to provide for indemnification of the entire Indemnified Amount.

Section 6.03. Subordination.

1. Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 6.01 and 6.02 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or otherwise will be fully subordinated to the payment in full in cash or immediately available funds of the applicable Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) until such time as this Agreement has been terminated in accordance with Section 7.15(a). No failure on the part of any Borrower or any Guarantor to make the payments required by Sections 6.01 and 6.02 hereof (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of any Borrower with respect to the applicable Secured Obligations or any Guarantor with respect to its obligations hereunder, and each Borrower shall remain liable for the full amount of the applicable Secured Obligations and each Guarantor shall remain liable for the full amount of its obligations hereunder.
(2) Each Borrower and each Guarantor hereby agree that all Indebtedness and other monetary obligations owed by it to any other Borrower, any other Guarantor or any Subsidiary will be fully subordinated to the payment in full in cash or immediately available funds of the applicable Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted).

(3) The guaranty obligations of Notes PropCo, if any, evidenced hereby are subordinate, in the manner and to the extent set forth in the Notes PropCo Subordination Agreement, if applicable, to the Senior Priority Guarantee Obligations (as defined in the Notes PropCo Subordination Agreement); and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Notes PropCo Subordination Agreement, if applicable.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Grantor will be given to it in care of the Lead Borrower, with such notice to be given as provided in Section 10.01 of the Credit Agreement.

Section 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

(1) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;

(2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document, the Existing Notes Indenture or any other agreement or instrument;

(3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or

(4) subject only to termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

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Section 7.03. **Limitation By Law.** All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.04. **Binding Effect; Several Agreement.** This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Credit Agreement. This Agreement will be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.05. **Successors and Assigns.** Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent. The Collateral Agent hereunder will at all times be the same Person that is the Collateral Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement will also constitute notice of resignation as the Collateral Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent pursuant hereto.

Section 7.06. **Collateral Agent’s Fees and Expenses; Indemnification.** The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.05 of the Credit Agreement and the provisions of Section 10.05 shall be incorporated by reference herein and apply to each Grantor mutatis mutandis.

Section 7.07. **Collateral Agent Appointed Attorney-in-Fact.** Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent’s name or in the name of such Grantor, to:
(1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;

(2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;

(3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;

(4) sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;

(5) send verifications of Accounts to any Account Debtor;

(6) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;

(7) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;

(8) notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and

(9) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

provided that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

Section 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

Section 7.09. Waivers; Amendment.
No failure or delay by the Collateral Agent or any Lender in exercising any right, power or remedy hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.

Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

Section 7.10. WAIVER OF JURY TRIAL. The provisions of Section 10.11 of the Credit Agreement shall be incorporated by reference herein and apply to each party hereto.

Section 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected or impaired thereby.

Section 7.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

Section 7.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 7.14. Jurisdiction; Consent to Service of Process. The provisions of Section 10.15 of the Credit Agreement shall be incorporated by reference herein and apply to each party hereto.

Section 7.15. Termination or Release. This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate when all the Term Loan Obligations (other than Term Loan Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted) have been paid in full in cash or immediately available funds and the Lenders
have no further commitment to lend under the Credit Agreement; provided, however, that no such termination shall be effective at any time when any Existing Notes Obligations remain outstanding unless and until (a) the Lead Borrower has notified the Collateral Agent in writing whether at such time there is outstanding any debt of any Person that is secured by the Existing Notes Designated Collateral (which notification the Lead Borrower hereby agrees to provide promptly upon the Collateral Agent’s request therefor) and (b) if any such secured debt is outstanding at such time, the Collateral Agent has taken such actions, at the expense of the Borrowers, as the Lead Borrower may reasonably request to transfer all Collateral consisting of Existing Notes Designated Collateral and all related Liens thereon and security interests therein (without any representation or warranties (other than a representation and warranty as to no Liens on the Existing Notes Designated Collateral created by the Agent in its individual capacity)) to the Existing Notes Trustee or such other agent or Person as the Lead Borrower may direct (provided further, however, that if such other secured debt is (x) under the ABL Credit Agreement, all such Collateral in the form of possessory collateral shall be transferred to the collateral agent under the ABL Credit Agreement, notwithstanding anything in the foregoing to the contrary, (y) under the Second Lien Notes, all such Collateral in the form of possessory collateral shall be transferred to the collateral agent under the Second Lien Notes Indenture, notwithstanding anything in the foregoing to the contrary (unless secured debt described in the immediately preceding clause (x) is also outstanding, in which case such clause (x) shall govern) or (z) under the Third Lien Notes, all such Collateral in the form of possessory collateral shall be transferred to the collateral agent under the Third Lien Notes Indenture, notwithstanding anything in the foregoing to the contrary (unless secured debt described in the immediately preceding clause (x) and/or clause (y) is also outstanding, in which case such clause (x) or clause (y), as applicable, shall govern)).

(2) A Grantor or Guarantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Grantor or Guarantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor or Guarantor ceases to be a Subsidiary Loan Party; provided that such portion of the Lenders as are required by the terms of the Credit Agreement to consent to such transaction shall have consented thereto; provided, further, to the extent the ABL Security Documents, Second Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) or the Third Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) are in effect on such date, such Grantor or Guarantor (and the security interests in the Collateral in respect thereof) is released under such ABL Security Documents, Second Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (2).

(3) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement to any Person that is not a Grantor, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 10.08 of the Credit Agreement or pursuant to Section 5.1 of the ABL/Term Loan/Notes Intercreditor Agreement or Sections 5.1 or 5.2 of the Junior Lien Intercreditor Agreement, the security interest in such Collateral shall be automatically released; provided to the extent the ABL Security Documents, Second Lien Notes
Collateral Documents or the Third Lien Notes Collateral Documents are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) is released under such ABL Security Documents, Second Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (3).

(4) In connection with any termination or release pursuant to paragraph (1), (2) or (3) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor or Guarantor, at such Grantor’s or Guarantor’s expense, all documents that such Grantor or Guarantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor or Guarantor such of the Pledged Collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; provided that the Collateral Agent will not be required to take any action under this Section 7.15(4) unless such Grantor or Guarantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of a Responsible Officer of the Borrower or such Grantor or Guarantor certifying that the transaction giving rise to such termination or release is permitted by the Credit Agreement and was or is consummated in compliance with the Loan Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.

Section 7.16. **Additional Subsidiaries.** Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by Section 5.10 of the Credit Agreement of a supplement in substantially the form of Exhibit I hereto, such Subsidiary will become a Grantor and/or a Guarantor hereunder with the same force and effect as if originally named as a Grantor and/or a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

Section 7.17. **Effect of Amendment and Restatement.** This Agreement is intended to and does completely amend and restate, without novation, that certain Term Loan Guarantee and Collateral Agreement, dated October 25, 2013, by the Grantors party thereto in favor of the Collateral Agent (as amended or supplemented prior to the date hereof, the “Original Guarantee and Collateral Agreement”). Notwithstanding the modifications effected by this Agreement of the representations, warranties and covenants of the Grantors and Guarantors contained in the Original Guarantee and Collateral Agreement, the Grantors and Guarantors acknowledge and agree that any causes of action or other rights created in favor of the Collateral Agent and its successors arising out of the representations, warranties and covenants of the Grantors and/or Guarantors thereto contained in or delivered in connection with the Original Guarantee and Collateral Pledge Agreement shall survive the execution and delivery of this Agreement. All indemnification obligations of the Grantors and Guarantors pursuant to the Original Guarantee and Collateral Agreement (including any arising from a breach of the representations thereunder) shall
survive the amendment and restatement of the Original Guarantee and Collateral Agreement pursuant to this Agreement.

Notwithstanding anything herein or in any other Loan Document to the contrary, the parties hereto expressly acknowledge that it is not their intention that the Extension Amendment, this Agreement or any of the other Loan Documents executed or delivered pursuant to the Extension Amendment constitute a novation of any of the obligations, covenants or agreements contained in the Original Guarantee and Collateral Agreement or any other Loan Document, but rather constitute a modification thereof or supplement thereto pursuant to the terms contained therein and herein. The Original Guarantee and Collateral Agreement and the other Loan Documents, in each case as amended, modified or supplemented hereby and by the Extension Amendment, shall be deemed to be continuing agreements among the parties thereto, and all documents, instruments, and agreements delivered, as well as all Liens created, pursuant to or in connection with the Original Guarantee and Collateral Agreement and the other Loan Documents shall remain in full force and effect, each in accordance with its terms (as amended, modified or supplemented by the Extension Amendment and this Agreement).

ARTICLE VIII
CONCERNING THE EXISTING NOTES TRUSTEE AND HOLDERS OF THE EXISTING 2028 DEBENTURES

Section 8.01. Collateral Agent’s Consent to Serve. The Collateral Agent has consented to serve as Collateral Agent hereunder on the express understanding, and the Existing Notes Trustee and each holder of Existing 2028 Debentures, by accepting the benefits of this Agreement, will be deemed to have agreed, that the Collateral Agent will have no duty and will owe no obligation or responsibility (fiduciary or otherwise) to the Existing Notes Trustee or such holders, other than the duty to perform its express obligations under this Agreement in accordance with its terms and the terms of the Junior Lien Intercreditor Agreement, the ABL/TERM Loan/Notes Intercreditor Agreement, and any other security documents for which the Collateral Agent is the collateral agent with respect to the Existing Notes Designated Collateral. Without limiting the foregoing, each of the Existing Notes Trustee and each holder of Existing 2028 Debentures, by accepting the benefits of this Agreement, will be deemed to have waived any right it might have, under applicable law or otherwise, to compel the sale or other disposition of any Collateral, and any obligation the Collateral Agent might have, under applicable law or otherwise, to obtain any minimum price for any Collateral upon the sale thereof, it being expressly understood, and the availability of the benefits of this Agreement to the Existing Notes Trustee and each holder of Existing 2028 Debentures being conditioned upon the understanding, that the sole right of the holders of the Existing 2028 Debentures will be to receive their ratable share of any proceeds of Existing Notes Designated Collateral in accordance with and subject to the provisions of this Agreement, the Intercreditor Agreements and the other Security Documents. Each of the Existing Notes Trustee and each holder of Existing 2028 Debentures, by accepting the benefits of this Agreement, will be deemed to have agreed to the provisions set forth in, and to have provided the consents, authorizations and instructions provided by the Lenders under, Article IX of the Credit Agreement (as such Article applies to the appointment of, and other matters relating to, the Collateral Agent) and Section 10.20 of the Credit Agreement. For the avoidance of doubt, nothing in this Agreement shall modify or in any way limit the rights and remedies available to the Existing
Notes Trustee and each holder of Existing 2028 Debentures under the Existing Notes Indenture.

Section 8.02 Determination of Amounts of Existing Notes Obligations and Existence of Existing Notes Events of Default; Acceleration.
Whenever the Collateral Agent is required to determine the existence or amount of any of the Existing Notes Obligations or the existence of any Existing Notes Event of Default for any purposes of this Agreement, it will request written certification of such existence or amount from the Existing Notes Trustee and will be entitled to make such determination on the basis of such certification; provided, however, that if, notwithstanding the request of the Collateral Agent, the Existing Notes Trustee fails or refuses reasonably promptly to certify as to the existence or amount of any Existing Notes Obligation or the existence of any Existing Notes Event of Default, the Collateral Agent will be entitled to determine such existence or amount by such commercially reasonable method as the Collateral Agent may, in the exercise of its good faith judgment, determine, including by reliance upon a certificate of the Lead Borrower. The Collateral Agent may rely conclusively, and will be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and will have no liability to the Borrowers, any other Grantor, any Secured Party or any other Person as a result of such determination or any action taken pursuant thereto except to the extent such liability is determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of the Collateral Agent. The Existing Notes Trustee will promptly notify the Collateral Agent of any Existing Notes Event of Default of which it will have been notified by any Existing Notes Secured Party or of which it will have otherwise become aware or any acceleration of any of the Existing Notes Obligations; provided that failure to give any such notice will not affect any rights or remedies of the Collateral Agent or any Secured Party arising in connection with any such acceleration.

[Signature Page Follows]

50
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

GRANTORS:

NEIMAN MARCUS GROUP LTD LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

THE NEIMAN MARCUS GROUP LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Senior Vice President

THE NMG SUBSIDIARY LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
GRANTORS AND GUARANTORS:

MARIPOSA INTERMEDIATE HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: Vice President

NEMA BEVERAGE CORPORATION,
a Texas corporation

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: President

NEMA BEVERAGE HOLDING CORPORATION,
a Texas corporation

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: President

NEMA BEVERAGE PARENT CORPORATION,
a Texas corporation

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: President

NMG SALON HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: President

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
NMG CALIFORNIA SALON LLC,
a California limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG FLORIDA SALON LLC,
a Florida limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG SALONS LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG TEXAS SALON LLC,
a Texas limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

BERGDORF GOODMAN INC.,
a New York corporation

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
BERGDORF GRAPHICS, INC.,
a New York corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

BG PRODUCTIONS, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

MARIPOSA BORROWER, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NM BERMUDA, LLC,
a Delaware limited liability company

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NM FINANCIAL SERVICES, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
NM NEVADA TRUST,  
a Massachusetts Trust

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:  Vice President

NMG GLOBAL MOBILITY, INC.,  
a Delaware corporation

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:  Vice President

NMGP, LLC,  
a Virginia limited liability company

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:  Vice President

WORTH AVENUE LEASING COMPANY,  
a Florida corporation

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:  Vice President

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
GUARANTORS:

NMG TERM LOAN PROPCO LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: Vice President

NMG NOTES PROPCO LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
   Name: Tracy M. Preston
   Title: Vice President

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Agent

By:  /s/ Bryan J. Matthews
Name:  Bryan J. Matthews
Title:  Authorized Signatory

By:  /s/ Megan Kane
Name:  Megan Kane
Title:  Authorized Signatory

[Signature Page to Amended and Restated Term Loan Guarantee and Collateral Agreement]
SUPPLEMENT NO. dated as of (this “Supplement”), to (a) the Amended and Restated Term Loan Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Guarantee and Collateral Agreement”), among each of the Grantors party thereto, each of the Guarantors party thereto, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “Administrative Agent”) and as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “Collateral Agent”) and (b) the Intercreditor Agreements referred to below.

(1) Reference is made to (a) that certain the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented or otherwise modified from time to time, including on the Amendment No. 2 Effective Date, the “Term Loan Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Company”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company ("TNMG LLC"), THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Guarantors party hereto, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent, (b) that certain Indenture dated as of May 27, 1998 (as amended, amended and restated, supplemented or otherwise modified from time to time, including, including on the Amendment No. 2 Effective Date, the “Existing Notes Indenture”), between TNMG LLC (the “Existing Notes Issuer”), and WILMINGTON SAVINGS FUND SOCIETY, FSB as successor trustee (in such capacity, the “Existing Notes Trustee”), pursuant to which the Existing Notes Issuer’s 7.125% Debentures due 2028 in an initial aggregate principal amount of $125,000,000 (the “Existing 2028 Debentures”) were issued, (c) that certain ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “ABL/Term Loan/Notes Intercreditor Agreement”), among Deutsche Bank AG New York Branch, as an ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as a Term Loan Agent (as defined therein), Ankura Trust Company, LLC, as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings, the Borrowers and the Subsidiaries from time to time party thereto and (d) that certain Junior Lien Intercreditor Agreement, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Junior Lien Intercreditor Agreement” and, together with the ABL/Term Loan/Notes Intercreditor Agreement, the “Intercreditor Agreements”), among Credit Suisse AG, Cayman Islands Branch, as Initial First Lien Representative (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Initial First Lien Collateral Agent (as defined therein), Ankura Trust Company, LLC as Initial Second Lien Representative (as defined therein), Ankura Trust Company, LLC as Initial Second Lien Collateral Agent (as defined therein), Wilmington Trust, National
Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement and the Guarantee and Collateral Agreement referred to therein.

The Grantors and Guarantors have entered into the Guarantee and Collateral Agreement in order to induce the Lenders to make Loans under the Credit Agreement. Pursuant to the Existing Notes Indenture, the Existing Notes Issuer may not secure the Term Loan Obligations with any Existing Notes Designated Collateral unless the Borrowers shall have made effective provision to secure the Existing 2028 Debentures for as long as such obligations are secured by any Existing Notes Designated Collateral. Section 7.16 of the Guarantee and Collateral Agreement provides that additional Subsidiaries may become Subsidiary Loan Parties under the Guarantee and Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The Intercreditor Agreements provide that additional Subsidiaries may become Grantors and/or Guarantors, as applicable, under the applicable Intercreditor Agreements by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become (x) a Subsidiary Loan Party under the Guarantee and Collateral Agreement and (y) a Grantor under the Intercreditor Agreements, in each case in order to induce the Lenders to make additional Loans (if available under the Credit Agreement) and as consideration for Loans previously made under the Credit Agreement.

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

SECTION 1. (a) In accordance with Section 7.16 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a Subsidiary Loan Party, a [a / an] [Extended Term Loan] Guarantor and a Grantor under the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Subsidiary Loan Party, a [a / an] [Extended Term Loan] Guarantor and a Grantor, and the New Subsidiary hereby (1) agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Subsidiary Loan Party, a [a / an] [Extended Term Loan] Guarantor and a Grantor thereunder and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects, on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Guarantee and Collateral Agreement), does hereby create and grant to the Collateral Agent, for the benefit of the applicable Secured Parties, a security interest in and Lien on all the New Subsidiary’s right, title and interest in and to the Collateral (as defined in and to the extent required by the Guarantee and Collateral Agreement) of the New Subsidiary. Each reference to a “Subsidiary Loan Party,” a “[Extended Term Loan] Guarantor,” or a “Grantor” in the Guarantee and Collateral Agreement shall be deemed to include

Exhibit I-2
the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

(b) In accordance with Section 9.3 of the ABL/Term Loan/Notes Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the ABL/Term Loan/Notes Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future ABL Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement), all existing and future Term Loan Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) and all existing and future Existing Noteholders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the ABL/Term Loan/Notes Intercreditor Agreement as fully as if the undersigned had executed and delivered the ABL/Term Loan/Notes Intercreditor Agreement as of the date thereof. This Supplement shall constitute an Intercreditor Agreement Joinder under (and as defined in) the ABL/Term Loan/Notes Intercreditor Agreement.

(c) In accordance with Section 8.20 of the Junior Lien Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the Junior Lien Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future all existing and future First Lien Secured Parties (as defined in the Junior Lien Intercreditor Agreement) and all existing and future Junior Lien Secured Parties (as defined in the Junior Lien Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the Junior Lien Intercreditor Agreement as fully as if the undersigned had executed and delivered the Junior Lien Intercreditor Agreement as of the date thereof. This Supplement shall constitute an intercreditor agreement joinder under the Junior Lien Intercreditor Agreement.

SECTION 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Collateral Agent receives a counterpart (whether by electronic transmission or otherwise) of this Supplement that bears the signature of the New Subsidiary.

SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

(1) set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof;
set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, registered Trademarks and registered Copyrights of the New Subsidiary as of the date hereof;

set forth on Schedule III attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of $5.0 million as of the date hereof; and

set forth on Schedule IV attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5.  Except as expressly supplemented hereby, the Guarantee and Collateral Agreement shall remain in full force and effect.

SECTION 6.  THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7.  In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, in the Guarantee and Collateral Agreement and in the Intercreditor Agreements will not in any way be affected or impaired thereby.  The parties will endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8.  All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Guarantee and Collateral Agreement.  The address of each of the New Subsidiaries for purposes of all notices and other communications under the Intercreditor Agreements is:  

SECTION 9.  The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Agents have duly executed this Supplement to the Guarantee and Collateral Agreement and to the Intercreditor Agreements as of the day and year first above written.

[Name of New Subsidiary]

Exhibit I-4
Pledged Securities of the New Subsidiary

**EQUITY INTERESTS**

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<th>Number and Class of Equity Interest</th>
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**DEBT SECURITIES**

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</table>

Schedule I-1
PATENTS, TRADEMARKS AND COPYRIGHTS

Schedule II-1
COMMERCIAL TORT CLAIMS

Schedule III-1
LEGAL NAME, JURISDICTION OF FORMATION
AND LOCATION OF CHIEF EXECUTIVE OFFICE

Schedule IV-1
This TRADEMARK SECURITY AGREEMENT is dated as of [ ], by [*] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Amended and Restated Term Loan Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”):

(a) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections
1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule I;

(b) all goodwill associated therewith or symbolized thereby;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[       ],
as Grantor

By:  
Name:  
Title:  

Accepted and Agreed:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Collateral Agent

By: 
Name: ______________________________
Title: ______________________________

By: 
Name: ______________________________
Title: ______________________________
FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT is dated as of [         ], by [*] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Amended and Restated Term Loan Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”):

(a) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I;

(b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed
therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[       ],
  as Grantor

By:  
  Name:  
  Title:  

[ ]
Accepted and Agreed:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Collateral Agent

By: 
Name: 
Title: 

By: 
Name: 
Title:
FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT is dated as of [], by [*] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Amended and Restated Term Loan Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the applicable Secured Parties, a security interest in all of such Grantor's right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”):

(a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

(b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule I;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and...
(d)  all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3.  Security Agreement.  The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.  In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4.  Recordation.  This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office.  Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

SECTION 5.  Counterparts.  This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[   ],
as Grantor

By: 
Name: 
Title: 
Accepted and Agreed:

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Collateral Agent

By: ______________________________
Name: ___________________________
Title: ____________________________

By: ______________________________
Name: ___________________________
Title: ____________________________
SCHEDULE I

to

COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS
## PLEDGED STOCK

<table>
<thead>
<tr>
<th>Grantor</th>
<th>Issuer</th>
<th>Type of Organization</th>
<th>Jurisdiction of Organization / Formation</th>
<th># of Shares Owned</th>
<th>Total Shares Outstanding</th>
<th>% of Interest Pledged</th>
<th>Certificate No.</th>
<th>Par Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mariposa Intermediate Holdings LLC</td>
<td>Neiman Marcus Group LTD LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>1 Unit</td>
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<td>100%</td>
<td>Uncertificated</td>
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<tr>
<td>Neiman Marcus Group LTD LLC (f/k/a Neiman Marcus Group LTD Inc.)</td>
<td>Mariposa Borrower, Inc.</td>
<td>Corporation</td>
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<td>10</td>
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<td>100%</td>
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<td>The Neiman Marcus Group LLC</td>
<td>Limited Liability Company</td>
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<td>100 Units</td>
<td>100</td>
<td>100%</td>
<td>Uncertificated</td>
<td>N/A</td>
</tr>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NM Financial Services, Inc.</td>
<td>Corporation</td>
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<td>NM Nevada Trust</td>
<td>Trust</td>
<td>Massachusetts</td>
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<td>100</td>
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<td>No par value</td>
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<td>Bergdorf Goodman Inc.</td>
<td></td>
<td></td>
<td></td>
<td>9</td>
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<td>100%</td>
<td>2</td>
<td>No par value</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NMGP, LLC</td>
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<td>Virginia</td>
<td>100 Units</td>
<td>100</td>
<td>100%</td>
<td>Uncertificated</td>
<td>N/A</td>
</tr>
<tr>
<td>Grantor</td>
<td>Issuer</td>
<td>Type of Organization</td>
<td>Jurisdiction of Organization / Formation</td>
<td># of Shares Owned</td>
<td>Total Shares Outstanding</td>
<td>% of Interest Pledged</td>
<td>Certificate No.</td>
<td>Par Value</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>Worth Avenue Leasing Company</td>
<td>Corporation</td>
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<td>100%</td>
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<td>BG Productions, Inc.</td>
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<td>$1.00</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NM Bermuda, LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>N/A</td>
<td>N/A</td>
<td>100%</td>
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<td>N/A</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NEMA Beverage Parent Corporation</td>
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<td>100</td>
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<td>Bergdorf Goodman Inc.</td>
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<td>1000</td>
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<td>4</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NMG Global Mobility, Inc.</td>
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<td>100%</td>
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<td>$1.00</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>Neiman Marcus Bermuda, L.P.</td>
<td>Limited Partnership</td>
<td>Bermuda</td>
<td>N/A; 99%</td>
<td>N/A</td>
<td>100%</td>
<td>Uncertificated</td>
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<tr>
<td>NEMA Beverage Parent Corporation</td>
<td>NEMA Beverage Holding Corporation</td>
<td>Corporation</td>
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<td>100</td>
<td>100%</td>
<td>1</td>
<td>$1.00</td>
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<tr>
<td>Grantor</td>
<td>Issuer</td>
<td>Type of Organization</td>
<td>Jurisdiction of Organization / Formation</td>
<td># of Shares Owned</td>
<td>Total Shares Outstanding</td>
<td>% of Interest Pledged</td>
<td>Par Value</td>
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<td>----------------------------------------------</td>
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<td>Corporation</td>
<td>Texas</td>
<td>100</td>
<td>100</td>
<td>100%</td>
<td>$1.00</td>
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<td>Bergdorf Goodman Inc.</td>
<td>Bergdorf Graphics, Inc.</td>
<td>Corporation</td>
<td>New York</td>
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<td>200</td>
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<td>The Neiman Marcus Group LLC</td>
<td>NMG Salon Holdings LLC</td>
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<td>100</td>
<td>100%</td>
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<tr>
<td>NMG Salon Holdings LLC</td>
<td>NMG Salons LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
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<td>100</td>
<td>100%</td>
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<td>NMG Salon Holdings LLC</td>
<td>NMG Florida Salon LLC</td>
<td>Limited Liability Company</td>
<td>Florida</td>
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<td>100</td>
<td>100%</td>
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<td>NMG Salon Holdings LLC</td>
<td>NMG California Salon LLC</td>
<td>Limited Liability Company</td>
<td>California</td>
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<td>NMG Salon Holdings LLC</td>
<td>NMG Texas Salon LLC</td>
<td>Limited Liability Company</td>
<td>Texas</td>
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<td>N/A</td>
<td>100%</td>
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<tr>
<td>The Neiman Marcus Group LLC</td>
<td>The NMG Subsidiary LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>170,000 units (13.655% as of 5/17/19)</td>
<td>1,244,983 (as of 5/17/19)</td>
<td>100%</td>
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</tr>
<tr>
<td>The Neiman Marcus Group LLC</td>
<td>Fashionphile Group, LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>100 Units</td>
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<td>100%</td>
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<td></td>
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<tr>
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<td>NMG Term Loan PropCo LLC</td>
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<td>Delaware</td>
<td>100 Units</td>
<td>N/A</td>
<td>100%</td>
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<tr>
<td>The Neiman Marcus Group LLC</td>
<td>NMG Notes PropCo LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>100 Units</td>
<td>N/A</td>
<td>100%</td>
<td>Uncertificated N/A</td>
<td></td>
</tr>
</tbody>
</table>
1. That certain Intercompany Note, dated as of June 7, 2019, by and among each Payor (as defined therein) and each Maker (as defined therein).

2. Intercompany receivable held by NM Nevada Trust from The Neiman Marcus Group LLC, which was approximately $2,880,299,470 as of May 31, 2019.

3. Intercompany receivable held by NM Nevada Trust from Bergdorf Goodman Inc., which was approximately $473,027,518 as of May 31, 2019.
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<thead>
<tr>
<th>Title</th>
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<th>Registration Date</th>
<th>Owner</th>
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<td>1. Another perspective / from Horchow.</td>
<td>TX0000887328</td>
<td>12/30/1981</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>4. Grand Finale: sales, close-outs &amp; special values from famous companies.</td>
<td>CSN0040942</td>
<td>1989</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<tr>
<td>5. Grand Finale: sales, close-outs &amp; special values from famous companies.</td>
<td>TX0000884099</td>
<td>1/15/1982</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>7. Grand Finale: sales, close-outs &amp; special values from famous companies.</td>
<td>TX0001047557</td>
<td>1/17/1983</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<tr>
<td>8. Grand Finale: sales, close-outs &amp; special values from famous companies.</td>
<td>TX0001385994</td>
<td>1/26/1984</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<tr>
<td>9. SGF: savings on gifts and furnishings.</td>
<td>TX0001398214</td>
<td>1/26/1984</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
</tr>
<tr>
<td>Title</td>
<td>Registration Number</td>
<td>Registration Date</td>
<td>Owner</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------</td>
<td>-------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>12. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
<td>TX0001530546</td>
<td>1/15/1985</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>13. SGF : savings on gifts and furnishings.</td>
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<td>1/15/1985</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<tr>
<td>15. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
<td>TX0001741165</td>
<td>1/21/1986</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>16. SGF : savings on gifts and furnishings.</td>
<td>TX0001741167</td>
<td>1/21/1986</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<tr>
<td>18. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>19. SGF : savings on gifts and furnishings.</td>
<td>TX0002024695</td>
<td>3/16/1987</td>
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<td>22. SGF : savings on gifts and furnishings.</td>
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<td>2/1/1988</td>
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<td>24. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
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<td>Easter candletower.</td>
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<td>Pigtails and froglegs: a family cookbook</td>
<td>TX0003623121</td>
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<td>37. Mahogany egg.</td>
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<td>39. Jungle florentine.</td>
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<td>41. Green jeweled egg.</td>
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<td>44. Large plum finial ornament.</td>
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<td>45. Large red finial ornament.</td>
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<td>46. Large topaz finial ornament.</td>
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<td>47. Bejeweled butterfly ornament.</td>
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<td>Jwelled heart ornament. Series: Jay Strongwater Christmas ornament; NM20027</td>
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<td>63. Red bow egg ornament.</td>
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<td>64. Red scallop ball ornament.</td>
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<td>65. Red phoenix egg ornament.</td>
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<td>66. Red scroll egg ornament.</td>
<td>VA0001172425</td>
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<td>67. Plum lattice heart ornament.</td>
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<td>68. Red frog egg ornament.</td>
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<td>69. Green frog egg.</td>
<td>VA0001172417</td>
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<td>70. Red turtle egg ornament.</td>
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<td>71. Green turtle egg ornament.</td>
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<td>72. Red butterfly egg ornament.</td>
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<td>73. Green butterfly ornament.</td>
<td>VA0001172399</td>
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<td>74. Red [l]orenzine star.</td>
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<td>75. Baby's first Christmas ornament.</td>
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<td>76. Red Florentine egg ornament.</td>
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<td>77. Purple moons/stars ball.</td>
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<td>78. Red moons/stars ball.</td>
<td>VA0001172418</td>
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<td>79. Salamander egg ornament.</td>
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<td>80. Dark amber florentine star.</td>
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<td>81. Plum florentine star.</td>
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<td>82. Plum daisy ball ornament.</td>
<td>VA0001172426</td>
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<td>83. Red scroll egg ornament.</td>
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<td>84. Small red finial ornament.</td>
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<td>85. Neiman Marcus cookbook / Kevin Garvin, with John Harrisson ; photography by Ellen Silverman.</td>
<td>TX0005786833</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
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<td>86. Neiman Marcus Taste: Timeless American Recipes.</td>
<td>TX0006840535</td>
<td>1/10/2008</td>
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<td>87. Neiman Marcus Pop-Up Book.</td>
<td>TX0006961127</td>
<td>1/10/2008</td>
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<td>88. Orchard apple with walnuts &amp; brandy : no. 8533 : net wt. 16 oz. (1 lb.) (454 g)</td>
<td>VA0000410146</td>
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(1) Assignment from The Neiman Marcus Group, Inc. to NM Nevada Trust to be filed with Japanese Trademark Office.
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(1) Reference is made to the class action settlement involving Visa and Mastercard, who separately and together with certain banks, engaged with certain actions that resulted in merchants paying excessive interchange fees when accepting Visa and Mastercard credit and debit cards in connection with store and online purchases. Under the settlement, Visa, Mastercard and other bank defendants have agreed to provide approximately $6.24 billion in class settlement funds. The net class settlement fund will be used to pay valid claims of merchants that accepted Visa and Mastercard credit or debit cards between January 1, 2004 through January 25, 2019.

The Court has given preliminary approval to this settlement. A Court hearing is set for November 7, 2019 for the Court to officially approve of the settlement.

Merchants have until July 23, 2019 to decide if they will stay in the settlement and wait to file a claim, object to the settlement and file a notice to appear with the Court, or to opt out and make a separate claim.

The Company is in the process of evaluating the potential recovery on its portion of the claims and believes there is a reasonable chance such recovery will exceed $2.5 million.
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</table>
FOURTH AMENDMENT, dated as of June 7, 2019 (this “Fourth Amendment”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Borrower”), THE NMG SUBSIDIARY LLC, a Delaware limited liability company (the “New Borrower”), each Co-Borrower party to the Credit Agreement (defined below), and, collectively, with the Borrower and the New Borrower, the “Borrower Parties”, each Guarantor party to the Credit Agreement (defined below), NMG SALON HOLDINGS LLC, a Delaware limited liability company, NMG SALONS LLC, a Delaware limited liability company, NMG FLORIDA SALON LLC, a Florida limited liability company, NMG CALIFORNIA SALON LLC, a California limited liability company, NMG TEXAS SALON LLC, a Texas limited liability company and NMG TERM LOAN PROPCO LLC, a Delaware limited liability company (the “New Guarantors”), each Guarantor party to the Credit Agreement and, collectively, with Holdings and the New Guarantors, the “Guarantors” and the LENDERS party hereto, to the REVOLVING CREDIT AGREEMENT, dated as of October 25, 2013 (as amended by the First Incremental Amendment to Revolving Credit Agreement, dated as of October 10, 2014, the Second Amendment to Revolving Credit Agreement, dated as of October 27, 2016, the Third Amendment to Revolving Credit Agreement, dated as of March 22, 2019, and as the same may be further amended, restated, amended and restated, supplemented and/or otherwise modified prior to the Fourth Amendment Effective Date referred to below, the “Credit Agreement”), among Holdings, the Borrower, the Co-Borrowers party thereto, the Lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Administrative Agent and Collateral Agent, and the other parties party thereto from time to time. Capitalized terms used but not otherwise defined in this Fourth Amendment shall have the respective meanings assigned to such terms in the Credit Agreement (as amended, restated, amended and restated, supplemented and/or otherwise modified, including by this Fourth Amendment).

SECTION 1. Amendments; Joinder of the New Borrower and Guarantors.

(a) Credit Agreement. Effective as of Fourth Amendment Effective Date, the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same
manner as the following example: **stricken text** and to add the bold and double-underlined text (indicated textually in the same manner as the following example: **bold and double-underlined text**) as set forth on the pages of the Credit Agreement attached as Annex A hereto.

(b) **Schedules.** All Schedules to the Credit Agreement are hereby amended and restated by deleting each such schedule in its entirety and replacing such schedule with the schedule set forth on Annex B hereto.

(c) **Exhibits.** All Exhibits to the Credit Agreement are hereby amended and restated by deleting each such Exhibit in its entirety and replacing such Exhibit with the Exhibit set forth on Annex C hereto.

(d) The New Borrower, by its signature to this Fourth Amendment, shall become a Borrower and a Subsidiary Loan Party under the Credit Agreement and a Grantor under the Amended and Restated ABL Collateral and Guarantee Agreement ("Collateral Agreement") with the same force and effect as if originally named therein as a Subsidiary Loan Party, a Loan Party, a Borrower and a Grantor, as applicable, and the New Borrower hereby (i) agrees to all the terms and provisions of (A) the Credit Agreement applicable to it as a Borrower and a Subsidiary Loan Party thereunder and (B) the Collateral Agreement applicable to it as a Grantor thereunder. Each reference to a "Co-Borrower" or a "Borrower Party" in the Credit Agreement and each reference to a "Subsidiary Loan Party," a "Loan Party" or a "Grantor" in the Collateral Agreement shall be deemed to include the New Borrower.

(e) Each New Guarantor party hereto that was not party to the Collateral Agreement (as in effect prior to the date hereof), by its respective signature to this Fourth Amendment, shall become a Guarantor, a Subsidiary Loan Party and a Loan Party for all purposes under the Credit Agreement and a Subsidiary Loan Party, a Loan Party, a Guarantor and (if applicable, as set forth in the Collateral Agreement, and for the avoidance of doubt, other than NMG Term Loan PropCo LLC) a Grantor under the Collateral Agreement with the same force and effect as if originally named therein as a Subsidiary Loan Party, a Loan Party, a Guarantor and, if applicable, a Grantor, and each New Guarantor hereby (i) agrees to all the terms and provisions of (A) the Credit Agreement applicable to it as a Guarantor, a Subsidiary Loan Party and Loan Party thereunder and (B) the Collateral Agreement applicable to it as a Subsidiary Loan Party, a Loan Party, a Guarantor and, if applicable, a Grantor thereunder. Each reference to a "Guarantor", a "Subsidiary Loan Party", or a "Loan Party" in the Credit Agreement and each reference to a "Subsidiary Loan Party", a "Loan Party," a "Guarantor," or, if applicable, a "Grantor", in the Collateral Agreement shall be deemed to include each New Guarantor. For the avoidance of doubt, each Lender Party party hereto hereby consents to the amendment and restatement of the Collateral Agreement (as defined in the Credit Agreement) in the form attached on Annex D hereto, which amendment and restatement shall become effective on the Fourth Amendment Effective Date.

SECTION 2. **Representations and Warranties.** Each Loan Party party hereto hereby represents and warrants to the Administrative Agent and each Lender Party party hereto that:
(a) no Default or Event of Default has occurred and is continuing as of the Fourth Amendment Effective Date, or would exist immediately after giving effect to this Fourth Amendment; and

(b) all of the representations and warranties contained in the Credit Agreement are true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to the Fourth Amendment Effective Date and immediately after giving effect to this Fourth Amendment; and

(c) this Fourth Amendment has been duly authorized, executed and delivered by each of Holdings and the Borrower and each of this Fourth Amendment and the Credit Agreement, as amended hereby, constitutes a legal, valid and binding obligation, enforceable against each Loan Party in accordance with its terms.

(d) The execution, delivery and performance by each Loan Party party hereto of this Fourth Amendment and the consummation of the transactions contemplated hereby will not violate (i) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party party hereto, (ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority or (iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party party hereto is a party or by which any of them or any of their property is or may be bound, in each case of clause (i), (ii) or (iii), except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3. Effectiveness; Amendments. This Fourth Amendment shall become effective as of the date first written above (such date, the “Fourth Amendment Effective Date”) when:

(a) the Lender Parties party hereto shall have received counterparts of this Fourth Amendment (including via facsimile or electronic transmission (including Adobe pdf copy)) that, when taken together, bear the signatures of Holdings, the Borrower, the New Borrower, each other Co-Borrower, the New Guarantors, the Guarantors and the Lender Parties constituting the Required Lenders;

(b) The Administrative Agent shall have received a customary legal opinion of each of (A) Kirkland & Ellis LLP, special counsel to Holdings, the Borrower, the New Borrower, each other Co-Borrower, the New Guarantors and each other Guarantor, (B) K&L Gates LLP, local counsel to Worth Avenue Leasing Company and NMG Florida Salon LLC and local counsel to NM Nevada Trust, and (C) Stinson Leonard Street LLP, local counsel to NMGP, LLC;

(c) The Administrative Agent shall have received (A) a certificate of a Responsible Officer of each Loan Party party hereto (1) certifying the resolutions of the board of directors, members or other body authorizing the execution, delivery and performance by such
Loan Party of this Fourth Amendment, (2) containing an incumbency and specimen signature identifying by name and title of the officers of each Loan Party party hereto authorized to sign this Fourth Amendment (or certifying that the signatures of such officers previously delivered to the Administrative Agent remain true and correct) and (3) containing appropriate attachments, including the organization documents of each Loan Party party hereto certified, if applicable, by the relevant authority of the jurisdiction of organization of such Loan Party (or certifying that the organization documents of such Loan Party previously delivered to the Administrative Agent remain true and correct) and (B) a good standing certificate (or other equivalent certificate to the extent such status or analogous concept applies to such jurisdiction of organization) as of a recent date for each such Loan Party from its respective jurisdiction of organization;

(d) On and as of the Fourth Amendment Effective Date, (A) no Default or Event of Default has occurred and is continuing, or would exist immediately after giving effect to this Fourth Amendment and (B) all of the representations and warranties contained in the Loan Documents are true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to the Fourth Amendment Effective Date and immediately after giving effect to this Fourth Amendment; the Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying as to the matters set forth in this Section 3(d) and Section 3(e) below;

(e) All (v) conditions precedent expressly set forth in (A) the TSA, (B) the material documents governing the New Second Lien Notes (including the Second Lien Notes Indenture), (C) the material documents governing the New Third Lien Notes (including the Third Lien Notes Indenture), (D) the material documents governing the MT Preferred Equity (as defined in the TSA) (including the applicable Certificate of Designation and material organizational documents), and (E) the material documents governing the Term Loans (including the 2019 Term Loan Extension Amendment), necessary to implement the Recapitalization Transactions, shall have been, or concurrently with the effectiveness of this Fourth Amendment shall be, satisfied (or waived in accordance therewith) and New Second Lien Notes in the face amount of $550,000,000 shall have been issued;

(f) The Administrative Agent shall have received the duly executed and delivered Collateral Agreement among the Collateral Agent and the Loan Parties party thereto and each as defined therein.

(g) The ABL/Term/Notes Intercreditor Agreement, dated as of the date hereof (the “ABL Intercreditor Agreement”), among Holdings, the Borrower Parties, the Administrative Agent, the Collateral Agent, the ABL Facility Administrative Agent, the Second Lien Notes Collateral Agent and the Third Lien Notes Collateral Agent shall have been duly executed and delivered by each party thereto, and shall be in full force and effect;

(h) The Borrower shall have paid to the Administrative Agent and the Lenders all fees, costs and out-of-pocket expenses (including, without limitation, reasonable, documented and invoiced fees, charges and disbursement of a single counsel which shall be White & Case
LLP) then due and payable to the Administrative Agent and the Lenders in accordance with the Credit Agreement, as amended hereby, to the extent then
 invoiced and due; and

(i) All documentation and other information required by regulatory authorities under applicable “know your customer” and anti-
 money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least five (5) calendar days prior to the
 Fourth Amendment Effective Date, will be provided not later than the date that is three (3) calendar days prior to the Fourth Amendment Effective Date.

(j) The Administrative Agent shall have received a completed Perfection Certificate dated the Fourth Amendment Effective Date and
 signed by a Responsible Officer of Holdings and the Borrower.

This Fourth Amendment may not be amended nor may any provision hereof be waived except pursuant to a writing signed by the Loan Parties party hereto
 and the Lender Parties constituting Required Lenders.

SECTION 4. Credit Agreement. Except as expressly set forth in this Fourth Amendment, this Fourth Amendment shall not by
implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Lenders, the Agents, the Borrower or any other
Loan Party under the Credit Agreement or any other Loan Document. In addition, except as expressly set forth in this Fourth Amendment, this Fourth
Amendment shall not alter, modify or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit
Agreement or any other Loan Document, all of which are, except as expressly set forth in this Fourth Amendment, ratified and affirmed in all respects and
shall continue in full force and effect. Nothing in this Fourth Amendment shall be deemed to entitle Holdings or the Borrower or any other Loan Party to any
future consent to, or waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the
Credit Agreement or any other Loan Document in similar or different circumstances. Upon the Fourth Amendment Effective Date, any reference to the
Credit Agreement shall mean the Credit Agreement as modified by this Fourth Amendment. Upon the Fourth Amendment Effective Date, this Fourth
Amendment shall constitute a “Loan Document” (as defined in the Credit Agreement).

SECTION 5. Novation. The parties hereto expressly acknowledge that it is not their intention that this Fourth Amendment or any of the
other Loan Documents executed or delivered pursuant hereto constitute a novation of any of the obligations, covenants or agreements contained in the Credit
Agreement or any other Loan Document, but rather constitute a modification thereof or supplement thereto pursuant to the terms contained herein. The Credit
Agreement and the Loan Documents, in each case as amended, modified or supplemented hereby, shall be deemed to be continuing agreements among the
parties thereto, and all documents, instruments, and agreements delivered, as well as all Liens created, pursuant to or in connection with the Credit Agreement
and the other Loan Documents shall remain in full force and effect, each in accordance with its terms (as amended, modified or supplemented by this Fourth
Amendment or otherwise).
SECTION 6. **APPLICABLE LAW.** THIS FOURTH AMENDMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS FOURTH AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7. **Counterparts.** This Fourth Amendment may be executed in one or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract. Delivery of an executed counterpart to this Fourth Amendment by facsimile or other electronic transmission (e.g., “PDF” or “TIFF”) shall be effective as delivery a manually signed original.

SECTION 8. **Headings.** The Section headings used in this Fourth Amendment are for convenience of reference only, are not part of this Fourth Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Fourth Amendment.

SECTION 9. **Construction.** The rules of construction specified in Section 1.02 of the Credit Agreement, as amended hereby, also apply to this Fourth Amendment.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to be duly executed by their respective authorized officers as of the day and year first written above.

NEIMAN MARCUS GROUP LTD LLC,
a Delaware limited liability company,
as Borrower

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

MARIPOSA INTERMEDIATE HOLDINGS LLC,
a Delaware limited liability company,
as Holdings

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

[Signature Page to Fourth Amendment]
THE NEIMAN MARCUS GROUP LLC,
a Delaware limited liability company,
as Co-Borrower

By:   /s/ Tracy M. Preston
       Name:  Tracy M. Preston
       Title: Senior Vice President

THE NMG SUBSIDIARY LLC,
a Delaware limited liability company,
as Co-Borrower

By:   /s/ Tracy M. Preston
       Name:  Tracy M. Preston
       Title:  Vice President

NEMA BEVERAGE CORPORATION,
a Texas corporation, as Co-Borrower

By:   /s/ Tracy M. Preston
       Name:  Tracy M. Preston
       Title:  Vice President

NEMA BEVERAGE HOLDING CORPORATION,
a Texas corporation, as Co-Borrower

By:   /s/ Tracy M. Preston
       Name:  Tracy M. Preston
       Title:  President

[Signature Page to Fourth Amendment]
NEMA BEVERAGE PARENT CORPORATION,
a Texas corporation, as Co-Borrower

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: President

BERGDORF GOODMAN INC,
a New York corporation, as Co-Borrower

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

BERGDORF GRAPHICS, INC.,
a New York corporation, as Co-Borrower

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

NM FINANCIAL SERVICES, INC.
a Delaware corporation, as Co-Borrower

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

NM NEVADA TRUST,
a Massachusetts Trust, as Co-Borrower

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

[Signature Page to Fourth Amendment]
NMGP, LLC,
a Virginia limited liability company,
as Co-Borrower

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

WORTH AVENUE LEASING COMPANY,
a Florida corporation, as Co-Borrower

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

[Signature Page to Fourth Amendment]
NMG SALON HOLDINGS LLC,
a Delaware limited liability company,
as a Guarantor

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: President

NMG CALIFORNIA SALON LLC,
a California limited liability company,
as a New Guarantor

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Senior Vice President

NMG FLORIDA SALON LLC,
a Florida limited liability company,
as a Guarantor

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Senior Vice President

NMG SALONS LLC,
a Delaware limited liability company,
as a Guarantor

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Senior Vice President

[Signature Page to Fourth Amendment]
NMG TEXAS SALON LLC,
a Texas limited liability company,
as a Guarantor

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

BG PRODUCTIONS, INC.,
a Delaware corporation,
as a Guarantor

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

MARIPOSA BORROWER, INC.,
a Delaware corporation,
as a Guarantor

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

NM BERMUDA, LLC,
a Delaware limited liability company,
as a Guarantor

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

[Signature Page to Fourth Amendment]
NMG GLOBAL MOBILITY, INC.,
a Delaware corporation,
as a Guarantor

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NMG TERM LOAN PROPCO LLC,
a Delaware limited liability company,
as a Guarantor

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

NMG NOTES PROPCO LLC,
a Delaware limited liability company,
as a Guarantor

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President

[Signature Page to Fourth Amendment]
DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent, Collateral Agent, Issuing Bank and Lender

By: /s/ Marguerite Sutton
Name: Marguerite Sutton
Title: Vice President

By: /s/ Michael Strosel
Name: Michael Strosel
Title: Vice President

[Signature Page to Fourth Amendment]
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013, AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA MERGER SUB LLC (WHICH WAS MERGED WITH AND INTO NEIMAN MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

Bank of America, N.A.

By: /s/ Peter M. Walther  
   Name: Peter M. Walther  
   Title: Senior Vice President

[Signature Page to Fourth Amendment]
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE
REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013,
AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA
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MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME
PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH,
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

BMO Harris Bank N.A.

By: /s/ Kara Goodwin
Name: Kara Goodwin
Title: Managing Director

[Signature Page to Fourth Amendment]
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Citizens Bank, N.A.

By: /s/ Richard Norberg

Name: Richard Norberg
Title: Vice President

[Signature Page to Fourth Amendment]
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Credit Suisse AG, Cayman Islands Branch

By: /s/ Bryan J. Matthews
    Name: Bryan J. Matthews
    Title: Authorized Signatory

By: /s/ Didier Siffer
    Name: Didier Siffer
    Title: Authorized Signatory

[Signature Page to Fourth Amendment]
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE
REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013,
AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA
MERGER SUB LLC (WHICH WAS MERGED WITH AND INTO NEIMAN
MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME
PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH,
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

JPMORGAN CHASE BANK, N.A.

By:  /s/ Joshua R. Lewis
     Name:  Joshua R. Lewis
     Title:  Authorized Signer
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013, AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA MERGER SUB LLC (WHICH WAS MERGED WITH AND INTO NEIMAN MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

ROYAL BANK OF CANADA

By: /s/ Anna Bernat
    Name: Anna Bernat
    Title: Attorney In Fact

By: /s/ Farhan Lodhi
    Name: Farhan Lodhi
    Title: Attorney In Fact

[Signature Page to Fourth Amendment]
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013, AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA MERGER SUB LLC (WHICH WAS MERGED WITH AND INTO NEIMAN MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH, AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

Siemens Financial Services, Inc.

By: /s/ John Finore  
Name: John Finore  
Title: Vice President

By: /s/ Michael Zion  
Name: Michael Zion  
Title: Vice President

[Signature Page to Fourth Amendment]
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE
REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013,
AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA
MERGER SUB LLC (WHICH WAS MERGED WITH AND INTO NEIMAN
MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME
PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH,
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

SunTrust Bank

By: /s/ Dan Clubb
Name: Dan Clubb
Title: Director

[Signature Page to Fourth Amendment]
SIGNATURE PAGE TO FOURTH AMENDMENT RELATED TO THE
REVOLVING CREDIT AGREEMENT DATED AS OF OCTOBER 25, 2013,
AMONG MARIPOSA INTERMEDIATE HOLDINGS LLC, MARIPOSA
MERGER SUB LLC (WHICH WAS MERGED WITH AND INTO NEIMAN
MARCUS GROUP LTD INC.), THE LENDERS FROM TIME TO TIME
PARTY THERETO AND DEUTSCHE BANK AG NEW YORK BRANCH,
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT.

TD Bank, N.A.

By: /s/ Stephen A. Caffrey

Name: Stephen A. Caffrey

Title: Vice President
WELLS FARGO BANK, N.A. as a Lender

By:  /s/ Michele L. Riccobono

Name: Michele L. Riccobono

Title: Authorized Officer
ANNEX A
Amended Credit Agreement

[See attached.]
$900,000,000

REVOLVING CREDIT AGREEMENT,

dated as of October 25, 2013,

among

MARIPOSA INTERMEDIATE HOLDINGS LLC,
as Holdings,

MARIPOSA MERGER SUB LLC,
(to be merged with and into NEIMAN MARCUS GROUP LTD INC.),
as the Borrower,

THE CO-BORROWERS PARTY HERETO,

THE LENDERS PARTY HERETO,

CREDIT SUISSE AG, NEW YORK BRANCH
and
RBC CAPITAL MARKETS,
As Co-Syndication Agents,

BANK OF AMERICA, N.A.,
GENERAL ELECTRIC CAPITAL CORPORATION,
JPMORGAN CHASE BANK, N.A.
and
WELLS FARGO BANK, N.A.,
as Co-Documentation Agents,

DEUTSCHE BANK AG NEW YORK BRANCH,
as Administrative Agent and Collateral Agent,

DEUTSCHE BANK SECURITIES INC.,
CREDIT SUISSE SECURITIES (USA) LLC,
RBC CAPITAL MARKETS(1),
BANK OF AMERICA, N.A.,
GE CAPITAL MARKETS, INC.,
J.P. MORGAN SECURITIES LLC, and
WELLS FARGO BANK, N.A.,
as Bookrunners and Arrangers,

BMO HARRIS BANK, N.A. and
SUNTRUST BANK,
as Senior Managing Agents

(1) RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates.
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REVOLVING CREDIT AGREEMENT, dated as of October 25, 2013 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, this "Agreement"), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company ("Holdings"), MARIPOSA MERGER SUB NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the "Merger Sub Borrower"), the Lenders party hereto from time to time, CREDIT SUISSE AG, NEW YORK BRANCH and RBC CAPITAL MARKETS, as co-syndication agents (in such capacities, the "Co-Syndication Agents"), BANK OF AMERICA, N.A., GENERAL ELECTRIC CAPITAL CORPORATION, JPMORGAN CHASE BANK, N.A. AND WELLS FARGO BANK, N.A., as co-documentation agents (in such capacities, the "Co-Documentation Agents") and DEUTSCHE BANK AG NEW YORK BRANCH, as administrative agent (in such capacity, and as further defined in Section 1.01, the "Administrative Agent"), as collateral agent (in such capacity, and as further defined in Section 1.01, the "Collateral Agent"), as Swingline Lender (in such capacity, and as further defined in Section 1.01, the "Swingline Lender"), and as issuing bank (in such capacity, and as further defined in Section 1.01, the "Issuing Bank").

RECITALS

(1) Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P. and Canada Pension Plan Investment Board have formed Holdings, and pursuant to the Agreement and Plan of Merger, dated as of September 9, 2013 (the "Merger Agreement"), by and among NM MARIPOSA HOLDINGS, INC. a Delaware corporation, Merger Sub and NEIMAN MARCUS GROUP LTD INC., a Delaware corporation formerly known as Neiman Marcus, Inc. (the "Company"), Merger Sub will merge (the "Merger") with and into the Company, with the Company being the survivor of such Merger. As used herein, the "Borrower" means Merger Sub prior to the consummation of the Merger and the Company thereafter.

(2) In connection with the consummation of the Merger, (a) the Lenders have agreed to extend credit to the Borrower Parties in the form of Revolving Loans, Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed $900.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower in the form of term loans under the Term Loan Credit Agreement (as defined herein) in an aggregate principal amount not to exceed $2,950.0 million and (c) the Sponsors and certain other equity investors (including members of the Company’s management) arranged by or designated by the Sponsors (such equity investors together with the Sponsors, the "Investors") will, directly or indirectly, contribute to Holdings or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Holdings or such Parent Entity (and Holdings or such Parent Entity will contribute such cash and rollover equity to the common equity capital of Merger Sub) and the aggregate amount of such contributed cash or rollover equity will be no less than 22.5% of the sum of (i) the aggregate gross proceeds of the Loans borrowed on the Closing Date under this Agreement (excluding Letters of Credit), the aggregate gross proceeds of the term loans borrowed by the Borrower under the Term Loan Credit Agreement on the Closing Date and the aggregate gross cash proceeds from any sale of Senior Notes on or prior to the Closing Date, (ii) the aggregate outstanding principal amount of the Existing 2028 Debentures on the Closing Date and (iii) the amount of such cash and rollover equity contributed on the Closing Date after giving effect to the Transactions (such contribution, the "Equity Contribution").
Borrower is party to that certain Credit Agreement, dated as of October 25, 2013 (as amended, supplemented or otherwise modified prior to the Fourth Amendment Effective Date (as defined below), including by (i) that certain First Incremental Amendment to Revolving Credit Agreement, dated as of October 10, 2014, among the Loan Parties (as defined below) party thereto, the Lenders party thereto, the Administrative Agent and the Collateral Agent, (ii) that certain Second Amendment to Revolving Credit Agreement dated as of October 27, 2016, by and among the Loan Parties party thereto, the Administrative Agent and Collateral Agent, and (iii) that certain Third Amendment, dated as of March 22, 2019, by and among Holdings, Borrower, the Lenders party thereto, the Administrative Agent and the Collateral Agent, the “Existing Credit Agreement”), by and among Holdings, the Borrower Parties (as defined below), certain Subsidiary Loan Parties (as defined below), the Administrative Agent, the Collateral Agent and certain Lenders party thereto from time to time.

Pursuant to that certain Fourth Amendment, dated as of June 7, 2019 (the “Fourth Amendment”), by and among Holdings, the Borrower Parties party thereto, the Subsidiary Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the Lenders party thereto, the Administrative Agent and the Required Lenders have agreed, inter alia, to amend the Existing Credit Agreement in its entirety to read as set forth in this Agreement as of the Fourth Amendment Effective Date.

In connection with the Fourth Amendment and as part of the Recapitalization Transactions, the Required Lenders have agreed to amend or amend and restate the Existing Credit Agreement to, among other things, amend certain provisions to replicate the provisions set forth in the Term Loan Credit Agreement, in each case subject to the terms and conditions set forth in this Agreement and the Fourth Amendment.

**AGREEMENT**

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**

**Definitions**

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“2013 Collateral” means the “2013 Term Loan Designated Collateral” as defined in the Term Loan Collateral Agreement and also includes all other property that is subject to any Lien in favor of the 2013 Term Loan Agent for the benefit of the 2013 Term Loan Lenders (as defined in the Term Loan Collateral Agreement) pursuant to any applicable Term Loan Security Document, including each mortgage of a Real Property entered into prior to the Fourth Amendment Effective Date.

“2013 Term Loan Amount” has the meaning provided in the definition of “2013 Term Loans”.

“2013 Term Loan Obligations” means the Indebtedness and the related Indebtedness Obligations under the Indebtedness Documents related to the 2013 Term Loans.
“2013 Term Loan Reserve” means, at any time, from and after July 25, 2020 (and the delivery of the irrevocable written direction from the Borrower contemplated by clause (1)(i) of the definition of “Maturity Date”), an amount equal to the aggregate principal amount of 2013 Term Loans outstanding on July 25, 2020; provided that (i) on the date of the incurrence of any Revolving Loans or Swingline Loans in reliance on the “2013 Term Loan Reserve” (as set forth in the applicable Borrowing Request for such Revolving Loans) for the sole purpose of repaying any then outstanding principal of the 2013 Term Loans, the “2013 Term Loan Reserve” shall be concurrently reduced on a dollar-for-dollar basis by the amount of principal repayments of 2013 Term Loans (other than with the proceeds of Revolving Loans and Swingline Loans) after the imposition of the “2013 Term Loan Reserve” as contemplated by clause (1)(i) of the definition of “Maturity Date” (as certified in writing to the Administrative Agent by a Responsible Officer of the Borrower).

“2013 Term Loan Reserve Advances” has the meaning assigned to such term in Section 2.01(4).

“2013 Term Loans” means term loans made to the Borrower under the Term Loan Credit Agreement and outstanding on the Fourth Amendment Effective Date in an aggregate principal amount equal to $12,697,707.32 (the “2013 Term Loan Amount”), that the lenders under the Term Loan Credit Agreement declined to convert into 2019 Extended Term Loans on the Fourth Amendment Effective Date (it being understood that the term “2013 Term Loans” shall not include any Non-Participating Term Loan Exchange Indebtedness).

“2019 Extended Term Loan Amount” has the meaning provided in the definition of “2019 Extended Term Loans”.

“2019 Extended Term Loan Collateral” means all Collateral (other than the 2013 Collateral, the ABL Priority Collateral, the Call Right Collateral and Equity Interests in 2019 Extended Term Loan PropCo).

“2019 Extended Term Loan Liens” means Liens on the Collateral, which Liens have Required Collateral Lien Priority for Liens securing the 2019 Extended Term Loans.

“2019 Extended Term Loan Obligations” means the Indebtedness and the related Indebtedness Obligations under the Indebtedness Documents related to the 2019 Extended Term Loans (but not including, for the avoidance of doubt, any 2013 Term Loan Obligations or Non-Participating Term Loan Exchange Obligations).

“2019 Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Borrower formed solely to hold Real Property interests consisting of 2019 Extended Term Loan PropCo Assets.

“2019 Extended Term Loan PropCo Assets” means the 2019 Term Loan Priority Real Estate Assets, to the extent that such Real Property assets are Non-Mortgageable Leases.

“2019 Extended Term Loans” means (x) the 2019 Extended Term Loans (as defined in the Term Loan Credit Agreement) converted from the term loans of the Borrower outstanding immediately prior to the Fourth Amendment Effective Date pursuant to the 2019 Term Loan Extension Amendment and the Term Loan Credit Agreement on the Fourth Amendment Effective Date in an initial aggregate principal
amount equal to $2,775,439,480.18 (the “2019 Extended Term Loan Amount”) and (v) the Additional 2019 Extended Term Loans.

“2019 Term Loan Extension Amendment” means that certain Extension Amendment and Amendment No. 2 to Credit Agreement, dated as of the Fourth Amendment Effective Date, by and among Holdings, the Borrower Parties, the Subsidiary Loan Parties party thereto, the Term Loan Agent, and lenders party thereto.

“2019 Term Loan Priority Real Estate Assets” means (a) the Real Property assets set forth on (i) Schedule 3.16(1) under the heading “2019 Term Loan Priority Real Estate Assets” and (ii) Schedule 3.16(2) under the heading “2019 Term Loan Priority Real Estate Assets”.

“2028 Debentures” means the 7.125% debentures due 2028 issued by TNMG LLC (f/k/a The Neiman Marcus Group, Inc.) pursuant to an Indenture, dated as of May 27, 1998, by and between The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) and Wilmington Savings Fund Society, FSB, as successor trustee, as amended, restated, supplemented and/or otherwise modified from time to time, including on or about the date hereof (the “2028 Debentures Indenture”).

“2028 Debentures Collateral” means the “2028 Notes Collateral” as defined in the Junior Lien Intercreditor Agreement (as in effect on the Fourth Amendment Effective Date).

“2028 Debentures Indenture” has the meaning given such term in the definition of 2028 Debentures.

“2028 Debentures Obligations” means the Indebtedness and the related Indebtedness Obligations under the 2028 Debentures Indenture and the other Indebtedness Documents related to the 2028 Debentures.

“ABL Junior Lien Intercreditor Agreement” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H, or, if requested by the providers of Indebtedness to be secured on a junior basis to the Revolving Loans, another lien subordination arrangement satisfactory to the Administrative Agent. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver an ABL Junior Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Revolving Loans.

“ABL Priority Collateral” means “ABL Priority Collateral” as defined in the ABL/Term Loan/Notes Intercreditor Agreement.

“ABL Term Lenders” means, collectively, the Incremental Term Lenders and the Other Term Lenders.

“ABL Term Loan Commitments” means, collectively, the Incremental Term Loan Commitments and the Other Term Loan Commitments.

“ABL Term Loans” means, collectively, the Incremental Term Loans and the Other Term Loans.

“ABL/Term Loan/Notes Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement, dated as of the Fourth Amendment Effective Date, by and among the Administrative Agent, the Collateral Agent, the Term Loan Agent, the Second Lien Notes Collateral Agent.
“ABR” means, for any day, a fluctuating rate per annum equal to the highest of:

1. The Federal Funds Rate plus 1/2 of 1.00%;
2. The prime commercial lending rate published as of such day by the Administrative Agent as the “prime rate;” and
3. The LIBOR Quoted Rate plus 1.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate, as the case may be. Notwithstanding anything to the contrary herein, in no event shall the ABR be less than zero.

“ABR Borrowing” means a Borrowing comprised of ABR Loans.

“ABR Loan” means any Loan bearing interest at a rate determined by reference to the ABR. For the avoidance of doubt, all Swingline Loans will be ABR Loans.

“ABR Revolving Facility Borrowing” means a Borrowing comprised of ABR Revolving Loans.

“ABR Revolving Loan” means any Revolving Loan bearing interest at a rate determined by reference to the ABR.

“Acceptable Appraiser” means (a) Great American Appraisal & Valuation Services, LLC or (b) any other experienced and reputable appraiser reasonably acceptable to the Borrower and the Administrative Agent.

“Account” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC). For the avoidance of doubt, “Accounts” will include all Credit Card Processor Accounts.

“Additional 2019 Extended Term Loans” means term loans incurred by the Term Loan Borrowers pursuant to, and in accordance with the terms of, Section 2.18 of the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date) in an aggregate principal amount not to exceed $201.0 million, the proceeds of which are used to prepay the Secured Notes substantially in accordance with the terms and conditions of Section 2.18(7) of the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date).

“Additional Lender” means the banks, financial institutions and other institutional lenders and investors (other than natural persons) that become Lenders in connection with Incremental
Commitments, Incremental Term Loans or Other Term Loans; provided that no Disqualified Institution may be an Additional Lender.

“Average Daily Used Percentage” means, for any period, the percentage derived by dividing (a) the sum of (i) the average daily principal balance of all Revolving Loans during such period plus (ii) the average daily undrawn amount of all outstanding Letters of Credit issued for the account or on behalf of the Borrower or any of its Subsidiaries during such period by (b) the average daily amount of the aggregate Revolving Facility Commitments during such period.

“Adjusted LIBO Rate” means, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, an interest rate per annum equal to the LIBO Rate in effect for such Interest Period divided by one minus the Statutory Reserves applicable to such Eurocurrency Revolving Facility Borrowing, if any

“Administrative Agent” means Deutsche Bank AG New York Branch, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“Administrative Agent Fees” has the meaning assigned to such term in Section 2.12(3).

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agents” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“Agreement” has the meaning assigned to such term in the introductory paragraph hereof.

“Annual Financial Statements” has the meaning assigned to such term in Section 5.04(1).

“Applicable Commitment Fee Percentage” means, for any period, (a) prior to the Second Amendment Effective Date, a percentage per annum equal to 0.25% and (b) from and after the Second Amendment Effective Date, (i) if the Average Daily Used Percentage for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower is greater than 50.0%, a percentage per annum equal to 0.25% and (ii) if the Average Daily Used Percentage for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower is equal to or less than 50%, a percentage per annum equal to 0.375%.

“Applicable Margin” means:

(a) prior to the Second Amendment Effective Date, the percentages per annum determined in accordance with the pricing grid set forth below, based on Average Historical Excess Availability for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower:
<table>
<thead>
<tr>
<th>Pricing Level</th>
<th>Average Historical Excess Availability</th>
<th>Applicable Margin for Eurocurrency Revolving Loans</th>
<th>Applicable Margin for ABR Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Greater than or equal to 66.7% of the Line Cap</td>
<td>1.25%</td>
<td>0.25%</td>
</tr>
<tr>
<td>II</td>
<td>Less than 66.7% of the Line Cap but greater than or equal to 33.3% of the Line Cap</td>
<td>1.50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>III</td>
<td>Less than 33.3% of the Line Cap</td>
<td>1.75%</td>
<td>0.75%</td>
</tr>
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(b) from and after the Second Amendment Effective Date, initially (1) 0.75% in the case of ABR Loans and (2) 1.75% in the case of Eurocurrency Revolving Loans, and following delivery of the Required Financial Statements for the first full fiscal quarter ended after the Second Amendment Effective Date, the percentages per annum determined in accordance with the pricing grid set forth below, based on Average Historical Excess Availability for the most recent fiscal quarter ending on the date prior to the first day of each fiscal quarter of the Borrower:

<table>
<thead>
<tr>
<th>Pricing Level</th>
<th>Average Historical Excess Availability</th>
<th>Applicable Margin for Eurocurrency Revolving Loans</th>
<th>Applicable Margin for ABR Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Greater than or equal to 50.0% of the Line Cap</td>
<td>1.75%</td>
<td>0.75%</td>
</tr>
<tr>
<td>II</td>
<td>Less than 50.0% of the Line Cap</td>
<td>2.00%</td>
<td>1.00%</td>
</tr>
</tbody>
</table>

; provided, however, that from and after delivery to the Administrative Agent of the Required Financial Statements and the certificate required pursuant to Section 5.04(3) indicating an entitlement in accordance with the next sentence to a different margin (each, a “Start Date”) to and including the applicable End Date described below, each Applicable Margin (hereinafter the “Adjustable Applicable Margin”) set forth in the immediately preceding grid for Level I and Level II shall be reduced by 0.25%. The Adjustable Applicable Margin shall apply upon the achievement and maintenance by the Borrower for two consecutive fiscal quarters for which Required Financial Statements have been delivered of a Senior Secured First Lien Net Leverage Ratio of less than or equal to 4.40:1.00.

The Senior Secured First Lien-Net Leverage Ratio used in a determination of Adjustable Applicable Margins shall be determined based on the delivery to the Administrative Agent of the Required Financial Statements and the relevant certificate required pursuant to Section 5.04(3), which shall set forth the Senior Secured First Lien-Net Leverage Ratio as at the last day of the most recent period of four consecutive fiscal quarters ended immediately prior to the relevant Start Date and shall remain in effect until such date as (x) the certificate delivered pursuant to Section 5.04(3) fails to demonstrate compliance with the Senior Secured First Lien-Net Leverage Ratio of less than or equal to 4.40:1.00 as at the last day of the most recent period of four consecutive fiscal quarters ended immediately prior to the delivery of such certificate or (y) at the option of the Administrative Agent or at the request of the Required Lenders, no certificate pursuant to Section 5.04(3)(b) has been delivered to the Administrative Agent as required pursuant to this Agreement (such date, the “End Date”). Upon occurrence of an End Date, the Adjustable Applicable Margins shall be those set forth in the immediately preceding grid (such Adjustable Applicable
Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Senior Secured First Lien Net Leverage Ratio set forth in any certificate delivered to the Administrative Agent pursuant to Section 5.04(3)(b) is inaccurate for any reason and the result thereof is that the Lenders received interest for any period based on an Applicable Margin that is less than that which would have been applicable had the Senior Secured First Lien Net Leverage Ratio been accurately determined, then, for all purposes of this Agreement, the “Applicable Margin” for any day occurring within the period covered by such certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Senior Secured First Lien Net Leverage Ratio for such period, and any shortfall in the interest or fees theretofore paid by the Borrower for the relevant period pursuant to Section 2.13 as a result of the miscalculation of the Senior Secured First Lien Net Leverage Ratio shall be deemed to be (and shall be) due and payable under the relevant provisions of Section 2.13 at the time the interest for such period were required to be paid pursuant to said Section (and shall remain due and payable until paid in full, together with all amounts owning under Section 2.13, in accordance with the terms of this Agreement); provided, however, that non-payment of any interest as a result of any such inaccuracy shall not constitute a Default or Event of Default (whether retroactively or otherwise), and no such amounts shall be deemed overdue (and no amounts shall accrue interest at the applicable default rate), in any such case prior to the earlier of (i) the occurrence of a Default or Event of Default under Section 8.01(8) or (9) and (ii) the fifth Business Day after written demand thereof by the Administrative Agent or the Required Lenders to the Borrower.

“Approved Fund” has the meaning assigned to such term in Section 10.04(2).


“Asset Sale” means any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any Sale and Lease-Back Transaction) to any Person of any asset or assets of any Borrower Party or any Restricted Subsidiary.

“Assignee” has the meaning assigned to such term in Section 10.04(2).

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form that is approved by the Administrative Agent and reasonably satisfactory to the Borrower.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Facility Commitments.

“Available Contribution Proceeds” means, as of any date, (A) an amount equal to the cumulative amount of cash proceeds received by the Borrower in connection with the sale or issuance of Equity Interests of any Parent Entity after the Fourth Amendment Effective Date (including upon exercise of warrants or options) which have been contributed to the capital of the Borrower or exchanged for Equity Interests of the Borrower, in each case, other than the proceeds of Disqualified Stock, contributions of the type set forth in Section 6.06(2)(c), the proceeds of common Equity Interest sales used to make voluntary
prepayments of any 2013 Term Loans prior to final stated maturity in accordance with Section 6.09(2)(i) (to the extent made in reliance on Section 2.07(2)(b) of the Term Loan Credit Agreement) and Cure Amounts, less (ii) any such amounts that are used prior to such date to make Investments under Section 6.04(3) and payments in respect of Junior Financing under Section 6.09(2)(b) or Section 6.09(4)(b) and (B) any property (for the avoidance of doubt, not the fair market value thereof, but property in the form received by the Borrower) other than cash received by the Borrower in connection with the sale or issuance of Equity Interests of any Parent Entity after the Fourth Amendment Effective Date (including upon exercise of warrants or options) which have been contributed to the capital of the Borrower or exchanged for Equity Interests of the Borrower.

“Available Revolving Facility Commitment” means, with respect to a Lender at any time, the Revolving Facility Commitment of such Lender at such time less the amount of such Lender’s Revolving Facility Percentage of the 2013 Term Loan Reserve at such time. The Available Revolving Facility Commitments of all Lenders at any time equals the sum of the Available Revolving Facility Commitments of all Lenders at such time.

“Available Unused Commitment” means, with respect to a Lender at any time, an amount equal to the amount by which (1) the Revolving Facility Commitment of such Lender at such time exceeds (2) the aggregate Revolving Facility Credit Exposure (other than Revolving Facility Credit Exposure attributable to Swingline Loans) of such Lender at such time.

“Average Daily Used Percentage” means, for any period, the percentage derived by dividing (a) the sum of (i) the average daily principal balance of all Revolving Loans during such period plus (ii) the average daily undrawn amount of all outstanding Letters of Credit issued for the account or on behalf of the Borrower or any of its Subsidiaries during such period by (b) the average daily amount of the aggregate Revolving Facility Commitments during such period.

“Average Historical Excess Availability” means, for any period, the average daily Excess Availability for such period.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Blocked Account” has the meaning assigned to such term in Section 5.11.

“Blocked Account Agreement” has the meaning assigned to such term in Section 5.11.

“Below Threshold Asset Sale Proceeds” has the meaning assigned to such term in the Term Loan Credit Agreement.

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the
happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “Beneficial Ownership”, “Beneficially Owns” and “Beneficially Owned” have a corresponding meaning.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.


“Blocked Account” has the meaning assigned to such term in Section 5.11.

“Blocked Account Agreement” has the meaning assigned to such term in Section 5.11.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“Borrower” has the meaning assigned to such term in the recitals to this Agreement introductory paragraph hereof.

“Borrower Materials” has the meaning assigned to such term in Section 10.17(1).

“Borrower Parties” means, as of any date, the Borrower and each Co-Borrower as of such date.

“Borrowing” means a group of Loans of a single Type made on a single date and, in the case of Eurocurrency Revolving Loans, as to which a single Interest Period is in effect.

“Borrowing Base” means, at any time, the sum of:

1. 90% of the Eligible Accounts held by the Borrower Parties; plus
2. 90% of the Net Orderly Liquidation Value of Eligible Inventory held by the Borrower Parties; plus
3. 100% of all Eligible Cash held by the Borrower Parties; less
4. Reserves; less
5. the 2013 Term Loan Reserve.

“Borrowing Base Certificate” means a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit B (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent the Borrower has received notice of any such Reserve from the Administrative Agent, any of the Reserves included in such calculation), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the
preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“Borrowing Minimum” means $1,000,000 in the case of ABR Borrowings and $5,000,000 in the case of Eurocurrency Revolving Facility Borrowings.

“Borrowing Multiple” means $1,000,000 in the case of ABR Borrowings and Eurocurrency Revolving Facility Borrowings.

“Borrowing Request” means a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D-1.

“Budget” has the meaning assigned to such term in Section 5.04(5).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; provided that when used in connection with a Eurocurrency Revolving Loan, the term “Business Day” also excludes any day on which banks are not open for dealings in deposits in the London interbank market.

“Call Right” means “Call Right” as defined in the Junior Lien Term/Note Intercreditor Agreement.

“Call Right Cap Recovery” has the meaning assigned to such term in the Junior Lien Term/Note Intercreditor Agreement.

“Call Right Collateral” means the Notes Priority Real Estate Assets that are not Notes PropCo Assets and the Equity Interests in Notes PropCo, and all the proceeds of any of the foregoing.

“Capital Expenditures” means, for any period, the aggregate of all expenditures incurred by the Borrower and the Restricted Subsidiaries during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period; provided that Capital Expenditures will not include:

1. expenditures to the extent they are made with (a) Equity Interests of any Parent Entity or (b) proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrower after the Closing Fourth Amendment Effective Date;

2. expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Subsidiaries;

3. interest capitalized during such period;

4. expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period);
the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (a) used or surplus equipment traded in at the time of such purchase or (b) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

Investments in respect of a Permitted Acquisition; or

the purchase of property, plant or equipment made within 24 months of any Asset Sale to the extent purchased with the proceeds of such Asset Sale.

“Capital Lease Obligations” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP (as in effect on the Closing Date), notwithstanding any modification or interpretative change thereto after the Closing Date and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital One” means Capital One, National Association, together with its Affiliates.

“Capital One Agreements” means the Second Amended and Restated Credit Card Program Agreement, dated as of July 15, 2013, among The Neiman Marcus Group, Inc., a Delaware corporation, Bergdorf Goodman Inc., a New York Corporation, and Capital One, and all material agreements and instruments entered into in connection therewith, in each case, as amended prior to the date hereof and as may be further amended from time to time in accordance with the terms of this Agreement.

“Capital One Arrangements” means the private label credit card program among The Neiman Marcus Group, Inc., a Delaware corporation, Bergdorf Goodman Inc., a New York Corporation, and Capital One pursuant to the terms of the Capital One Agreements.

“Capital One Credit Card Receivables Accounts” has the meaning given to such term in the Collateral Agreement.

“Capital Stock” means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Cash Dominion Period” means the period commencing upon the occurrence of, and continuing during the continuation of, a Liquidity Condition or any Designated Event of Default. Once commenced, a Cash Dominion Period will continue until such Liquidity Condition or Designated Event of Default has been cured or waived or is no longer continuing, as applicable.

“Cash Equivalents” means:

1. Dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
2. direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
3. time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than $250.0 million;
4. repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;
5. commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
6. securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
7. Indebtedness issued by Persons (other than the Sponsors) with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
8. Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and

shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above.

“Cash Dominion Period” means the period commencing upon the occurrence of, and continuing during the continuation of, a Liquidity Condition or any Designated Event of Default. Once commenced, a Cash Dominion Period will continue until such Liquidity Condition or Designated Event of Default has been cured or waived or is no longer continuing, as applicable.

“Cash Management Bank” means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Closing Fourth Amendment Effective Date, on the Closing Fourth Amendment Effective Date, was the Administrative Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Lender or an Affiliate of the foregoing.

“Cash Management Obligations” means obligations owed by any Loan Party to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as “Cash Management Obligations” under this Agreement (but only if such obligations have not been designated as “Cash Management Obligations” under the Term Loan Credit Agreement).

“Cash Management Services” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“Certain Funds Provisions” has the meaning given to such term in the Commitment Letter.

A “Change in Control” will be deemed to occur if:

(1) at any time,

(a) Holdings ceases to Beneficially Own, directly or indirectly, 100% of the issued and outstanding Equity Interests of the Borrower; provided, however, that prior to the completion of the Closing Date Conversions, a controlled Affiliate of the Sponsors may own the Class B Capital Stock of the Borrower; or

(b) a “change of control” (or comparable event) occurs under the Term Loan Credit Agreement, the Secured Notes Indentures or the Senior Notes Indentures or the documentation governing any Permitted Refinancing Indebtedness in respect of any of the foregoing, in each case, if any Indebtedness is outstanding under such agreement; or

(2) at any time prior to the consummation of a Qualified IPO, the Permitted Holders, taken together, cease to Beneficially Own, directly or indirectly, Voting Stock representing more than 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity
Interests of Holdings (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested); or

(3) at any time after the consummation of a Qualified IPO, any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, acquires Beneficial Ownership of Voting Stock of a Parent Entity representing (a) more than 35% of the aggregate ordinary voting power for the election of directors represented by the issued and outstanding Equity Interests of such Parent Entity (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) and (b) more than the percentage of the aggregate ordinary voting power for the election of directors that is at the time Beneficially Owned, directly or indirectly, by the Permitted Holders, taken together (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested).

“Change in Law” means:

(1) the adoption of any law, rule or regulation after the Closing Fourth Amendment Effective Date;

(2) any change in law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Fourth Amendment Effective Date; or

(3) compliance by any Lender (or, for purposes of Section 2.15(2), by any lending office of such Lender or by such Lender’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Fourth Amendment Effective Date; provided that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated or issued.

“Charges” has the meaning assigned to such term in Section 10.09.

“Closing Date” means October 25, 2013.

“Closing Date Conversions” means the transactions described on Schedule 1.01(3).

“Closing Date Refinancing” means the repayment of debt contemplated by the Debt Payoff Letter (as defined in the Merger Agreement).

“Closing Date Senior Secured First Lien Net Leverage Ratio” means 4.70 to 1.00.

“Closing Date Total Net Leverage Ratio” means 7.00 to 1.00.

“Co-Borrower” means (1) as of the Closing Date and after giving effect to the Original Merger, each of the Subsidiaries listed on Schedule 1.01(2) hereto and (2) from time to time after the
Closing Date, each of the Restricted Subsidiaries of the Borrower identified in clause (1) above and each other Restricted Subsidiary of the Borrower that as of such date of determination has executed a Co-Borrower Joinder Agreement, except for any Restricted Subsidiaries that as of such date of determination have ceased to be a Co-Borrower in accordance with the terms of this Agreement.

“Co-Borrower Joinder Agreement” means a Co-Borrower Joinder Agreement substantially in the form of Exhibit F, executed and delivered by a new Co-Borrower in accordance with the provisions of Section 5.12.

“Co-Documentation Agents” has the meaning assigned to such term in the introductory paragraphs hereof.

“Co-Syndication Agents” has the meaning assigned to such term in the introductory paragraphs hereof.


“Collateral” means the “Collateral” as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document, including all interests in Real Property mortgaged in accordance with Section 5.12 hereof and the Real Property constituting Collateral prior to the Fourth Amendment Effective Date.

“Collateral Access Agreement” means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“Collateral Agent” means Deutsche Bank AG New York Branch, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“Collateral Agreement” means the Amended and Restated ABL Collateral and Guarantee and Collateral Agreement, dated as of the Closing Fourth Amendment Effective Date, among the Loan Parties and the Collateral Agent, as amended, supplemented, restated and/or otherwise modified from time to time.

“Commitment Fee” has the meaning assigned to such term in Section 2.12(1).

“Commitment” means (1) with respect to each Lender, such Lender’s Revolving Facility Commitment, (2) with respect to the Swingline Lender, its Swingline Commitment and (3) with respect to any Issuing Bank, its Letter of Credit Commitment. On the First Incremental Closing Date, the aggregate amount of Commitments is $800.0 million. On the Fourth Amendment Effective Date, the aggregate amount of Commitments is $900.0 million.

“Company Commitment Fee” has the meaning assigned to such term in the recitals hereto Section 2.12(1).

“Consolidated 1st and 2nd Priority Senior Secured Net Debt” means, as of any date, all Consolidated Debt as of such date (i) that constitutes Obligations or that is secured by a Lien on the ABL Priority Collateral that is pari passu with the Lien securing the Obligations, (ii) that is secured by a Lien on the ABL Priority Collateral that is junior to the Lien securing the Obligations but senior to the Lien securing the Term Loan Obligations (including any Incremental Equivalent Debt), (iii) that is secured by a Lien on the Term/Note Priority Collateral (excluding, prior to the Call Right Cap Recovery, the Call Right Collateral) that is senior to, or pari passu with, the Lien securing the Term Loan Obligations, and (iv) that is secured by a Lien on the Term/Note Priority Collateral (excluding, prior to the Call Right Cap Recovery, the Call Right Collateral) that is senior to, or pari passu with, the Lien securing the Second Lien Note Obligations, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; provided that for purposes of calculating the amount of Consolidated 1st and 2nd Priority Senior Secured Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness. For the avoidance of doubt, (x) Indebtedness in respect of the Term Loan Credit Agreement and the Second Lien Notes Indenture will constitute Consolidated 1st and 2nd Priority Senior Secured Net Debt and (y) Indebtedness in respect of the Third Lien Notes Indentures will not constitute Consolidated 1st and 2nd Priority Senior Secured Net Debt.

“Consolidated Debt” means, as of any date, the sum (without duplication) of all Indebtedness (other than letters of credit or bank guarantees, to the extent undrawn) consisting of Capital Lease Obligations, Indebtedness for borrowed money, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services of the Borrower and the Restricted Subsidiaries and all Guarantees of the foregoing, determined on a consolidated basis in accordance with GAAP, based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Consolidated EBITDA” means, for any period, the Consolidated Net Income of the Borrower for such period:

1 increased, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:

(a) provision for taxes based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of tax distributions actually made to the holders of Equity Interests of the Borrower or any Parent Entity in respect of such period (in each case, to the extent attributable to the operations of the Borrower and its Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Borrower; plus

(b) consolidated interest expense; plus

(c) cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Borrower or any Restricted Subsidiary; plus
(d) all depreciation and amortization charges and expenses; plus

(e) all

   (i) losses, charges, fees, costs and expenses relating to the Recapitalization Transactions;

   (ii) transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Agreement, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the incurrence, modification or repayment of Indebtedness permitted to be incurred under this Agreement (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions; and

   (iii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period; plus

(f) any expense or deduction attributable to minority Equity Interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Borrower; plus

(g) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities, fees, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 6.07; plus

(h) earn-out obligations incurred in connection with any Permitted Acquisition or other Investment; plus

(i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of the Borrower and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of the Borrower or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; plus

(j) all non-cash losses, charges and expenses, including any write-offs or write-downs; provided that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period (i) the Borrower may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; plus

(k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated
Net Income; and

(2) decreased, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Closing Date). For the avoidance of doubt, amortization of tenant and developer allowances will not be deducted pursuant to this clause (2).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

(i) August 3, 2013 will be deemed to be $107.2 million;

(ii) April 27, 2013 will be deemed to be $206.2 million;

(iii) January 26, 2013 will be deemed to be $178.3 million; and

(iv) October 27, 2012 will be deemed to be $179.8 million;

it being understood that the amounts listed in the foregoing clauses (i), (ii), (iii) and (iv) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

"Consolidated First Lien Net Debt" means, as of any date, all Consolidated Debt as of such date that is secured by a Lien on the ABL Priority Collateral that is pari passu with the Lien securing the Obligations or that is secured by a Lien on the Term Priority Collateral that is senior to or pari passu with the Lien securing the Obligations, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; provided that for purposes of calculating the amount of Consolidated First Lien Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness. For the avoidance of doubt, Indebtedness in respect of the Term Loan Credit Agreement will constitute Consolidated First Lien Net Debt.

"Consolidated Interest Expense" means, with respect to any Person for any period, the sum, without duplication, of:

(1) the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capital Lease Obligations and net payments and receipts (if any) pursuant to Hedge Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, any expenses resulting from the discounting of the Existing 2028 Debentures as a result of the purchase accounting
treatment of the Original Transactions and the Recapitalization Transactions and all discounts, commissions, fees and other charges associated with any Receivables Facility; plus

(2) consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued; plus

(3) any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been Guaranteed by the referent Person; less

(4) interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of such period. For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP (adjusted to reflect any charge, tax or expense incurred or accrued by Holdings or any Parent Entity during such period attributable to the operations of the Borrower and its Subsidiaries as though such charge, tax or expense had been incurred by the Borrower, to the extent that the Borrower has made or would be entitled under the Loan Documents to make any Restricted Payment or other payment to or for the account of Holdings in respect thereof) and before any deduction for preferred stock dividends; provided that:

(1) all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, consolidation, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans in connection with the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions or otherwise (including any transition-related expenses incurred before, on or after the Closing Date, Fourth Amendment Effective Date), will be excluded;

(2) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded;

(3) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by a Responsible Officer of the Borrower) will be excluded;
all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded;

all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded;

(a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period; and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof;

the cumulative effect of a change in accounting principles during such period will be excluded;

the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to the Transactions or any acquisition consummated before or after the Closing Fourth Amendment Effective Date, and the amortization, write-down or write-off of any amounts thereof, net of taxes, will be excluded;

all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded;

all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

accruals and reserves for liabilities or expenses that are established or adjusted as a result of the Recapitalization Transactions within 18 months after the Closing Fourth Amendment Effective Date will be excluded;

all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(a) the non-cash portion of “straight-line” rent expense will be excluded and (b) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included;
expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount (a) has not been denied by the applicable carrier in writing and (b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period); provided that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

provided that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

(a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities in an aggregate amount not to exceed $20.0 million for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded, and (b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded; and

non-cash charges for deferred tax asset valuation allowances will be excluded.

“Consolidated Total Assets” means, as of any date, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Consolidated Total Net Debt” means, as of any date, the Consolidated Debt as of such date minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; provided that for purposes of calculating the Consolidated Total Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“Contribution Indebtedness” has the meaning assigned to such term in Section 6.01(15).

“Control Agreement” means any “Control Agreement” as defined in the Collateral.
“Cost” means the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent Annual Financial Statements, which practices are consistent with the methodology used in the most recent appraisal delivered in connection with this Agreement prior to the Closing Fourth Amendment Effective Date.

“Co-Documentation Agents” shall have the meaning assigned to such term in the introductory paragraphs hereof.

“Co-Syndication Agents” shall have the meaning assigned to such term in the introductory paragraphs hereof.

“Covenant Trigger Event” means that Excess Availability is less than the greater of (a) $50.0 million and (b) 10.0% of the Line Cap then in effect. Once commenced, a Covenant Trigger Event will be deemed to be continuing until such time as Excess Availability equals or exceeds the greater of (i) $50.0 million and (ii) 10.0% of the Line Cap then in effect for 20 consecutive days.

“Covered Party” has the meaning assigned to such term in Section 10.26.

“Credit Agreement Refinancing Indebtedness” means secured or unsecured Indebtedness of the Borrower (which may be co-borrowed by the Co-Borrowers) in the form of term loans or notes; provided that:

1. such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, convert, replace or refinance, in whole or part, Indebtedness (“Refinanced Debt”) that is either Loans or other Credit Agreement Refinancing Indebtedness;
2. such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Refinanced Debt (plus the amount of unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, defeasance costs, fees, commissions and expenses);
3. the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Refinanced Debt, and the final stated maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the date that is at least 90 days after the Latest Maturity Date of the Revolving Loans;
4. such Indebtedness may participate in any voluntary or mandatory prepayments hereunder on the same basis as ABL Term Loans;
5. such Indebtedness is not secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not constitute Collateral (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender) securing the applicable Loans or other Credit Agreement Refinancing Indebtedness being refinanced;
6. such Indebtedness is not guaranteed or incurred by any Subsidiary of the Borrower other than a Subsidiary Loan Party or by any other entity that is not a Loan Party (unless such entity becomes a Loan Party in connection with the incurrence of such Indebtedness);
if such Indebtedness is secured:

(a) the security agreements relating to such Indebtedness are substantially similar to or the same as the corresponding Security Documents (as determined in good faith by a Responsible Officer of the Borrower) applicable to the Loans or other Credit Agreement Refinancing Indebtedness being refinanced; and

(b) such Indebtedness shall be secured on a junior basis to the Revolving Facility Claims and, except in the case of Credit Agreement Refinancing Indebtedness constituting Other Term Loans (which shall be secured on a pari passu basis with the Other Term Loans), the ABL Term Loans; and

(c) except in the case of Other Term Loans, a Debt Representative, acting on behalf of the holders of such Indebtedness, shall have become party to or is otherwise subject to the provisions of an ABL Junior Lien Intercreditor Agreement and, if applicable, the ABL/Term Loan/Notes Intercreditor Agreement; provided that, to the extent such Indebtedness constitutes Other Term Loans, it shall be subject to the relative priorities and intercreditor provisions as described in Section 2.22(1);

(8) the terms and conditions of such Indebtedness are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Debt as determined in good faith by a Responsible Officer of the Borrower; provided that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); provided that this clause (8) will not apply to:

(a) terms addressed in the preceding clauses (1) through (7);

(b) (i) interest rate, fees, funding discounts and other pricing terms; (ii) redemption, prepayment or other premiums; (iii) optional prepayment terms (except in the case of Other Term Loans, which terms shall be as set forth herein); and (iv) redemption terms;

(c) subordination terms (except in the case of Other Term Loans, which terms shall be as set forth herein); and

(d) covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness.

Credit Agreement Refinancing Indebtedness will include any Registered Equivalent Notes issued in exchange therefor.

“Credit Card Notification” has the meaning assigned to such term in Section 5.11.

“Credit Card Processor” means any Person (other than a Loan Party or any Affiliate of any Loan Party) who issues or whose members or Affiliates issue credit or debit cards, including MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including credit or debit cards issued
“Credit Card Processor Accounts” means Accounts owing to a Borrower Party from a Credit Card Processor (including Capital One under the Capital One Arrangements or any Permitted Replacement Credit Card Program).

“Credit Event” has the meaning assigned to such term in Article IV.

“Credit Suisse” means Credit Suisse AG, Cayman Islands Branch.

“Credit Support” means, with respect to any Person and any Indebtedness or other Indebtedness Obligations, (i) such Person’s Guarantee of, or becoming a direct or indirect obligor with respect to, such Indebtedness or other Indebtedness Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Indebtedness Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Indebtedness Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Indebtedness Obligations (including by means of a “keepwell” or other similar commitment).

“Cure Amount” has the meaning assigned to such term in Section 8.02.

“Cure Right” has the meaning assigned to such term in Section 8.02.

“Customs Broker Agreement” means an agreement, in form reasonably satisfactory to the Collateral Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of such Inventory solely as directed by the Collateral Agent.

“DBNY” means Deutsche Bank AG New York Branch.

“DDA” means any checking or other demand deposit account maintained by the Loan Parties.

“DDA Notification” has the meaning assigned to such term in Section 5.11.

“Debt Representative” means, with respect to any Indebtedness that is secured on a junior basis to the Revolving Facility Claims, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Default” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means any Lender whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default.
“Designated Disbursement Account” has the meaning assigned to such term in Section 5.11.

“Designated Event of Default” means any Event of Default under Section 8.01(1) (solely with respect to a default under Section 3.05), Section 8.01(2), Section 8.01(3) (solely with respect to interest and Fees), Section 8.01(4) (solely with respect to a default under Section 5.04(1)), Section 5.11 or Section 6.10, Section 8.01(8) or Section 8.01(9).

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“Designated Disbursement Account” has the meaning assigned to such term in Section 5.11.

“Discharge of ABL Revolving Claims” has the meaning assigned to the term “Discharge of ABL Revolving Claims” in the ABL/TERM Loan/Notes Intercreditor Agreement, except that, solely for purposes of this definition, the principal amount of any ABL Term Loans and any interest, fees, attorneys’ fees, costs, expenses, indemnities and other Obligations relating thereto do not constitute “ABL Claims” (as defined in the ABL/TERM Loan/Notes Intercreditor Agreement).

“Disinterested Director” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“Disqualified Institution” means:

1. (a) any Person that is a competitor of the Borrower and identified by the Borrower in writing to the Administrative Agent on or prior to the Closing Fourth Amendment Effective Date; or

   (b) any Person that is a competitor of the Borrower and identified by the Borrower in good faith in writing to the Administrative Agent from time to time after the Closing Fourth Amendment Effective Date; provided that such Person will not be a Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrower and notifies the Borrower of such determination promptly following the date on which the Borrower identifies such Person to the Administrative Agent; and

   (c) together with any Affiliates of such competitors described in the foregoing clauses (a) and (b) that are reasonably identifiable as such (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (2) below) that regularly invest in commercial loans or similar extensions of credit in the ordinary course of business and for which no personnel involved with the relevant competitor (i) make investment decisions or (ii) have access to non-public information relating to the Borrower or any Person that forms part of the Borrower’s business (including its Subsidiaries); or
Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent will not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and the Administrative Agent will have no liability with respect to any assignment made to a Disqualified Institution.

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

1. mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

2. are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;

3. provide for the scheduled payments of dividends in cash; or

4. either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is 91 days after the earlier of:
   a. the Latest Maturity Date; and
   b. the date on which the Loans and all other Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated and any outstanding Letters of Credit are expired, terminated or cash-collateralized on terms satisfactory to the Issuing Bank;

provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; provided, further, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by Holdings or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and provided, further, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.
“Distressed Person” has the meaning assigned to such term in the definition of “Lender-Related Distress Event.”

“Dollars” or “$” means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of the Borrower that is organized under the laws of the United States or any political subdivision thereof, and “Domestic Subsidiaries” means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Borrower.

“Dominion Account” has the meaning assigned to such term in Section 5.11.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition and is subject to the supervision of an EEA Resolution Authority, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision of an EEA Resolution Authority with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Accounts” means all Credit Card Processor Accounts that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except any Credit Card Processor Account with respect to which any of the exclusionary criteria set forth below applies. No Credit Card Processor Account will be an Eligible Account if:

1. such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;

2. such Credit Card Processor Account is (a) not subject to the first priority, valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account or (b) is subject to any other Lien, other than (i) a Lien permitted under Section 6.02(10), 6.02(13) or 6.02(19) or other Permitted Lien arising by operation of law or (ii) a Lien securing Indebtedness permitted under Section 6.01(1)(it being understood that customary offsets to fees and chargebacks in the ordinary course by the credit card or debit card processors will not be deemed violative of this clause (2));

3. a Borrower Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (i) Liens granted to the Administrative Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (ii) a junior priority Lien permitted under Section 6.02(10), 6.02(13) or 6.02(19) or other Permitted Lien arising by operation of law or (iii) a lien securing Indebtedness permitted under 6.01(1) or(2));
such Credit Card Processor Account does not constitute the legal, valid and binding obligation of the applicable Credit Card Processor enforceable in accordance with its terms;

such Credit Card Processor Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Credit Card Processor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);

such Credit Card Processor Account is owed by a Credit Card Processor that is subject to a bankruptcy proceeding of the type specified in Section 8.01(8) or (9) or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Reasonable Credit Judgment;

such Credit Card Processor Account is does not conform with a covenant or representation contained herein as to such Credit Card Processor Account;

unless otherwise agreed by the Administrative Agent, the Credit Card Processor is organized or has its principal offices or assets outside the United States or Canada;

such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Collateral Agreement) of any kind, or has been reduced to judgment; or

such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Accounts in the Borrowing Base at any time, any Credit Card Processor Account that otherwise meets the requirements for Eligible Accounts may be included in such calculation even though the same does not constitute proceeds from the sale or disposition of Inventory; provided that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact.

If any Credit Card Processor Account at any time ceases to be an Eligible Account, then such Credit Card Processor Account will promptly be excluded from the calculation of the Borrowing Base; provided that if any Credit Card Processor Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Credit Card Processor Account from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; provided that upon such notice, the Borrower Parties shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Borrowing Base after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, in its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Closing Date.

"Eligible Cash" means cash of a Borrower Party held in a segregated restricted deposit account maintained with the Administrative Agent or another financial institution acceptable to the
Administrative Agent in its sole discretion, for the benefit of the Secured Parties, as security for the Obligations, and in which the Administrative Agent, for the benefit of the Secured Parties, has a first priority perfected security interest, and which is (unless held by the Administrative Agent) subject to a deposit account control agreement reasonably satisfactory to the Administrative Agent; provided that in no event shall any cash held in any Excluded Account be included in Eligible Cash.

“Eligible Inventory” means all Inventory reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies. No item of Inventory will be Eligible Inventory if such item:

1. is not subject to a first priority (subject to a Lien permitted under Section 6.02(10) or 6.02(13)) perfected Lien in favor of the Administrative Agent;
2. is subject to any Lien other than (a) a Lien in favor of the Collateral Agent, (b) a Lien permitted under Section 6.02(10) or 6.02(13) or other Permitted Lien arising by operation of law or (c) a (in each case under Section 6.01(2), on a junior priority basis) Lien securing Indebtedness permitted under Section 6.01(1) or (2) (in each case under Section 6.01(2), on a junior priority basis);
3. is slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Borrower Parties customary practices), obsolete, unmerchantable, defective, used or unfit for sale;
4. does not conform in all material respects to the representations and warranties contained in this Agreement or the Collateral Agreement;
5. is not owned only by one or more Borrower Parties;
6. is not finished goods or which constitutes work-in-process, raw materials, packaging and shipping material, supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale) or repossessed, or which constitutes goods held on consignment or goods which are not of a type held for sale in the ordinary course of business;
7. is not located in the United States or Canada;
8. (a) is located at any location (other than a retail store or clearance center) leased by a Borrower Party, unless (x) the lessor has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment or (b) is located at retail store or clearance center leased by a Borrower Party and such location is in a Landlord Lien State, unless a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment;
9. is located in any third-party warehouse or is in the possession of a bailee (other than a third-party processor) and is not evidenced by a Document (as defined in Article 9 of the UCC), unless an appropriate Reserve has been established by the Administrative Agent in its Reasonable Credit Judgment;
10. is being processed offsite at a third party location or outside processor, or is in-transit to or from said third party location or outside processor;
is the subject of a consignment by any Borrower as consignor;

is reported in a Borrower’s books and records as part of the “Epicure” division of The Neiman Marcus Group, Inc. or, without duplication of the foregoing, is perishable, to the extent the book value of Inventory described in this clause (12) exceeds $5,000,000;

contains or bears any intellectual property rights licensed to any Loan Party by any Person other than a Loan Party unless the Collateral Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (a) infringing the rights of such licensor, (b) violating any contract with such licensor, or (c) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;

is not reflected in a current retail stock ledger report of the Company or the respective Borrower Party (except as to goods received but not recorded in the retail stock ledger);

is acquired in connection with a Permitted Acquisition to the extent the Administrative Agent has not received a Report in respect of such Inventory showing results reasonably satisfactory to the Administrative Agent;

is in transit, except that Inventory in transit will not be deemed ineligible if:

(a) it has been paid for in advance of shipment;

(b) legal ownership thereof has passed to the applicable Borrower Party (or is retained by the applicable Borrower Party) as evidenced by customary documents of title;

(c) the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (including, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement); and

(d) it is insured to the reasonable satisfaction of the Collateral Agent; or

constitutes operating supplies, packaging or shipping materials, cartons, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base; provided, however, that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Inventory from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; provided that upon such notice, the Borrower Parties shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Line Cap after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth
“environment” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

“Environmental Laws” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, legally binding agreements and final, legally binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the environment or exposure to Hazardous Materials).

“Equity Contribution” has the meaning assigned to such term in the recitals to this Agreement.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations promulgated and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Holdings or any of its Subsidiaries, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302, 303 and 306(g) of ERISA and Section 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means:

1. a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;

2. a withdrawal by Holdings or any of its Subsidiaries, or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by Holdings or any of its Subsidiaries, or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate that is treated as a termination or withdrawal under Section 4062(e) of ERISA;

3. a complete or partial withdrawal by Holdings or any of its Subsidiaries, or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by Holdings or any of its Subsidiaries, or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability on it or written notification that a Multiemployer Plan is, or is expected to be, insolvent, in reorganization within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA or Section 432 of the Code;

4. (a) the provision by a Plan administrator or the PBGC to any Loan Party or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate of notice of intent to terminate a Plan, or to appoint...
a trustee to administer a Plan, (b) the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or (c) the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;

(5) the incurrence by Holdings or any of its Subsidiaries [Loan Party] or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the timely payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;

(6) the application for a minimum funding waiver under Section 302(c) of ERISA or Section 412(c) of the Code with respect to a Plan;

(7) the imposition of a lien on the assets of any Loan Party under Section 303(k) of ERISA with respect to any Plan or Section 430(k) of the Code; and

(8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA) or Section 430 of the Code.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Eurocurrency Revolving Facility Borrowing” means a Borrowing comprised of Eurocurrency Revolving Loans.

“Eurocurrency Revolving Loan” means any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Section 8.01.

“Excess Availability” means, at any time, (a) the Line Cap at such time minus (b) the Revolving Facility Credit Exposure at such time.


“Excluded Accounts” means any DDA, securities account, commodity account or any other deposit account (Securities Account, Commodity Account or any other Deposit Account) of any Borrower Party or Restricted Subsidiary (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of $500,000, or in the aggregate with each other account described in this clause (1), in excess of $5,000,000; (2) the balance of which is swept at the end of each Business Day into a Deposit Account, Commodity Account or Securitization Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account, Commodity Account or Securitization Account is swept into another Deposit Account, Commodity Account or Securitization Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account, Capital One Credit Card Receivables Account or Designated Disbursement Account; or (4) any DDA of the Borrower or any Restricted Subsidiary the balance of which consists solely of proceeds of any sale or other disposition of any Term Note Priority Collateral including the Asset Sale Proceeds Account (as defined in the Term Loan Credit Agreement) so long as all amounts on deposit therein constitute Term Note Priority Collateral; or (5) to the extent that it is cash collateral for
letters of credit (other than Letters of Credit) to the extent permitted hereunder. Unless otherwise defined in this Agreement, terms which are defined in the UCC are used in this definition of “Excluded Accounts” as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof).

“Excluded Assets” means “Excluded Assets” as defined in the Collateral Agreement.

“Excluded Contributions” means, as of any date, the aggregate amount of the net cash proceeds and Cash Equivalents, together with the aggregate fair market value (determined in good faith by a Responsible Officer of the Borrower) of other assets that are used or useful in a business permitted under Section 6.08, received by the Borrower after the Closing Date from:

(1) contributions to its common equity capital; or

(2) the sale of Capital Stock of the Borrower;

in each case, designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower on the date such contribution is made or such Capital Stock is sold, less the aggregate amount of Investments made pursuant to Section 6.04(27) and Restricted Payments made pursuant to Section 6.06(13), in each case prior to such date, provided that the proceeds of Disqualified Stock, Cure Amounts and any net cash proceeds that are used prior to such date (A) to make Restricted Payments under Section 6.06(1) or Section 6.06(2)(b) or (B) for Contribution Indebtedness, will not be treated as Excluded Contributions.

“Excluded Equity Interests” means “Excluded Equity Interests” as defined in the Collateral Agreement.

“Excluded NY Real Property” has the meaning assigned to such term in Section 5.10(10).

“Excluded Subsidiary” means any:

(1) Immaterial (i) Unrestricted Subsidiary, (ii) captive insurance Subsidiary, and (iii) not-for-profit Subsidiary;

(2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or the Borrower, only to the extent such Subsidiary was created, formed or acquired in connection with a Permitted Acquisition;

(3) Foreign Subsidiary that is existing as of the Fourth Amendment Effective Date; provided that such Foreign Subsidiary shall not be deemed an Excluded Subsidiary hereunder to the extent that one or more Loan Parties makes Investments in such Foreign Subsidiary after the Fourth Amendment Effective Date exceeding $2.5 million in the aggregate; and

(4) Foreign Subsidiary or FSHCO acquired or created after the Fourth Amendment Effective Date and with respect to which (i) a Responsible Officer of the Borrower (reasonably and in good faith) and the Administrative Agent have determined that making such Subsidiary a Subsidiary Loan Party is not practicable (including as a result of local law in the jurisdiction in which such Subsidiary is organized or other applicable law, rule or regulation), or (ii) a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent determine that the burden or cost (including as a result of any adverse changes in applicable tax laws) of providing a Guarantee of the
Obligations from such Subsidiary outweigh the benefit of the Guarantee afforded thereby (it being understood for purposes of each of the foregoing that any such Guarantee provided by a Subsidiary Loan Party may not be given, or may be released, due to material adverse U.S. federal income tax consequences, in each case, only if such consequences arise as a result of a change in law occurring after the Fourth Amendment Effective Date, including, for the avoidance of doubt, a change to the Proposed Regulations under section 956 of the Internal Revenue Code of 1986, as amended, published on November 5, 2018);

(2) Unrestricted Subsidiary;

(4) Foreign Subsidiary;

(5) Domestic Subsidiary of a Foreign Subsidiary;

(6) Subsidiary substantially all the assets of which are Equity Interests or indebtedness in one or more Foreign Subsidiaries;

(7) Subsidiary if acting as a Guarantor, or its Guarantee, would (a) be prohibited by law or regulation or (b) require a governmental or third-party consent, approval, license or authorization; and

(8) captive insurance Subsidiary, not-for-profit Subsidiary or Subsidiary which is a special purpose entity for securitization transaction (including any Receivables Subsidiary) or like special purposes;

in each case, unless the Borrower determines in its sole discretion, upon written notice to the Administrative Collateral Agent, that any of the foregoing Persons (other than a Subsidiary that is not a Wholly-Owned Subsidiary of Holdings or the Borrower) should not be an Excluded Subsidiary until the date on which the Borrower has informed the Administrative Collateral Agent that it elects to have such Person be an Excluded Subsidiary; provided that (i) the Guarantee (or its obligations as a Co-Borrower, as applicable) provided by a Subsidiary Loan Party and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person — and (ii) to the extent that a Subsidiary of Holdings provides Credit Support for the Second Lien Notes and/or Third Lien Notes or any Refinancing thereof, such Subsidiary shall not be deemed an Excluded Subsidiary for the purposes of this Agreement. For the avoidance of doubt, Immaterial Subsidiaries shall not, subject to Section 5.10, constitute Subsidiary Guarantors as of the Fourth Amendment Effective Date.

“Excluded Taxes” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

(1) income taxes imposed on or measured by its net income (however denominated) or franchise taxes imposed in lieu of net income taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) any branch profits tax or any similar tax that is imposed by any jurisdiction described in clause (1) above;
any withholding tax (including any backup withholding tax) that is in effect and would apply to amounts payable hereunder to or for the account of a Recipient under the law applicable at the time such Recipient becomes a party to this Agreement (or in the case of a Lender, under the law applicable at the time such Lender changes its lending office), except to the extent that the Recipient’s assignor (if any), at the time of assignment (or such Lender immediately before it changed its lending office), was entitled to receive additional amounts from the Loan Party with respect to any withholding tax pursuant to Section 2.17(1) or Section 2.17(3);

Taxes that are attributable to such Lender’s or Administrative Agent’s failure to comply with Section 2.17(5) or Section 2.17(6); and

any U.S. federal withholding Taxes imposed under FATCA.

“Executive Order” has the meaning assigned to such term in Section 3.20(3)(a).

“Existing Credit Agreement” has the meaning assigned to such term in the recitals hereto.

“Existing ABL Facility” means the Second Amended and Restated Credit Agreement, dated as of May 17, 2011, among The Neiman Marcus Group, Inc. and the other borrowers referred to therein, Neiman Marcus, Inc., the other subsidiaries of The Neiman Marcus Group, Inc. from time to time party thereto, Bank of America, N.A., as administrative agent, and the other agents and lenders from time to time party thereto, as the same may have been subsequently amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time.

“Existing 2028 Debentures” means the 7.125% debentures due 2028 issued by The Neiman Marcus Group, Inc. pursuant to an indenture dated as of May 27, 1998.

“Existing Letters of Credit” means those Letters of Credit described on Schedule 1.01(1) hereto.

“Extended Commitments” has the meaning assigned to such term in Section 2.23(1).

“Extended Loans” has the meaning assigned to such term in Section 2.23(1).

“Extension” has the meaning assigned to such term in Section 2.23(1).

“Extension Amendment” has the meaning assigned to such term in Section 2.23(2).

“Extension Offer” has the meaning assigned to such term in Section 2.23(1).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“FCPA” has the meaning assigned to such term in Section 3.20(2)
“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that:

1. If such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and

2. If no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.0%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“**Fee Letter**” means the Fee Letter, dated September 9, 2013, by and among Merger Sub, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Royal Bank of Canada, Deutsche Bank Securities Inc. and Deutsche Bank Trust Company Americas, as amended and in effect from time to time and including any joinders thereto.

“**Fees**” means the Commitment Fees, the L/C Participation Fees, the Issuing Bank Fees, Administrative Agent Fees and all other fees set forth in the Fee Letter and relating hereto.

“**FILO Intercreditor Provisions**” means the provisions set forth on Exhibit I.

“**Financial Officer**” means, with respect to any Person, the chief financial officer, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person.

“**Financial Performance Covenant**” means the covenant set forth in Section 6.10.

“**First Incremental Amendment**” shall mean that certain First Incremental Amendment to this Agreement, dated as of October 10, 2014.

“**First Incremental Amendment Effective Date**” shall have the meaning assigned to such term in the First Incremental Amendment.

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of:

1. (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, minus (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) minus (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or payable in cash during such period (including tax distributions paid in cash during such period) to

2. Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

“**Fixed Charges**” means, for any period, the sum without duplication, of the following for such period:
the Consolidated Interest Expense of the Borrower that was paid or payable in cash during such period; plus

all scheduled principal amortization payments that were paid or payable in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Lease Obligations, but excluding payments with respect to intercompany Indebtedness; plus

all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“Flex Provisions” means the market flex provisions of the Fee Letter.

“Flood Insurance Laws” means collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” means any Lender or Issuing Bank that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that not a Domestic Subsidiary.

“Fourth Amendment” has the meaning assigned to such term in the recitals to this Agreement.

“Fourth Amendment Effective Date” has the meaning assigned to such term in the Fourth Amendment.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (1) with respect to the Issuing Bank, such Defaulting Lender’s Revolving Facility Percentage of the outstanding Revolving L/C Exposure, other than Revolving L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to non-Defaulting Lenders or cash collateralized in accordance with the terms hereof, and (2) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Facility Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“FSHCO” means any Domestic Subsidiary substantially all the assets of which are Equity Interests or Indebtedness of one or more Foreign Subsidiaries that are treated as controlled foreign corporations within the meaning of Section 957 of the Code.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).
Notwithstanding anything to the contrary above or in the definition of “Capital Lease Obligations” or “Capital Expenditures”, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Closing Date, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures on the Closing Date (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“Governmental Authority” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Guarantee” of or by any Person (the “guarantor”) means:

(1) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

(b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Fourth Amendment Effective Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.
The term "Guaranteed" as used herein will have a corresponding meaning.

"Guarantor" means (1) Holdings; (2) each Subsidiary Loan Party that is not a Borrower Party; and (3) each Parent Entity or Restricted Subsidiary (other than any Restricted Subsidiary that is not a Wholly Owned Subsidiary) that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations until such date that the Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations; provided that, in the case of this clause (3), the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

"Hazardous Materials" means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would reasonably be expected to give rise to liability under any Environmental Law due to their dangerous or deleterious properties.

"Hedge Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings or any of its Subsidiaries will be a Hedge Agreement.

"Holdings" has the meaning assigned to such term in the introductory paragraph hereof.

"Hudson Yard Indebtedness" means the deferred financing obligation reflected on the balance sheet of TNMG LLC related to its ownership for accounting purposes of a portion of TNMG LLC's retail property at Hudson Yards.

"Immaterial Subsidiary" means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered ended prior to the Fourth Amendment Effective Date, have assets with a value in excess of 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% of total revenues of the Borrower and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered most recently ended prior to the Fourth Amendment Effective Date, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered most recently ended prior to the Fourth Amendment Effective Date, did not have assets with a value in excess of 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period. All Immaterial Subsidiaries existing as of the Fourth Amendment Effective Date shall, within 90 days of the Fourth Amendment Effective Date (or such later date as mutually agreed by the Borrower and the Administrative Agent) either (i) be dissolved, liquidated or merged out of existence or (ii) become a Guarantor hereunder in accordance with Section 5.10.

"Incremental Commitment" has the meaning assigned to such term in Section 2.21(1).
“Incremental Equivalent Debt” means Indebtedness of the Borrower (which may be co-borrowed by the Co-Borrowers) in the form of the term loans or notes that is secured on a junior basis to the Obligations or is unsecured; provided that:

(1) the aggregate outstanding principal amount of such Indebtedness on any date that such Indebtedness is incurred pursuant to Section 6.01(1) shall be subject to the limitations set forth in Section 2.21(3);

(2) the final maturity date of such Incremental Equivalent Debt may not be earlier than the date that is at least 90 days after the Latest Maturity Date of the Revolving Loans, and such Incremental Equivalent Debt shall not require any scheduled payment of principal prior to such date, other than quarterly principal payments in an aggregate amount not to exceed 1.00% per annum of the original aggregate principal amount of such Incremental Equivalent Debt; and

(3) if such Indebtedness is secured, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of an ABL Junior Lien Intercreditor Agreement.

Incremental Equivalent Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Incremental Equivalent Term Debt” has the meaning assigned to such term in the Term Loan Credit Agreement.

“Incremental Facility” has the meaning assigned to such term in Section 2.21(21).

“Incremental Facility Amendment” has the meaning assigned to such term in Section 2.21(5)(a).

“Incremental Lender” has the meaning assigned to such term in Section 2.21(4).

“Incremental Term Lender” means each Lender that holds an Incremental Term Loan.

“Incremental Term Loan Commitment” means, with respect to each Incremental Term Lender, the commitment of such Incremental Term Lender to make Incremental Term Loans as set forth in the applicable Incremental Facility Amendment.

“Incremental Term Loans” has the meaning assigned to such term in Section 2.21(1).

“Indebtedness” means, with respect to any Person, without duplication:

(1) all obligations of such Person for borrowed money;

(2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;

(4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
(5) all Capital Lease Obligations of such Person;

(6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;

(7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;

(8) the principal component of all obligations of such Person in respect of bankers’ acceptances;

(9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and

(10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

(a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;

(b) prepaid or deferred revenue arising in the ordinary course of business;

(c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or

(d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Documents” means, with respect to any Indebtedness, all agreements and instruments governing such Indebtedness, all evidences of such Indebtedness or Credit Support thereof, all security documents for such Indebtedness (and documents and filings related thereto) and any intercreditor or similar agreements related thereto.

“Indebtedness Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Indemnified Taxes” means (1) all 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 (2) to the extent not otherwise described in clause (1), Other Taxes.
“Indemnitee” has the meaning assigned to such term in Section 10.05(2).

“Intellectual Property Rights” has the meaning assigned to such term in Section 3.21(1).

“Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent, and Credit Suisse, as administrative agent and collateral agent under the Term Loan Credit Agreement, and acknowledged by Holdings and the Borrower, as amended, restated, supplemented or otherwise modified from time to time, the Junior Lien Term/Notes Intercreditor Agreement, the ABL Junior Intercreditor Agreement and/or any other intercreditor agreement related to the Obligations or the Term Loan Obligations, as the context may require.

“Interest Coverage Ratio” means, as of any date, the ratio of (1) the Consolidated EBITDA for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Borrower for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any of the Restricted Subsidiaries, in each case, made during such period.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07.

“Interest Payment Date” means (1) with respect to any Eurocurrency Revolving 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 Eurocurrency Revolving Facility Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing and, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type and (2) with respect to any ABR Loan, the last Business Day of each fiscal quarter of the Borrower.

“Interest Period” means, as to any Eurocurrency Revolving Facility Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months thereafter (or, if agreed by all Lenders, 12 months or a period of less than one month), as the Borrower may elect, or the date any Eurocurrency Revolving Facility Borrowing is converted to an ABR Borrowing in accordance with Section 2.07 or repaid or prepaid in accordance with Section 2.09, 2.10 or 2.11; provided that:

1. if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day;

2. any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will end on the last Business Day of the calendar month at the end of such Interest Period; and

3. no Interest Period will extend beyond the applicable Maturity Date. Interest will accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.
“Inventory” means, with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise and other property, and all documents of title or other documents representing the foregoing.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Restricted Subsidiaries;

(3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and

(4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Investors” has the meaning assigned to such term in the recitals hereto.

“Issuing Bank” means DBNY and each other Lender designated as an Issuing Bank pursuant to Section 2.05(12), in each case, in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(10). An Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” will include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Issuing Bank Fees” has the meaning assigned to such term in Section 2.12(2)(b).

“Junior Financing” means (1) any Indebtedness permitted to be incurred hereunder that is subordinated in right of payment to the Obligations or secured by Liens that are in all respects subordinated to the Liens securing the Obligations; (2) the 2028 Debentures; (3) the Senior Notes; (4) the Secured Notes; (5) any Junior Lien Term/Note Indebtedness and (6) any Permitted Refinancing Indebtedness in respect of the foregoing. Junior Financing shall also include any ABL Term Loans, Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness, in each case whether secured or unsecured and (y) exclude Term Loan Obligations and the Obligations.

“Junior Lien Intercreditor Agreement” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H, or, if requested by the providers
of Indebtedness to be secured on a junior basis to the Revolving Loans, another lien subordination arrangement satisfactory to the Administrative Agent.

Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Revolving Loans.

“Junior Lien Term/Note Indebtedness” means Indebtedness that is secured by Junior Liens.

“Junior Lien Term/Note Intercreditor Agreement” means that certain Junior Lien Intercreditor Agreement, dated as of the Fourth Amendment Effective Date, by and among the Term Loan Agent, the Second Lien Notes Collateral Agent, the Third Lien Notes Collateral Agent and any other parties party thereto from time to time, and acknowledged by Holdings, the Borrower and the Subsidiary Loan Parties, as amended, restated, supplemented and/or otherwise modified from time to time.

“Junior Liens” means Liens on the Collateral, which Liens on any item of Collateral rank junior to the Liens on such item of Collateral securing the Term Loan Obligations (it being understood, for the avoidance of doubt, that any Junior Liens must rank junior to the Liens on ABL Priority Collateral securing the Obligations), provided that, with respect to the Call Right Collateral, such Liens may rank senior to the Lien securing the Term Loan Obligations in accordance with the Junior Lien Term/Note Intercreditor Agreement.

“L/C Amount” has the meaning assigned to such term in the definition of Revolving L/C Exposure.

“L/C Disbursement” means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

“L/C Participation Fee” has the meaning assigned such term in Section 2.12(2)(a).

“Landlord Lien State” means any state in which a landlord’s claim for rent has priority by law over the Lien of the Collateral Agent in any of the Collateral.

“Latest Maturity Date” means, as of any date of determination, the latest Maturity Date of the Revolving Facility Commitments, any Extended Commitments or any ABL Term Loans in effect on such date.

“L/C Amount” has the meaning assigned to such term in the definition of Revolving L/C Exposure.

“L/C Disbursement” means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

“L/C Participation Fee” has the meaning assigned such term in Section 2.12(2)(a).

“Lender” means each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 and any Additional Lender.
“Lender Default” means:

(1) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any Borrowing or reimbursement obligations, which refusal or failure is not cured within two Business Days after the date of such refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied;

(2) the failure of any Lender to pay over to the Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;

(3) the failure of any Lender within three Business Days after request by the Administrative Agent, to confirm that it will comply with its funding obligations under the Revolving Facility; provided that such Lender will cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower;

(4) any Lender has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations under the Revolving Facility or under other similar agreements in which it commits to extend credit; or

(5) the admission by any Lender that it is insolvent or such Lender becoming subject to a Lender-Related Distress Event.

“Lender-Related Distress Event” means, with respect to any Lender or any Person that directly or indirectly controls a Lender (each, a “Distressed Person”), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or such Distressed Person becomes the subject of a Bail-In Action; provided that a Lender-Related Distress Event will not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof.

“lending office” means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

“Letter of Credit” has the meaning assigned to such term pursuant to Section 2.05(1).

“Letter of Credit Commitment” means (a) prior to the Second Amendment Effective Date, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit pursuant to Section 2.05 as in effect prior to the Second Amendment Effective Date and (b) from and after the Second Amendment Effective Date, (i) with respect to each Issuing Bank, the amount set forth opposite such Issuing Bank’s name on Schedule 2.01 attached to the Second Amendment as Annex A, and (ii) with respect to any
other Lender that becomes an Issuing Bank pursuant to Section 2.05(10) or 2.05(12) hereof, such amount as agreed in writing by the Borrower and such Lender at the time such Lender is designated as an Issuing Bank hereunder, as each of the foregoing amounts may be decreased or increased from time to time with the written consent of the Borrower and the Issuing Banks; provided that any increase in an applicable Issuing Bank’s Letter of Credit Commitment with respect to any Issuing Bank shall only require the consent of the Borrower and such Issuing Bank (so long as such increase does not result in the Letter of Credit Commitments exceeding the Letter of Credit Sub-Limit).

“Letter of Credit Request” shall mean a request by the Borrower substantially in the form of Exhibit D-3 (or such other form as may be agreed between the Borrower and the Administrative Agent).

“Letter of Credit Sublimit” means the aggregate Letter of Credit Commitments of the Issuing Banks, in an amount not to exceed $150.0 million.

“LIBO Rate” means, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, the rate per annum equal to the arithmetic mean of the offered rates for deposits in Dollars with a term equivalent to such Interest Period that appears on the Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market as designated by the Administrative Agent from time to time) 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; provided that if such rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period will be the rate per annum determined by the Administrative 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 Eurocurrency Revolving Loan being made, continued or converted by the Administrative Agent and with a term equivalent to such Interest Period would be offered by the Administrative Agent to major banks in the London interbank Eurocurrency market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period. Notwithstanding anything to the contrary herein, in no event shall the LIBO Rate be less than zero.

“LIBOR Quoted Rate” means, for any day, a fluctuating rate per annum equal to the Adjusted LIBO Rate for an interest period of one month as reported on the LIBOR01 Page as of 11:00 a.m. (London, England time) on such day.

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) 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; provided that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Limited MYT Guarantee” means the joint and several, irrevocable, full and unconditional Guarantee by each MYT Guarantor on a senior basis for the performance of and punctual payment when due of all obligations of the issuers of the Second Lien Notes under the Second Lien Notes Indenture and the Second Lien Notes to the holders of such Second Lien Notes and the Second Lien Notes Trustee in accordance therewith (the maximum amount recoverable therefrom in the aggregate not to exceed $200.0 million).

“Limited MYT Guarantee Collateral” means all or substantially all assets of the MYT
Guarantors securing the Limited MYT Guarantee of each MYT Guarantor.

“Line Cap” means, at any time, the lesser of (1) the aggregate Available Revolving Facility Commitments at such time and (2) the Borrowing Base then in effect.

“Liquidity Condition” means and will exist during the period from (1) the date on which Excess Availability has been less than the greater of (a) $50 million and (b) 10.0% of the Line Cap then in effect, in either case, for five consecutive Business Days, to (2) the date on which Excess Availability has been at least equal to the greater of (a) $50 million and (b) 10.0% of the Line Cap then in effect, in either case, for 20 consecutive calendar days.

“Loan Accounts” means the loan accounts established on the books of the Administrative Agent.

“Loan Documents” means this Agreement, the Security Documents, the ABL/Term Loan/Notes Intercreditor Agreement, any ABL Junior Lien Intercreditor Agreement, any Note, the PropCo Subordination Agreements, any Note, the Fourth Amendment, any other amendment or other agreement or document evidencing or governing the Obligations hereunder, and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

“Loan Parties” means Holdings, the Borrower, each Co-Borrower and the Subsidiary Loan Parties.

“Loans” means the Revolving Loans and the Swingline Loans and any other loans and advances of any kind made by the Administrative Agent, any Lender or any Affiliate of the Administrative Agent or any Lender pursuant to this Agreement.

“Maintenance Capital Expenditures” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“Management Agreement” means (1) each of the Management Services Agreements, as in effect on the Closing Date Management Agreements, as amended, supplemented or otherwise modified in a manner not materially adverse to the Lenders, and (2) any other similar or related agreement with one or more of the Sponsors on terms not materially adverse to the Lenders relative to the terms of the Closing Date Management Agreements; it being agreed that (a) the inclusion of or increases (either by amendments to the Closing Date Management Agreements, the execution of a similar or related agreements or otherwise) by a material amount in the aggregate amount payable to the Sponsors as a monitoring, management or similar fee above $10.0 million per annum (with pro rated amounts payable for any partial year periods and any amounts not paid in any year accruing and payable upon request of the Sponsors in future periods) will be deemed to be materially adverse to the Lenders and (b)(i) adding Affiliates of the Sponsors as parties to any such agreements or (ii) providing for the payment (or accrual) of an annual monitoring, management or similar fee to the Sponsors in an aggregate amount equal to or less than $10.0 million per annum for any period commencing on or after the Closing Date (with pro rated amounts payable for any partial year periods and any amounts not paid in any period beginning on the Closing Date accruing and payable upon request of the Sponsors in future periods), either by amendments to the Closing Date Management Agreements, as amended, supplemented or otherwise modified in a manner not materially adverse to the Lenders, and (2) any other similar or related agreement with one or more of the Sponsors on terms not materially adverse to the Lenders relative to the terms of the Closing Date Management Agreements; it being agreed that (a) the inclusion of or increases (either by amendments to the Closing Date Management Agreements, the execution of a similar or related agreements or otherwise) by a material amount in the aggregate amount payable to the Sponsors as a monitoring, management or similar fee above $10.0 million per annum (with pro rated amounts payable for any partial year periods and any amounts not paid in any year accruing and payable upon request of the Sponsors in future periods) will be deemed to be materially adverse to the Lenders.
“Management Agreement” means each of (i) that certain Management Services Agreements, dated as of October 25, 2013, by and among ACOF Operating Manager III, LLC, a Delaware limited liability company, TNMG LLC and NMG, (ii) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager IV, LLC, a Delaware limited liability company, TNMG LLC and NMG, and (iii) that certain Management Services Agreement, dated as of October 25, 2013, by and among CPPIB Equity Investments Inc., a corporation incorporated under the Canada Business Corporations Act, TNMG LLC and NMG, in each case, as in effect on the Fourth Amendment Effective Date, as amended, amended and restated, supplemented or otherwise modified in a manner consistent with this Agreement, including Section 6.07 hereof.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the Borrower and the Restricted NM Group and its Subsidiaries on the Closing Date. Fourth Amendment Effective Date or who became directors, officers or management personnel of NM Group or any direct or indirect parent of NM Group, as applicable, and its Subsidiaries following the Fourth Amendment Effective Date (other than in connection with a transaction that would otherwise be a Change in Control if such persons were not included in the definition of “Permitted Holders”), or (in each case) family members thereof, or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date Beneficially Own or have the right to acquire, directly or indirectly, Equity Interests of the Borrower or any Permitted Parent.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect on:

1. the business, financial condition or results of operations, in each case, of the Borrower and the Restricted Subsidiaries (taken as a whole);
2. the ability of the Borrower Parties and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
3. the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the ABL Term Loans) of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding $50.0 million.

“Material Subsidiary” means any Subsidiary other than an Immaterial Subsidiary.

“Maturity Date” means, as the context may require:

1. with respect to Revolving Facility Commitments existing after giving effect to the Second/Fourth Amendment on the Second/Fourth Amendment Effective Date, and Loans and Letters of Credit in respect thereof, the earlier of (1) the later of (a) July 25, 2020 and (b) July 25, 2021, so long as, in the case of this clause (b), either any of (i) the Term Loan Obligations (and any Permitted-Refinancing Indebtedness in respect thereof) have been fully repaid or otherwise redeemed,
discharged or defeased on or prior to July 25, 2020 (it being agreed that, absent manifest error, a payoff letter executed by an agent with respect to the Term Loan Obligations or such Permitted Refinancing Indebtedness shall be conclusive evidence thereof) or, (ii) the maturity date with respect to the Term Loan Obligations (and any Permitted Refinancing Indebtedness in respect thereof) has been extended prior to July 25, 2020 to a date no earlier than October 25, 2021; or (iii) the Administrative Agent shall have, at the written direction of a Responsible Officer of the Borrower (which written direction (once provided) shall be irrevocable), imposed the 2013 Term Loan Reserve on or prior to July 25, 2020; provided that the Administrative Agent shall have no obligation to impose the 2013 Term Loan Reserve, unless the Excess Availability at such time (prior to giving effect to the 2013 Term Loan Reserve) is equal to or greater than the amount of the 2013 Term Loan Reserve and (II) April 16, 2021, if and only if all of the Senior Notes (and any Refinancing in respect thereof), other than Senior Notes (and any Refinancing in respect thereof) in an aggregate principal amount not to exceed $150.0 million, have not been, on or prior to April 16, 2021, (a) fully repaid or otherwise redeemed, discharged or defeased or (b) extended so that the maturity date with respect thereto is no earlier than April 24, 2024;

(2) with respect to any ABL Term Loans, the final maturity date specified therefor in the applicable Incremental Facility Amendment or Refinancing Amendment, as the case may be; and

(3) with respect to any Extended Commitments and Loans and Letters of Credit in respect thereof, the final maturity date specified therefor in the applicable Extension Amendment.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**Merger Sub**” means Mariposa Merger Sub LLC, a Delaware limited liability company, which merged with and into Borrower with Borrower surviving such merger.

“**MIRE Event**” means any increase, extension of the maturity or renewal of any of the Commitments or Loans (including any Incremental Revolving Facility Increase or the provision of Incremental Term Loans) or any other incremental or additional credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans, or (iii) the issuance, renewal or extension of Letters of Credit.

“**MNPI**” means any material Nonpublic Information regarding Holdings and the Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material Nonpublic Information” means Nonpublic Information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Commitments and/or Loans or to enter into any of the transactions contemplated thereby.

“**Merger**” has the meaning assigned to such term in the recitals hereto.

“**Merger Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Merger Sub**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Moody’s**” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.
“Mortgage Policies” has the meaning assigned to such term in Section 5.10(c)(ed).

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Holdings, the Borrower or any Restricted Subsidiary, any Loan Party or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“MYT Entities” means, (a) collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH (Germany), (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in subclauses (i) through (vii).

“MYT Guarantor” means, collectively, and together with their respective successors, (a) the entities listed in clause (a)(i), (a)(ii) and (a)(vii) of the definition of “MYT Entities” and (b) MYT Parent and MYT Intermediate Holdco, providing the Limited MYT Guarantee of the Second Lien Notes Obligations.

“MYT Holdco” means MYT Holdings Co., a Delaware corporation and a direct Wholly Owned Subsidiary of MYT Parent, together with its successors.

“MYT Holdco Common Equity” means the common Equity Interests of the MYT Holdco.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Preferred Stock” means, collectively, the Cumulative Series A Preferred Stock of MYT Holdco under the certificate of designation governing the MYT Holdco Preferred Series A Stock and the Cumulative Series B Preferred Stock of MYT Holdco under the certificate of designation governing the MYT Holdco Preferred Series B Stock.

“MYT Holdco Preferred Stock Documents” means, collectively, the documents governing the MYT Holdco Preferred Stock (including the applicable certificates of designation and organizational documents).

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.


“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.
“MYT Waterfall” means, collectively, distributions of cash or any other assets received in connection with a MYT Secondary Sale (as defined in the Second Lien Notes Indenture) by MYT Holdco or any of the equityholders thereof (which proceeds shall be funded by the purchasers directly to MYT Holdco for deposit or distribution) made in accordance with the following priorities:

1. **first**, up to $200.0 million irrevocably deposited into the MYT Account (as defined in the Second Lien Notes Indenture); provided that, upon the earlier to occur of (i) the satisfaction and discharge in full of the Second Lien Notes Obligations and (ii) provision of MYT Alternate Security (as defined in the Second Lien Notes Indenture), any amounts in the MYT Account shall be released and distributed in accordance with clauses (2), (3), and (4) below:

2. **second**, to holders of MYT Holdco Series A Preferred Stock on a pro rata basis, up to an amount in respect of each share of MYT Holdco Series A Preferred Stock equal to (i) $1.00, adjusted as appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization, combination or similar event with respect to shares of MYT Holdco Series A Preferred Stock, plus (ii) all accumulated and unpaid dividends (whether or not declared, and including all such dividends that have compounded) thereon through but not including, the date of payment (such amount in the aggregate, the “Liquidation Preference”);

3. **third**, to the holders of MYT Holdco Series B Preferred Stock, up to an amount equal to the Liquidation Preference received by the holders of MYT Holdco Series A Preferred Stock in the foregoing clause (2) (excluding any additional dividends of 2% per annum payable in accordance with the MYT Holdco Preferred Series A Certificate upon certain events of default therein); and

4. **fourth**, (x) to the holders of the MYT Holdco Common Equity, 50% of any remaining distributions on a pro rata basis and (y) the other 50% of any remaining distributions, to the Borrower as common equity and used by the Borrower to redeem the Third Lien Notes at par.

“MyTheresa Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.

“MyTheresa Designation” means, collectively, all designations by any Loan Party or any of their Related Parties prior to the execution date of the TSA of any of the MYT Entities as “unrestricted” subsidiaries under the Senior Notes Indentures, the Existing Credit Agreement or the Term Loan Credit Agreement, and all acts or omissions taken by any Loan Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Loan Party or any of their Related Parties (including but not limited to NMG International) prior to the execution date of the TSA to or for the benefit of any other Related Parties of (1) any Equity Interests in the MYT Entities, (2) any Indebtedness owed by the MYT Entities to any Related Party (including but not limited to NMG International), and (3) any and all other Claims or Equity Interests of any Related Party (including but not limited to NMG International) in the MYT Entities, and all acts or omissions taken by any Loan Party or any of its Related Parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1) through (3) of this definition.

“Net Orderly Liquidation Value” means, with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.07.

“New MYT Dutch HoldCo” means a newly formed Dutch B.V., Wholly Owned Subsidiary.
of MYT Intermediate Holding and direct parent of NMG Germany GmbH as a result of a merger by absorption of Mariposa Luxembourg II S.à r.l. into Mariposa Luxembourg I S.à r.l. and a subsequent merger by absorption of Mariposa Luxembourg I S.à r.l. into such newly formed Dutch B.V.

“New York Courts” has the meaning assigned to such term in Section 10.15.

“NM Group” means, collectively, NMG and its Subsidiaries.

“NMG” means Neiman Marcus Group, Inc., a Delaware corporation and the direct Parent Entity of Holdings.

“NMG International” means NMG International LLC, a Delaware limited liability company.

“NMG Sub” means The NMG Subsidiary LLC, a Delaware limited liability company and a Wholly Owned Subsidiary of the Borrower.

“Non-Consenting Lender” has the meaning assigned to such term in Section 2.19(3).

“Non-Mortgageable Leases” means all leasehold Real Property interests subject to provisions restricting the mortgaging, assignment or other creation of a security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by a Responsible Officer of the Borrower and the Collateral Agent) to be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest.

“Non-Participating Term Loan Exchange Indebtedness” means any Indebtedness incurred by the Borrower or any Guarantor under the Term Loan Credit Agreement in exchange for or converted from, or the net proceeds of which are used to, Refinance or repay the 2013 Term Loan Obligations (or any refinancings thereof constituting Permitted Refinancing Indebtedness (as defined in the Term Loan Credit Agreement)); provided that:

1. the principal amount (or accreted value, if applicable) of such Non-Participating Term Loan Exchange Indebtedness does not exceed 100% of the outstanding aggregate principal amount (or accreted value, if applicable) of the 2013 Term Loans so Refinanced or repaid (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. such Non-Participating Term Loan Exchange Indebtedness otherwise qualifies as Permitted Refinancing Indebtedness (as defined in the Term Loan Credit Agreement) with respect to the 2013 Term Loans (except that such Indebtedness and Guarantees thereof may be unsecured, secured with 2019 Extended Term Loan Liens (including secured with any existing 2019 Extended Term Loan Liens) or secured with Liens junior to the 2019 Extended Term Loan Liens on any or all of the Collateral and Guaranteed by any Person that Guarantees the 2019 Extended Term Loans, including any PropCo Guarantor);

3. such Non-Participating Term Loan Exchange Indebtedness shall not amortize:
such Non-Participating Term Loan Exchange Indebtedness shall be subject to any “most favored nation” pricing provisions;

such Non-Participating Term Loan Exchange Indebtedness shall mature no earlier than the final stated maturity date applicable to the 2019 Extended Term Loans under the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date);

such Non-Participating Term Loan Exchange Indebtedness has a cash interest rate not exceeding that applicable to the 2019 Extended Term Loans incurred on the Fourth Amendment Effective Date; and

such Non-Participating Term Loan Exchange Indebtedness is subordinated in right of payment or “waterfall” priority to the 2019 Extended Term Loan Obligations.

Notwithstanding any other provision of this Agreement, Non-Participating Term Loan Exchange Indebtedness may be incurred as Other Term Loans (as defined in the Term Loan Credit Agreement) pursuant to Section 2.19 of the Term Loan Credit Agreement (to the extent incurred to refinance existing 2013 Term Loans) or Extended Term Loans (as defined in the Term Loan Credit Agreement) pursuant to Section 2.20 of the Term Loan Credit Agreement (to the extent holders of 2013 Term Loans elect to extend such 2013 Term Loans in the form of Non-Participating Term Loan Exchange Indebtedness).

“Non-Participating Term Loan Exchange Obligations” means the Indebtedness and the related Indebtedness Obligations under the Indebtedness Documents related to the Non-Participating Term Loan Exchange Indebtedness.

“Note” has the meaning assigned to such term in Section 2.09(2).

“Notes Priority Real Estate Assets” means the Real Property assets set forth on (i) Schedule 3.16(1) under the heading “Notes Priority Real Estate Assets” and (ii) Schedule 3.16(2) under the heading “2019 Term Loan Priority Real Estate Assets”.

“Notes PropCo” means NMG Notes PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Borrower formed solely to hold the Real Property interests consisting of Notes PropCo Assets; provided, however, that in the event no Notes Priority Real Estate Assets are contributed to the Notes PropCo as of the post-closing deadline (subject to any applicable extensions) to put in place mortgages over the Notes Priority Real Estate Assets set forth on Schedule 5.15, Notes PropCo shall be permitted to be liquidated or dissolved pursuant to Section 6.05(1)(g) after the Fourth Amendment Effective Date.

“Notes PropCo Assets” means the Notes Priority Real Estate Assets, to the extent that such Real Property assets are Non-Mortgageable Leases.

“Notice Period” has the meaning assigned to such term in Section 5.13.

“Obligations” means:

all amounts owing to any Agent, any Issuing Bank or any Lender pursuant to the terms of this Agreement or any other Loan Document (including any contingent indemnification and reimbursement obligations, or other payments required under Section 10.05), including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Loan Party of any
proceeding under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding;

(2) all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement; and

(3) any Cash Management Obligations;

provided that:

(a) the Obligations of the Loan Parties under any Specified Hedge Agreement and Cash Management Obligations will be secured and Guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and Guaranteed; and

(b) any release of Collateral or Guarantors (as defined in the Collateral Agreement) effected in the manner permitted by this Agreement or any Security Document will not require the consent of any Cash Management Bank or Qualified Counterparty pursuant to any Loan Document.

“OFAC” has the meaning assigned to such term in Section 3.20(3)(e).

“Offering Circular” means the Offering Circular related to the offering of Second Lien Notes, dated as of May 20, 2019.

“Original Merger” means the “Merger” as defined in the Existing Credit Agreement.

“Original Merger Agreement” means the “Merger Agreement” as defined in the Existing Credit Agreement.

“Original Transactions” means the “Transactions” as defined in the Existing Credit Agreement.

“Other Connection Taxes” means, with respect to any Recipient, 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, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Other Term Lender” means each Lender that holds an Other Term Loan.

“Other Term Loan Commitment” means, with respect to each Other Term Lender, the
commitment of such Other Term Lender to make Other Term Loans as set forth in the applicable Refinancing Amendment.

“Other Term Loans” has the meaning assigned to such term in Section 2.22(1).

“Overadvance” has the meaning assigned to such term in Section 2.01(2).

“Parent Entity” means any direct or indirect parent of the Borrower.

“Participant” has the meaning assigned to such term in Section 10.04(4).

“Participant Register” has the meaning assigned to such term in Section 10.04(4).

“Payment Conditions” means, and will be deemed to be satisfied with respect to any particular action as to which the satisfaction of the Payment Conditions is being determined if, after giving effect to the taking of such action, (1) no Default or Event of Default has occurred and is continuing, (2) Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of (a) 15% of the Line Cap then in effect and (b) $90.0 million, in any such case, on a Pro Forma Basis, and (3) the Fixed Charge Coverage Ratio would be at least 1.0 to 1.0 on a Pro Forma Basis giving effect to the subject action; provided that compliance with the Fixed Charge Coverage Ratio will not be required if after giving effect to the taking of such action, Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of 25% of the Line Cap then in effect and $200.0 million, on a Pro Forma Basis.

“Participant Register” has the meaning assigned to such term in Section 10.04(4).

“Payment Office” means the office of the Administrative Agent located at 60 Wall Street, New York, New York 10005, Attention: Peter Cucchiara, Telecopier No.: 212-797-5690, and Email: peter.cucchiara@db.com or such other office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“Perfection Certificate” means the Perfection Certificate with respect to the Loan Parties in a form substantially similar to that delivered on the Closing Fourth Amendment Effective Date.

“Permitted Acquisition” means any purchase or other acquisition of all or substantially all the assets of, or a majority, by merger, consolidation, amalgamation or otherwise, of the Equity Interests in, or merger, consolidation or amalgamation with, a Person or the assets of (including all or substantially all the assets constituting a business unit, division, product line or line of business of a), any Person, including minority investments and joint ventures (or any subsequent investment made in a Person, business unit, division, product line or line of business previously acquired in a Permitted Acquisition), (any such transaction, an “Acquisition”).

“Permitted Cure Securities” means any equity securities of Holdings other than Disqualified Stock.

“Permitted Debt” has the meaning assigned thereto in Section 6.01.
“Permitted Holders” means each of:

(1) the Sponsors;

(2) any member of the Management Group (or any controlled Affiliate thereof, of which members of the Management Group hold at least 50% of the Voting Stock and 50% of the economic value);

(3) any other holder of a direct or indirect Equity Interest in Holdings that either (a) holds such Equity Interest as of the Closing Date and is disclosed to the Arrangers prior to the Closing Date or (b) becomes a holder of such interest prior to the three-month anniversary of the Closing Date and is a limited partner of a Sponsor on the Closing Date; provided that the limited partners that become holders of equity interests pursuant to this clause (b) do not own in the aggregate more than 25% of the Voting Stock of Holdings as of such three-month anniversary; all Equity Interests as of the Fourth Amendment Effective Date;

(4) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in the foregoing clauses (1), (2) or (3) are members; provided that, (a) without giving effect to the existence of such group or any other group, the Persons described in the foregoing clauses (1), (2) and (3), collectively, Beneficially Own Voting Stock representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings or any Permitted Parent (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested) then held by such group; and (b) if the Beneficial Ownership described in subclause (a) is shared with any Person other than the Persons described in clauses (1), (2) and (3) above, the Persons described in clauses (1), (2) and (3) above hold at least 50% of the economic value of the equity securities of Holdings or any Permitted Parent, as the case may be) then held by such group; and

(5) any Permitted Parent.

“Permitted Holdings Debt” means unsecured Indebtedness of Holdings that:

(1) is not subject to any Guarantee by the Borrower or any Restricted Subsidiary;

(2) does not mature prior to the date that is ninety-one (91) days after the Latest Maturity Date;

(3) no Event of Default has occurred and is continuing immediately after the issuance or incurrence thereof or would result therefrom;

(4) has no scheduled amortization or payments of principal (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (6) hereof) prior to the Latest Maturity Date;

(5) does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the date that is ninety-one (91) days after the Latest Maturity Date; and

(6) has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive than those set forth in the Senior Notes Indentures taken as a whole (other than provisions customary for senior discount notes of a holding company), in each case as determined in good faith.
faith by a Responsible Officer of the Borrower;

provided that clauses (4) and (5) will not restrict payments that are necessary to prevent such Indebtedness from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code; provided, further that the Borrower will deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

“Permitted Investments” has the meaning assigned to such term in Section 6.04.

“Permitted Liens” has the meaning assigned to such term in Section 6.02.

“Permitted Parent” means any Parent Entity for so long as it is controlled only by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof; provided that such Parent Entity was not formed in connection with, or in contemplation of, a transaction that would otherwise constitute a Change in Control.

“Permitted PropCo Guaranteed Obligations” means, collectively, (i) the Obligations, (ii) the Second Lien Notes Obligations, (iii) the Third Lien Notes Obligations, (iv) the 2019 Extended Term Loan Obligations, (v) the Non-Participating Term Loan Exchange Obligations and (vi) the 2028 Debentures Obligations.

“Permitted Refinancing Indebtedness” means any Indebtedness issued in exchange for, or converted from, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “Refinance” or a “Refinancing”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

(2) the final maturity of such Permitted Refinancing Indebtedness is later than the maturity of the Indebtedness so refinanced and the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Latest Maturity Date were instead due on the date that is one year following the Latest Maturity Date; provided that no Permitted Refinancing Indebtedness incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Latest Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Latest Maturity Date for the Indebtedness being Refinanced;

(3) if the Indebtedness being Refinanced is subordinated in right of payment or, as to any assets, lien priority to the Obligations—under this Agreement, such Permitted Refinancing Indebtedness is subordinated as to such assets, in right of payment or lien priority to the Obligations on terms at least as favorable to the Lenders—applicable creditors as those contained in the documentation governing the Indebtedness being Refinanced;
Permitted Refinancing Indebtedness may have different obligors, or greater (including higher ranking priority) Guarantees or security, than the Indebtedness being Refinanced; provided that, with respect to a Refinancing of the Term Loan Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness will be on terms not materially less favorable to the Lenders than those contained in the documentation governing the Term Loan Credit Agreement, as determined in good faith by a Responsible Officer of the Borrower (and, for the avoidance of doubt, any Liens securing such Permitted Refinancing Indebtedness may not extend to additional assets or be higher in priority than the Liens securing the Indebtedness being Refinanced);

in the case of a Refinancing of Indebtedness that is secured on a pari passu basis with, or on a junior basis to, Liens on the ABL Priority Collateral that are junior to the Liens securing the Revolving Facility Claims with Indebtedness that is secured on a junior basis, to the Revolving Facility Claims but senior to the Liens on the ABL Priority Collateral securing the Term Loan Obligations or other obligations secured on a first-priority basis by Term/Note Priority Collateral, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of an ABL Junior Lien Intercreditor Agreement and, if applicable, the ABL/Term Loan/Notes Intercreditor Agreement;

in the case of a Refinancing of Indebtedness that is secured by any Collateral and subject to specified Required Collateral Lien Priority, the applicable Liens securing such Permitted Refinancing Indebtedness do not have a higher priority than the Required Collateral Lien Priority applicable to the Liens securing the Obligations and a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement;

in the case of a Refinancing of the Term Loan Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness are subject to the ABL/Term Loan/Notes Intercreditor Agreement or another intercreditor agreement that is substantially consistent with, and no less favorable to the Lenders in any material respect than, the ABL/Term Loan/Notes Intercreditor Agreement as certified by a Responsible Officer of the Borrower; and

Permitted Refinancing Indebtedness may not be incurred to Refinance Indebtedness that is secured on a junior basis with the Revolving Loans with Indebtedness that is secured on a pari passu basis with the Revolving Loans. For the avoidance of doubt, any Permitted Refinancing Indebtedness incurred to refinance any Obligations or Credit Agreement Refinancing Indebtedness shall satisfy the requirements of the definition of “Credit Agreement Refinancing Indebtedness”. Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

Notwithstanding the foregoing: (a) Indebtedness incurred to Refinance the Remaining Senior Notes must be Remaining Senior Notes Exchange Indebtedness; (b) Indebtedness incurred to Refinance the 2013 Term Loan Obligations must be unsecured Indebtedness, Junior Lien Term/Note Indebtedness or Non-
Participating Term Loan Exchange Indebtedness; (c) Indebtedness incurred to Refinance the Second Lien Notes, Third Lien Notes and/or the Guarantees in respect thereof must be unsecured Indebtedness or Junior Lien Term/Note Indebtedness; (d) Indebtedness incurred to Refinance any Indebtedness Guaranteed by Notes PropCo may not have the benefit of a Guarantee by Notes PropCo that has a higher priority in right of payment than the Guarantee by Notes PropCo of the Indebtedness being Refinanced; and (e) Indebtedness incurred to Refinance any Indebtedness Guaranteed by 2019 Extended Term Loan PropCo that has a higher priority in right of payment than the Guarantee by 2019 Extended Term Loan PropCo of the Indebtedness being Refinanced.

“Permitted Replacement Credit Card Program” means any private label credit card program or similar arrangement substantially similar in all material respects to the Capital One Arrangements, with such modifications as the Administrative Agent shall have consented to in writing prior to the effectiveness thereof (such consent not to be unreasonably withheld or delayed), which, after notice to the Administrative Agent in accordance with Section 5.14, is entered into by the Borrower or any of its Subsidiaries on commercially reasonable terms generally available at that time (as determined in good faith by a Responsible Officer of the Borrower), or is in effect with respect to any Person that becomes a Subsidiary after the date hereof in connection with a Permitted Acquisition and is not created in contemplation of or in connection therewith, provided that if such program grants a security interest in any assets other than those certain Accounts, receivables, or transferor interest or other similar residual interests subject to such program or arrangement, including a security interest in any returned goods, and the grant of such security interest would reasonably be expected to be detrimental in any material respect to the rights and interests of the Lenders under the Loan Documents, as determined by the Administrative Agent in its reasonable discretion, such program will not be considered a Permitted Replacement Credit Card Program unless and until the Administrative Agent and the third party with whom such program is created have entered into an intercreditor agreement reasonably satisfactory to the Administrative Agent with respect to the priority and enforcement of such security interests.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by Holdings or any of its Subsidiaries or any ERISA Affiliate or (b) in respect of which Holdings or any of its Subsidiaries or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” has the meaning assigned to such term in Section 10.17(1).

“Pledged Collateral” means “Pledged Collateral” as defined in the Collateral Agreement.

“Pro Forma Basis” or “Pro Forma” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge Coverage Ratio or any other calculation under any applicable provision of the Loan Documents, as of any date, that pro forma effect will be given to the Recapitalization Transactions, any Permitted Acquisition or Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant
transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, or any conversion of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Borrower and the Restricted Subsidiaries to be realized based upon actions taken or reasonably expected to be taken within twelve (12) months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Borrower, up to an amount, after giving effect to such application or adjustment, not in excess of 10% of Consolidated EBITDA for any Reference Period.

“Projections” means all projections (including financial estimates, financial models, forecasts and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of Holdings or any of the Subsidiaries on or prior to the Closing Fourth Amendment Effective Date.

“PropCo Guarantors” means Notes PropCo and 2019 Extended Term Loan PropCo.

“PropCo Operating License” has the meaning assigned to such term in Section 5.10(8).

“PropCo Subordination Agreements” means each of (a) that certain subordination agreement, dated as of the Fourth Amendment Effective Date, by and among the Administrative Agent, the Term Loan Agent, the representative for the Second Lien Notes, the representative for the Third Lien Notes and any other parties party thereto from time to time, and acknowledged by 2019 Extended Term Loan PropCo, as amended, restated, supplemented and/or otherwise modified from time to time and (b) that certain subordination agreement, dated as of the Fourth Amendment Effective Date, by and among the Administrative Agent, the Term Loan Agent, the representative for the Second Lien Notes, the representative for the Third Lien Notes and any other parties party thereto from time to time, and acknowledged by Notes PropCo, as amended, restated, supplemented and/or otherwise modified from time to time.

“Protective Advances” has the meaning assigned to such term in Section 2.01(3).

“Public Lender” has the meaning assigned to such term in Section 10.17(2).

“QFC Credit Support” has the meaning assigned to such term in Section 10.26.

“Purchase Date” means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

“Purchase Documents” means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.
“Qualified Counterparty” means any counterparty to any Specified Hedge Agreement that, at the time such Specified Hedge Agreement was entered into or on the Closing Date, was an Agent, an Arranger, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of the foregoing.

“Qualified Equity Interests” means any Equity Interests other than Disqualified Stock.

“Qualified IPO” means an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-4 or Form S-8) of the Equity Interests of any Parent Entity which generates cash proceeds of at least $100.0 million.

“Qualified Receivables Financing” means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

1. The Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;

2. All sales of accounts receivable and related assets by the Borrower or any Restricted Subsidiary to the Receivables Subsidiary are made at fair market value (as determined in good faith by a Responsible Officer of the Borrower);

3. The financing terms, covenants, termination events and other provisions thereof will be market terms (as determined in good faith by a Responsible Officer of the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary) to secure any Indebtedness will not be deemed a Qualified Receivables Financing.

“Quarterly Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Ratio Debt” has the meaning assigned to such term in Section 6.01.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Reasonable Credit Judgment” means reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions; provided that, as it relates to the establishment of Reserves or the adjustment or imposition of exclusionary criteria, Reasonable Credit Judgment will require that:

1. such establishment, adjustment or imposition be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date that are materially different from facts or events known to the Administrative Agent on the Closing Date;
the contributing factors to the imposition of any Reserve will not duplicate (a) the exclusionary criteria set forth in definitions of “Eligible Accounts,” “Eligible Inventory” or “Eligible Cash,” as applicable (and vice versa), or (b) any reserves deducted in computing book value; and

the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

“Recapitalization Transaction Documents” has the meaning assigned to “Recapitalization Transaction Documents” in the TSA.

“Recapitalization Transactions” means, collectively, the transactions to occur pursuant to the Recapitalization Transaction Documents, including:

“Receivables Facility” means one or more receivables financing facilities, as amended, supplemented, modified, extended, renewed, restated, refunded, replaced or refinanced from time to time, the Indebtedness of which is non recourse (except for standard representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower and the Restricted Subsidiaries pursuant to which the Borrower or any Restricted Subsidiary sells its accounts receivable to either (1) a Person that is not a Restricted Subsidiary; or (2) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“Receivables Financing” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any Restricted Subsidiary may sell, convey or otherwise transfer to:

(1) a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary that is not a Receivables Subsidiary); and

(2) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Borrower or any Restricted Subsidiary, and any assets related thereto including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedge Agreements entered into by the Borrower or any such Restricted Subsidiary in connection with such accounts receivable.

“Receivables Repurchase Obligation” means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Receivables Subsidiary” means a Wholly Owned Subsidiary of the Borrower (or another Person formed solely for the purposes of engaging in a Qualified Receivables Financing)
with the Borrower and to which the Borrower or any Restricted Subsidiary transfers accounts receivable and related assets (which engages in no activities other than in connection with the financing of accounts receivable of the Borrower and its Restricted Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise): the execution and delivery of the Fourth Amendment and any other amended or amended and restated Loan Documents, and the creation of the Liens pursuant to the Security Documents;

(2) the execution and delivery of the 2019 Term Loan Extension Amendment and the other Term Loan Documents, and the creation of the Liens pursuant to the Term Loan Security Documents;

(3) the execution and delivery of the Second Lien Notes Documents and the issuance of the Second Lien Notes under the Second Lien Notes Indenture, and the creation of the Liens pursuant to the applicable Second Lien Notes Documents;

(4) the execution and delivery of the Third Lien Notes Documents and the issuance of the Third Lien Notes under the Third Lien Notes Indentures, and the creation of the Liens pursuant to the applicable Third Lien Notes Documents;

(5) the execution and delivery of the MYT Holdco Preferred Stock Documents and the issuance of the MYT Holdco Preferred Stock; and

(6) the payment of all fees, costs and expenses in connection with the foregoing.

(a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding guarantees of obligations (other than the principal of, and interest thereon, indebtedness) pursuant to Standard Securitization Undertakings);

(b) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or

(c) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(3) to which neither the Borrower nor any other Restricted Subsidiary has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results.
Any such designation by the Board of Directors of the Borrower will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions.

“Recipient” means the Administrative Agent and any Lender, as applicable.

“Refinance” has the meaning assigned to such term in the definition of “Permitted Refinancing Indebtedness,” and the terms “Refinanced” and “Refinancing” will have correlative meanings.

“Refinancing Amendment” means an amendment to this Agreement (and, as necessary, each other Loan Document) executed by each of (1) the Borrower and Holdings; (2) the Administrative Agent; and (3) each Lender that agrees to provide any portion of the Other Term Loans in accordance with Section 2.22.

“Register” has the meaning assigned to such term in Section 10.04(2)(d).

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees and collateral provisions) issued by the Borrower in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Related Persons” has the meaning assigned to such term in Section 6.06(2).

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating in, into, upon, onto or through the environment or disposing into the Environment.

“Remaining Present Value” means, as of any date with respect to any lease, the present value as of such date of the scheduled future lease payments with respect to such lease, determined with a discount rate equal to a market rate of interest for such lease reasonably determined at the time such lease was entered into.

“Remaining Senior Notes” means any Senior Notes issued pursuant to the Senior Notes Indentures that the holders thereof declined to exchange into Third Lien Notes pursuant to the exchange offer contemplated by the TSA, which remain outstanding on the Fourth Amendment Effective Date following the consummation of the Recapitalization Transactions.
"Remaining Senior Notes Exchange Indebtedness" means Remaining Senior Notes Third Lien Exchange Indebtedness and Remaining Senior Notes Unsecured Exchange Indebtedness.

"Remaining Senior Notes Exchange Obligations" means the Indebtedness and the related Indebtedness Obligations under the applicable Remaining Senior Notes Exchange Indebtedness and the other Indebtedness Documents related to the applicable Remaining Senior Notes Exchange Indebtedness.

"Remaining Senior Notes Obligations" means the Indebtedness and the related Indebtedness Obligations under the Indebtedness Documents related to the Remaining Senior Notes.

"Remaining Senior Notes Third Lien Exchange Indebtedness" means any Indebtedness incurred by the issuers of the Senior Notes or issued in exchange for, or the net proceeds of which are used to Refinance the Senior Notes (or any refinancing thereof constituting Permitted Refinancing Indebtedness); provided that:

1. the aggregate principal amount (or accreted value, if applicable) of such Remaining Senior Notes Third Lien Exchange Indebtedness issued shall not exceed an amount equal to 85% of the aggregate outstanding principal amount (or accreted value, if applicable) of the Senior Notes so Refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. such Remaining Senior Notes Third Lien Exchange Indebtedness otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Remaining Senior Notes (except that (a) such Indebtedness and Guarantees thereof may be secured with the same priority on the same Collateral that secures the Third Lien Notes and a Debt Representative acting on behalf of the holders of such Indebtedness shall become (if it is not already) party to or will otherwise be subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and (b) such Indebtedness may benefit from the same Guarantees that provide Credit Support to the Third Lien Notes, including by Notes PropCo and 2019 Extended Term Loan PropCo, subject to the Required PropCo Guarantee Priority for Third Lien Notes or otherwise no worse for the Lenders);

3. such Remaining Senior Notes Third Lien Exchange Indebtedness shall have a cash interest rate not exceeding the cash interest rate on the Third Lien Notes as of the Fourth Amendment Effective Date;

4. such Remaining Senior Notes Third Lien Exchange Indebtedness shall not amortize;

5. such Remaining Senior Notes Third Lien Exchange Indebtedness shall not be subject to any "most favored nation" pricing provisions; and

6. such Remaining Senior Notes Third Lien Exchange Indebtedness shall mature no earlier than the latest maturity date then applicable to the Third Lien Notes under the Third Lien Notes Indentures.

"Remaining Senior Notes Unsecured Exchange Indebtedness" means any Indebtedness incurred by the issuers of the Senior Notes or issued in exchange for, or the net proceeds of which are used to Refinance the Senior Notes (or any refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

1. the aggregate principal amount (or accreted value, if applicable) of such Remaining Senior Notes Unsecured Exchange Indebtedness issued shall not exceed an amount equal to 100% of the aggregate outstanding principal amount (or accreted value, if applicable) of the Senior Notes so
Refinanced (including any Guarantees thereof) (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

(2) such Remaining Senior Notes Unsecured Exchange Indebtedness otherwise qualifies as Permitted Refinancing Indebtedness (as defined in the Term Loan Credit Agreement) with respect to the Remaining Senior Notes;

(3) such Remaining Senior Notes Unsecured Exchange Indebtedness shall have a cash interest rate not exceeding the weighted average cash interest rate of the Senior Notes outstanding as of the Fourth Amendment Effective Date;

(4) such Remaining Senior Notes Unsecured Exchange Indebtedness shall not amortize;

(5) such Remaining Senior Notes Unsecured Exchange Indebtedness shall not be subject to any “most favored nation” pricing provisions; and

(6) such Remaining Senior Notes Unsecured Exchange Indebtedness shall mature no earlier than the latest maturity date then applicable to the Third Lien Notes under the Third Lien Notes Indentures (as in effect on the Fourth Amendment Effective Date).

“Report” means reports prepared by the Administrative Agent, the Collateral Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties’ assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent or Collateral Agent has exercised its rights of inspection pursuant to this Agreement, which Report may be distributed to the Lenders by the Administrative Agent, subject to the provisions of Section 10.16.

“Reportable Event” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Required 2019 Extending Term Lenders” has the meaning assigned to such term in the Term Loan Credit Agreement.

“Required Collateral Lien Priority” means, with respect to any Lien on any Collateral, that such Lien on such Collateral has the priority indicated in the table below pursuant to the Intercreditor Agreements or other binding contractual obligation of the applicable secured parties, based on the category of asset subject to such Lien listed at the top of each column and the Indebtedness Obligations secured by such Lien listed at the beginning of each row:
### 2019 Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations

<table>
<thead>
<tr>
<th></th>
<th>2019 Extended Term Loan Collateral</th>
<th>2013 Collateral</th>
<th>ABL Priority Collateral</th>
<th>Call Right Collateral (pre-Call Right Cap Recovery)</th>
<th>Call Right Collateral (post-Call Right Cap Recovery)</th>
<th>Equity Interests in 2019 Extended Term Loan PropCo</th>
<th>Limited MYT Guarantee Collateral and MYT Account (A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 Extended Term Loan Obligations</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>2013 Term Loan Obligations</td>
<td>None</td>
<td>1</td>
<td>2</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>None</td>
</tr>
<tr>
<td>Second Lien Notes Obligations</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2(B)</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>1(C)</td>
<td>4</td>
<td>3</td>
<td>None</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>1(D)</td>
<td>1(D)</td>
<td>None</td>
<td>3(D)</td>
<td>2(E)</td>
<td>1(D)</td>
<td>None</td>
</tr>
</tbody>
</table>

(A) “MYT Account” shall have the meaning ascribed to it in the Second Lien Notes Indenture. Liens securing the Second Lien Notes Obligations on Limited MYT Guarantee Collateral to be released following the earlier to occur of (i) a MYT Deposit Event (as defined in the Second Lien Notes Indenture) and (ii) the provision of MYT Alternate Security (as defined in the Second Lien Notes Indenture) pursuant to the terms of the Second Lien Notes Indenture.

(B) Recovery not to exceed $200.0 million, together with recovery for Second Lien Notes Obligations.

(C) Recovery not to exceed $200.0 million, together with recovery for Third Lien Notes Obligations.

(D) Priority will be pari passu with the 2019 Extended Term Loan Liens and Liens securing the Non-Participating Term Loan Exchange Obligations (or if there are no 2019 Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations, (i) with respect to the Call Right Collateral prior to the Call Right Cap Recovery, the 2028 Debentures Obligations will retain its Lien priority thereon (i.e., third priority) and (ii) with respect to the 2019 Extended Term Loan Collateral, the 2013 Collateral, and the Equity Interests in the 2019 Extended Term Loan PropCo, the Lien priority provided for the 2028
Debentures Obligations will be pari passu with the highest priority Lien remaining on the relevant asset) solely on assets if and to the extent required by the 2028 Debentures Indenture as in effect on the Fourth Amendment Effective Date.

(E) To the extent no 2019 Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, if the Call Right Cap Recovery has occurred, priority will be pari passu with the highest priority Lien remaining on the relevant asset, solely on assets if and to the extent required by the 2028 Debentures Indenture.

“Required Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Required Lenders” means, at any time, Lenders having (1) Revolving Facility Credit Exposure and (2) Available Unused Commitments that, taken together, represent more than 50.0% of the sum of (a) all Revolving Facility Credit Exposure and (b) the total Available Unused Commitments at such time. The Revolving Facility Credit Exposure and Available Unused Commitments of any Defaulting Lender will be disregarded in determining Required Lenders; provided that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

1. any amendment that would disproportionately affect the obligation of the Borrower Parties to make payment of the Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same class of Loans or Commitments;

2. any amendment relating to:
   a. increases in the Commitment of such Defaulting Lender;
   b. reductions of principal, interest, fees or premium applicable to the Loans or Commitments of such Defaulting Lender;
   c. extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Loans or Commitments of such Defaulting Lender; and

3. matters requiring the approval of each Lender under Sections 10.08(2)(vi) and (vii).

“Required PropCo Guarantee Priority” means, with respect to any Guarantee of Permitted PropCo Guaranteed Obligations by Notes PropCo or 2019 Extended Term Loan PropCo, that such Guarantee has the priority indicated in the table below in respect of contractual right of payment, based on the Obligations guaranteed by Notes PropCo and 2019 Extended Term Loan PropCo (as the case may be) listed at the beginning of each row:

<table>
<thead>
<tr>
<th>Priority of Guarantee by Notes PropCo (pre-Call Right Cap Recovery)</th>
<th>Priority of Guarantee by Notes PropCo (post-Call Right Cap Recovery)</th>
<th>Priority of Guarantee by 2019 Extended Term Loan PropCo</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Second Lien Notes Obligations</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>2013 Term Loan Obligations</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
</tr>
</tbody>
</table>
To the extent no 2019 Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, after a Call Right Cap Recovery, the priority of the Guarantee by Notes PropCo of 2028 Debenture Obligations will match the priority of the senior-most remaining Guarantee.

“Required Term Lenders” means, at any time, ABL Term Lenders having ABL Term Loans outstanding that, taken together, represent more than 50.0% of the sum of all ABL Term Loans outstanding at such time. The ABL Term Loans of any Defaulting Lender will be disregarded in determining Required Term Lenders; provided that, subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Term Lenders with respect to:

(1) any amendment that would disproportionately affect the obligation of the Borrower to make payment of the ABL Term Loans of such Defaulting Lender as compared to other Lenders holding the same class of ABL Term Loans;

(2) any amendment relating to:

(a) increases in the ABL Term Loan Commitment of such Defaulting Lender;
(b) reductions of principal, interest, fees or premium applicable to the ABL Term Loans of such Defaulting Lender;
(c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the ABL Term Loans of such Defaulting Lender; and
(d) matters requiring the approval of each Lender under Section 10.08(2)(vi) and (vii).

“Reserves” means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves (including banking services reserves, landlord lien reserves, customer credit liabilities reserves, customer deposits reserves, reserves for Obligations under Specified Hedge Agreements and reserves against Eligible Accounts, Eligible Inventory and Eligible Cash) that the Administrative Agent from time to time determines in its Reasonable Credit Judgment as being appropriate to reflect:

(1) the impediments to the Administrative Agent’s ability to realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;
claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral; or

criteria, events, conditions, contingencies or risks that adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, the Collateral Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral.

The establishment or increase of any Reserve will be limited to the exercise by the Administrative Agent of Reasonable Credit Judgment, upon at least five Business Days’ prior written notice to the Borrower (which notice will include a reasonably detailed description of the Reserve being established); provided that upon such notice, the Borrower will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves. During such five Business Day period, the Administrative Agent will, if requested, discuss any such new or modified Reserve with the Borrower, and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new or modified Reserve no longer exists or exists in a manner that would result in the establishment of a lower Reserve, in each case, in a manner and to the extent reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary herein, (a) the amount of any such Reserve will have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve and (b) no Reserves will be duplicative of other reserves or items that are otherwise addressed, excluded or already accounted for through eligibility criteria (including collection/advance rates).

“Responsible Officer” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payments” has the meaning assigned to such term in Section 6.06.

“Restricted Subsidiary” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Borrower. For the avoidance of doubt, TNMG LLC and NMG Sub are Restricted Subsidiaries of the Borrower for all purposes hereunder.

“Revolving Facility” means the Revolving Facility Commitments (including any Incremental Commitments) and the extensions of credit made hereunder by the Revolving Lenders.

“Revolving Facility Borrowing” means a Borrowing comprised of Revolving Loans.

“Revolving Facility Claims” has the meaning assigned to the term “ABL Claims” in the ABL/Term Loan/Notes Intercreditor Agreement, but assuming, solely for purposes of this definition, that the principal amount of any ABL Term Loans and any interest, fees, attorneys’ fees, costs, expenses, indemnities and other Obligations relating thereto do not constitute “ABL Claims”.

“Revolving Facility Commitment” means, with respect to a Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the
maximum aggregate permitted amount of such Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (1) reduced from time to
time pursuant to Section 2.08, (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04 or (3) increased
from time to time under Section 2.21. The initial amount of each Lender’s Revolving Facility Commitment is set forth on Schedule 2.01 or in the Assignment
and Acceptance pursuant to which such Lender has assumed its Revolving Facility Commitment, as applicable. The initial aggregate amount of the Lenders’
Revolving Facility Commitments as of the Closing Date is $800.0 million. The aggregate principal amount of the Lenders’ Revolving Facility Commitments on the 
First Incremental Fourth Amendment Effective Date is $900.0 million.

“Revolving Facility Credit Exposure” means, at any time, the sum of:

(1) the aggregate principal amount of the Revolving Loans outstanding at such time;
(2) the Swingline Exposure at such time; and
(3) the Revolving L/C Exposure at such time. The Revolving Facility Credit Exposure of any Revolving Lender at any time will be, subject to
adjustment as expressly provided in Section 2.26, the product of (a) such Revolving Lender’s Revolving Facility Percentage and (b) the aggregate
Revolving Facility Credit Exposure of all Revolving Lenders, collectively, at such time.

“Revolving Facility Percentage” means, with respect to any Revolving Lender, the percentage of the total Revolving Facility Commitments
represented by such Lender’s Revolving Facility Commitment. If the Revolving Facility Commitments have terminated or expired, the Revolving Facility
Percentages will be determined based upon the Revolving Facility Commitments most recently in effect, giving effect to any assignments pursuant to
Section 10.04.

“Revolving L/C Exposure” means at any time the sum of (1) the aggregate undrawn face amount of all Letters of Credit outstanding at such
time (the “L/C Amount”) and (2) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The Revolving
L/C Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Revolving L/C Exposure at such time. For
all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by
reason of the operation of Rule 3.14 of the International Standard Practices, International Chamber of Commerce No. 590, such Letter of Credit will be
deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any
time will be deemed to be the stated amount of such Letter of Credit in effect at such time; provided that, with respect to any Letter of Credit that by its terms or
the terms of any document related thereto provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will be
deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is
in effect at such time.

“Revolving Lender” means each Lender with a Revolving Facility Commitment or outstanding Revolving Facility Credit Exposure.

“Revolving Loans” has the meaning assigned to such term in Section 2.01(1) and will include any Overadvances and 2013 Term Loan Reserve Advances.

“S&P” means Standard & Poor’s Ratings Services or any successor entity thereto.
“Sale and Lease-Back Transaction” has the meaning assigned to such term in Section 6.03.

“SEC” means the Securities and Exchange Commission or any successor thereto.

“Second Amendment” means that certain Second Amendment to this Agreement, dated as of October 27, 2016.


“Second Amendment Documentation Agent” means BMO Harris Bank, N.A.


“Second Amendment Documentation Agent” means BMO Harris Bank, N.A.

“Second Amendment Effective Date” has the meaning assigned to such term in the Second Amendment.

“Second Amendment Senior Managing Agent” means BMO Harris Bank, N.A.


“Second Amendment Documentation Agent” means BMO Harris Bank, N.A.


“Second Amendment Documentation Agent” means BMO Harris Bank, N.A.

“Second Amendment Effective Date” has the meaning assigned to such term in the Second Amendment.

“Second Amendment Senior Managing Agent” means BMO Harris Bank, N.A.

“Second Lien Notes” means the 14.00% Senior Cash Pay/PIK Second Lien Notes due 2024 issued on or prior to the Fourth Amendment Effective Date pursuant to the Second Lien Notes Indenture, as amended, restated, supplemented and/or otherwise modified from time to time.

“Second Lien Notes Collateral Agent” means Ankura Trust Company, LLC in its capacity as collateral agent under the applicable Second Lien Notes Documents, together with its permitted successors and assigns.

“Second Lien Notes Documents” means, collectively, the Second Lien Notes Indenture and all other mortgages, security agreements, indentures, note purchase agreements, promissory notes, Guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of Second Lien Notes or the collateral therefor.

“Second Lien Notes Indenture” means that certain indenture, dated as of June 7, 2019, among the Second Lien Notes Trustee, the issuers party thereto and the guarantors party thereto from time to time, as amended, restated, supplemented and/or otherwise modified from time to time.

“Second Lien Notes Obligations” means the Indebtedness and the related Indebtedness Obligations under the Second Lien Notes Indenture and the other Indebtedness Documents related to the Second Lien Notes.

“Second Lien Notes Trustee” means Ankura Trust Company, LLC in its capacity as trustee under the Second Lien Notes Indenture, together with its permitted successors and assigns.

“Secured Notes” means, collectively, the Second Lien Notes and the Third Lien Notes.
“Secured Notes Documents” means, collectively, the Second Lien Notes Documents and the Third Lien Notes Documents.

“Secured Notes Indentures” means, collectively, the Second Lien Notes Indenture and the Third Lien Notes Indentures.

“Secured Parties” means the collective reference to the “Secured Parties” as defined in the Collateral Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Documents” means the Collateral Agreement and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10 or Section 5.15, including any and all mortgages, deeds of trust and related agreements in respect of Real Property constituting Collateral and any and all Control Agreements.

“Senior Cash Pay Notes” means the 8.00% senior cash pay notes due 2021 issued on or prior to the date hereof pursuant to the Senior Cash Pay Notes Indenture.

“Senior Cash Pay Notes Indenture” means that certain indenture, dated as of October 21, 2013, among the Senior Cash Pay Notes Trustee, the Borrower and the guarantors party thereto, as amended, restated, supplemented and/or otherwise modified from time to time.

“Senior Cash Pay Notes Trustee” means U.S. Bank National Association, together with its permitted successors and assigns.

“Senior Managing Agents” means, collectively, BMO Harris Bank N.A. and SunTrust Bank.

“Senior Notes” means, collectively, the Senior Cash Pay Notes and the Senior PIK Notes.

“Senior Notes Documents” means, collectively, the Senior Notes Indentures and all other loan agreements, indentures, note purchase agreements, promissory notes, guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of Senior Notes.

“Senior Notes Indentures” means, collectively, the Senior Cash Pay Notes Indenture and the Senior PIK Notes Indenture.

“Senior PIK Notes” means the 8.75% senior PIK notes due 2021 issued on or prior to the date hereof pursuant to the Senior PIK Notes Indenture, as amended, restated, supplemented and/or otherwise modified from time to time.

“Senior PIK Notes Indenture” means that certain indenture, dated as of October 21, 2013, among the Senior PIK Notes Trustee, the Borrower and the guarantors party thereto, as amended, restated, supplemented and/or otherwise modified from time to time.

“Senior PIK Notes Trustee” means U.S. Bank National Association, together with its permitted successors and assigns.
“Senior Secured First Lien Net Leverage Ratio” means, as of any date, the ratio of Consolidated First Lien and 2nd Priority Senior Secured Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“Settlement Date” has the meaning assigned to such term in Section 2.18(2).

“Specified Event of Default” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“Specified Hedge Agreement” means any Hedge Agreement entered into or assumed between or among the Borrower, any Co-Borrower or any other Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Specified Hedge Agreement” under this Agreement (but only if such Hedge Agreement has not been designated as a “Specified Hedge Agreement” under the Term Loan Credit Agreement).

“Specified Merger Agreement Representations” means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders.

“Specified Representations” means the representations and warranties of each of Holdings and the Borrower set forth in the following sections of this Agreement:

1. Section 3.01(1) and (4) (but solely with respect to its organizational existence and status and organizational power and authority as to the execution, delivery and performance of this Agreement and the Collateral Agreement);
2. Section 3.02(1) (but solely with respect to its authorization of this Agreement and the Collateral Agreement);
3. Section 3.02(2)(a)(i) (but solely with respect to non-conflict of this Agreement and the Collateral Agreement with its certificate or article of incorporation or other charter document);
4. Section 3.02(2)(a)(iii) (but solely with respect to non-conflict of this Agreement and the Collateral Agreement with the Existing 2028 Debentures);
5. Section 3.03 (but solely with respect to execution and delivery by it, and enforceability against it, of this Agreement and the Collateral Agreement);
6. Section 3.09(2) (but solely with respect to use of proceeds on the Closing Date applicable date);
7. Section 3.10;
8. Section 3.15(1) (but solely with respect to the validity and perfection of the Liens granted by it in the Collateral on the Closing Date applicable date (subject to Permitted Liens and subject to the Certain Funds Provisions));
9. Section 3.17; and
“Specified Segregated Accounts” means those segregated DDAs that the Borrower designates to the Administrative Agent from time to time in writing, into which (1) funds from the sale of Inventory (a) held by the Borrower or any Restricted Subsidiary on a consignment basis or (b) relating to a leased department within retail stores of the Borrower or any Restricted Subsidiary, in each case, which Inventory is not owned by a Loan Party (and would not be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP); or (2) in-store payments in respect of private label credit cards subject to the Capital One Arrangements or any Permitted Replacement Credit Card Program are made.

“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Standard Securitization Undertakings” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Borrower or any Subsidiary of the Borrower that a Responsible Officer of the Borrower has determined in good faith to be customary in a Receivables Financing including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation will be deemed to be a Standard Securitization Undertaking.

“Standby Letter of Credit” has the meaning assigned to such term in Section 2.05(1).

“Statutory Reserves” means, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Loans in such currency are determined.

“Subagent” has the meaning assigned to such term in Section 9.02.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower. For the avoidance of doubt, as of the Fourth Amendment Effective Date, TNMG LLC and NMG Sub are Subsidiaries of the Borrower for all purposes hereunder.

“Subsidiary Loan Parties” means: (1) each Wholly Owned Domestic Restricted Subsidiary of the Borrower on the Closing Fourth Amendment Effective Date (other than any Excluded Subsidiary); and (2) each Wholly Owned Domestic Restricted Subsidiary (other than any Excluded Subsidiary) of Holdings that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date Fourth Amendment Effective Date; provided, however, that notwithstanding anything herein or in any other Loan Document, any reference to a PropCo Guarantor as a Subsidiary Loan Party in this Agreement or in any other Loan Document shall only mean such Subsidiary Loan Party in its capacity.
as a Guarantor but not in any capacity as a Grantor (as defined in the Collateral Agreement). For the avoidance of doubt, “Subsidiary Loan Parties” includes all Co-Borrowers.

“Supermajority Lenders” has the meaning assigned to such term in clause (5) of the proviso to Section 10.08(2).

“Supported QFC” has the meaning assigned to such term in Section 10.26(1).

“Swingline Borrowing” means a Borrowing comprised of Swingline Loans.

“Swingline Borrowing Request” means a request by the Borrower substantially in the form of Exhibit D-2.

“Swingline Commitment” means, with respect to any Swingline Lender, the commitment of such Swingline Lender to make Swingline Loans pursuant to Section 2.04. The aggregate amount of the Swingline Commitments on the Closing Date is $45.0 million.

“Swingline Exposure” means, at any time, the aggregate principal amount of all outstanding Swingline Borrowings at such time. The Swingline Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Swingline Exposure at such time.

“Swingline Lender” means DBNY, in its capacity as a lender of Swingline Loans to the Borrower Parties.

“Swingline Loans” means the swingline loans made to the Borrower or any Co-Borrower pursuant to Section 2.04.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“Term Facilities” means the facilities and commitments utilized in making term loans under the Term Loan Credit Agreement.

“Term Loan Agent” means Credit Suisse, as administrative agent and collateral agent, under the Term Loan Credit Agreement, together with its permitted successors and assigns.

“Term Loan Borrowers” means, collectively, the Borrower, TNMG LLC and NMG Sub.

“Term Loan Collateral Agreement” means the “Collateral Agreement” as defined in the Term Loan Credit Agreement.

“Term Loan Credit Agreement” means the Amended and Restated Term Loan Credit Agreement, dated as of the Closing Fourth Amendment Effective Date, among Holdings, Merger Sub, the Term Loan Borrowers, the lenders party thereto and Credit Suisse, as administrative agent and collateral agent, initially in respect of $2,950.0 million of term loans made available on the Closing Date the Term Loan Agent, as such document may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the requirements thereof.
“Term Loan Documents” means the Term Loan Credit Agreement, the Term Loan Collateral Agreement and the other “Loan Documents” under and as defined in the Term Loan Credit Agreement, as each such document may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the requirements thereof.

“Term Loan Security Documents” means the “Security Documents” as defined in Obligations” means the Indebtedness and related Indebtedness Obligations under the Term Loan Credit Agreement and the other related Indebtedness Documents.

“Term Loan Obligations Security Documents” means the “Obligations Security Documents” as defined in the Term Loan Credit Agreement.

“Term/Note Priority Collateral” means “Term/Loan/Note Priority Collateral” as defined in the ABL/Term Loan/Notes Intercreditor Agreement.

“Threshold Level” has the meaning assigned to such term in Section 2.11(2).

“Total Net Leverage Ratio” means, as of any date, the ratio of Consolidated Total Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“Third Amendment” means that certain Third Amendment to this Agreement, dated as of March 22, 2019.

“Third Lien Notes” means, collectively, the 8.00% and 8.75% senior third lien secured notes due October 25, 2024 issued on or prior to the Fourth Amendment Effective Date pursuant to the Third Lien Notes Indentures, as amended, restated, supplemented and/or otherwise modified from time to time.

“Third Lien Notes Collateral Agent” means Wilmington Trust, N.A. in its capacity as collateral agent under the applicable Third Lien Notes Documents, together with its permitted successors and assigns.

“Third Lien Notes Documents” means, collectively, the Third Lien Notes Indentures and all other mortgages, security agreements, indentures, note purchase agreements, promissory notes, Guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of Third Lien Notes or the collateral therefor.

“Third Lien Notes Indentures” means (x) that certain Indenture with respect to the 8.00% senior third lien secured notes, dated on or about the Fourth Amendment Effective Date, among the Third Lien Notes Trustee, the issuers party thereto and the guarantors party thereto from time to time, as amended, restated, supplemented and/or otherwise modified from time to time and (v) that certain Indenture with respect to the 8.75% senior third lien secured notes, dated on or about the Fourth Amendment Effective Date, among the Third Lien Notes Trustee, the issuers party thereto and the guarantors party thereto from time to time, as amended, restated, supplemented and/or otherwise modified from time to time.

“Third Lien Notes Obligations” means the Indebtedness and the related Indebtedness Obligations under the Third Lien Notes Indentures and the other Indebtedness Documents related to the Third Lien Notes.
“Third Lien Notes Trustee” means Wilmington Trust, N.A., in its capacity as trustee under the Third Lien Notes Indentures, together with its permitted successors and assigns.

“TNMG LLC” means The Neiman Marcus Group LLC, a Delaware limited liability company and a Wholly Owned Subsidiary of the Borrower.

“Trade Letter of Credit” has the meaning assigned to such term in Section 2.05(1).

“Transaction Documents” means the Purchase Documents, the Loan Documents, the Senior Notes Documents and the Term Loan Documents.

“Transactions” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

1. the consummation of the Merger;
2. the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
3. the Equity Contribution;
4. the execution and delivery of the Term Loan Documents, the creation of the Liens pursuant to the Term Loan Security Documents and the initial borrowings under the Term Loan Credit Agreement;
5. the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indentures;
6. the Closing Date Refinancing;
7. the Closing Date Conversions; and
8. the payment of all fees, costs and expenses in connection with the foregoing.

“Trust Account” means any accounts or trusts used solely to hold Trust Funds (as defined in the Collateral Agreement).

“Trust Funds” means cash, Cash Equivalents, cash equivalents or other assets comprised of:

1. funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees;
2. all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer’s share thereof)); and
3. any other funds which Holdings, the Borrower or any of its Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary of the Borrower.
“TSA” means, collectively, that certain Transaction Support Agreement, dated as of March 25, 2019, by and among the Company Parties (as defined therein), the Sponsors, certain holders of the term loans incurred under the Term Loan Credit Agreement and certain holders of the Senior Notes, together with all exhibits, schedules and annexes thereto, as amended, restated, supplemented and/or otherwise modified from time to time.

“Type” means, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” means Adjusted LIBO Rate or ABR, as applicable.

“U.S. Special Resolution Regimes” has the meaning assigned to such term in Section 10.26.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“Unrestricted Cash” means, as of any date, all cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries as of such date that would not appear as “restricted” on the Required Financial Statements, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Unrestricted Subsidiary” means, at any time that such Person is a Subsidiary of Holdings (other than any Borrower Party) designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; provided that the Borrower will only be permitted to designate a new Unrestricted Subsidiary after the Closing Date or subsequently re-designate any such Unrestricted Subsidiary as a Restricted Subsidiary (by written notice to the Administrative Agent) if:

1. no Event of Default is continuing;
2. such designation or re-designation would not cause an Event of Default; and
3. compliance with the Payment Conditions.

The designation of any Restricted Subsidiary as an Unrestricted Subsidiary will constitute an Investment for purposes of Section 6.04. The redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary will be deemed to be an incurrence at the time of such designation of Indebtedness of such Unrestricted Subsidiary and the Liens on the assets of such Unrestricted Subsidiary, in each case outstanding on the date of such redesignation.

“USA 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)).
“Voting Stock” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“Wholly Owned Domestic Subsidiary” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrower.

“Wholly Owned Subsidiary” means, with respect to any Person, a subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02 Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise:

1. the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation;”
2. in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including;”
3. the word “will” will be construed to have the same meaning and effect as the word “shall;”
4. the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);
5. the word “or” will be construed to mean “and/or;”
any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and

the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of the Borrower Parties or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; provided that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825-10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting upon the request of the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders)), the Borrower, the Administrative Agent and the Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; provided that provisions of this Agreement in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. “Accounting Change” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by Holdings or the Borrower.

SECTION 1.04 Effectuation of Transfers. Each of the representations and warranties of Holdings and the Borrower contained in this Agreement (and all corresponding definitions) is made after giving effect to the Recapitalization Transactions, unless the context otherwise requires.

SECTION 1.05 Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06 Required Financial Statements. With respect to the determination of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage
Ratio, the Fixed Charge Coverage Ratio or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) made on or prior to the date on which Required Financial Statements have been delivered for the first fiscal quarter ending after the Closing Fourth Amendment Effective Date, such calculation will be determined for the period of four consecutive fiscal quarters most recently ended prior to the Closing Fourth Amendment Effective Date, and calculated on a Pro Forma Basis.

SECTION 1.07 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws); (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein:

(1) Revolving Loans.

(b) Each Lender agrees to make loans ("Revolving Loans") to the Borrower Parties from time to time during the Availability Period in amounts not to exceed (except for the Swingline Lender with respect to Swingline Loans) such Lender’s Revolving Facility Percentage of the Borrowing Base, and in an aggregate principal amount that will not result in (i) such Lender’s Revolving Facility Credit Exposure exceeding such Lender’s Available Revolving Facility Commitment or (ii) the total Revolving Facility Credit Exposure exceeding the total Available Revolving Facility Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower Parties may borrow, prepay and reborrow Revolving Loans.

(b) Notwithstanding the foregoing, on the Closing Date only the following Revolving Loans will be made available:

(i) Revolving Loans in an amount not exceed $100.0 million for working capital related purposes (including repayment of Indebtedness under the Existing ABL Facility); and

(ii) Revolving Loans in an amount, taken together with the amount drawn pursuant to the preceding clause (i), not to exceed $135.0 million in the aggregate, to fund original issue discount and upfront fees arising in connection with any exercise of the Flex Provisions;

(2) Overadvances. Insofar as the Borrower may request and the Administrative Agent or Required Lenders may be willing in their sole discretion to make Revolving Loans to the Borrower Parties at a time when the Revolving Facility Credit Exposure exceeds, or would exceed with the making
of any such Revolving Loan, the Borrowing Base (any such Loan being herein referred to individually as an “Overadvance”), the Administrative Agent will enter such Overadvances as debits in the applicable Loan Account. All Overadvances will be repaid on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally. Any Overadvance made pursuant to the terms hereof will be made to the Borrower Parties by all Lenders ratably in accordance with their respective Revolving Facility Percentages. Overadvances in the aggregate amount of $10.0 million or less may, unless a Default or Event of Default has occurred and is continuing, be made in the sole, reasonable discretion of the Administrative Agent; provided that the Required Lenders may at any time revoke the Administrative Agent’s authorization to make future Overadvances; provided that no existing Overadvances will be subject to such revocation and any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof. Overadvances in an aggregate amount of more than $10.0 million but less than $25.0 million may, unless a Default or Event of Default has occurred and is continuing, be made with the consent of the Required Lenders. Overadvances in an aggregate amount of $25.0 million or more and Overadvances to be made after the occurrence and during the continuation of a Default or Event of Default will require the consent of all Revolving Lenders. The foregoing notwithstanding, in no event, unless otherwise consented to by all Revolving Lenders will:

(a) any Overadvances be outstanding for more than 90 consecutive days;

(b) the Administrative Agent or Lenders make any additional Overadvances unless 30 days or more have expired since the last date on which any Overadvances were outstanding; or

(c) will the Administrative Agent make Revolving Loans on behalf of Lenders under this Section 2.01(2) to the extent such Revolving Loans would cause a Lender’s share of the Revolving Facility Credit Exposure to exceed such Lender’s Available Revolving Facility Commitment or cause the aggregate Available Revolving Facility Commitments to be exceeded.

(3) Protective Advances. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole, reasonable discretion, may make Revolving Loans to the Borrower Parties on behalf of the Lenders, so long as the aggregate amount of such Revolving Loans will not exceed 5.0% of the Borrowing Base, if the Administrative Agent, in its Reasonable Credit Judgment, deems that such Revolving Loans are necessary or desirable to:

(a) protect all or any portion of the Collateral;

(b) enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations; or

(c) pay any other amount chargeable to the Borrower Parties pursuant to this Agreement (such Revolving Loans, “Protective Advances”);

provided that (i) in no event will the Revolving Facility Credit Exposure exceed the aggregate Available Revolving Facility Commitments and (ii) the Required Lenders under the Revolving Facility may at any time revoke the Administrative Agent’s authorization to make future Protective Advances; provided, further, that any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof and existing Protective Advances will not be subject to thereto.
Each applicable Lender will be obligated to advance to the Borrower Parties its Revolving Facility Percentage of each Protective Advance made in accordance with this Section 2.01(3). If Protective Advances are made in accordance with the preceding sentence, then all Revolving Lenders will be bound to make, or permit to remain outstanding, such Protective Advances based upon their Revolving Facility Percentages in accordance with the terms of this Agreement. All Protective Advances will be repaid by the Borrower Parties on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally.

(4) 2013 Term Loan Reserve Advances. On October 25, 2020 (i.e., the final stated maturity date of the 2013 Term Loans), if (i) the 2013 Term Loan Reserve has been imposed as contemplated by the definition of “Maturity Date”, (ii) principal of 2013 Term Loans remains outstanding on such date and (iii) the Administrative Agent has not received from the Borrower a Borrowing Request for the incurrence of Revolving Loans in reliance on the 2013 Term Loan Reserve (or other written evidence reasonably satisfactory to the Administrative Agent evidencing the repayment of 2013 Term Loans on such date), the Administrative Agent may, in its sole discretion, make Revolving Loans to the Borrower Parties on behalf of the Lenders in an aggregate principal amount equal to the 2013 Term Loan Reserve on such date and direct the proceeds thereof to repayment of principal of outstanding 2013 Term Loans under the Term Loan Credit Agreement as provided below (such Revolving Loans, “2013 Term Loan Reserve Advances”); provided that in no event will the Revolving Facility Credit Exposure exceed the Line Cap at such time. Each applicable Lender will be obligated to advance to the Administrative Agent (on behalf of the Borrower Parties) its Revolving Facility Percentage of each 2013 Term Loan Reserve Advance made in accordance with this Section 2.01(4). If 2013 Term Loan Reserve Advances are made in accordance with the preceding sentence, then all Revolving Lenders will be bound to make, or permit to remain outstanding, such 2013 Term Loan Reserve Advances based upon their Revolving Facility Percentages in accordance with the terms of this Agreement. All 2013 Term Loan Reserve Advances will be repaid by the Borrower Parties, will be secured by the Collateral and will bear interest, in each case, as provided in this Agreement for Revolving Loans generally.

The Borrower Parties hereby authorize the Administrative Agent (with full power and authority) to direct and apply the proceeds of the 2013 Term Loan Reserve Advances to the repayment of the 2013 Term Loans on October 25, 2020 and to make such payment to the Term Loan Agent under the Term Loan Credit Agreement on its behalf, all without further notice or consent from the Borrower Parties or any other Person.

SECTION 2.02 Loans and Borrowings.

(1) Each Loan will be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments (or, in the case of Swingline Loans, in accordance with their respective Swingline Commitments). The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender’s failure to make Loans as required.

(2) Subject to Section 2.14, each Borrowing (other than a Swingline Borrowing) will be comprised entirely of ABR Loans or Eurocurrency Revolving Loans as the Borrower may request in accordance herewith. Each Swingline Borrowing will be an ABR Borrowing. Each Lender at its option may make any ABR Loan or Eurocurrency Revolving Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option will not affect the obligation of the Borrower Parties to repay such Loan in accordance with
the terms of this Agreement and such Lender will not be entitled to any amounts payable under Section 2.15 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(3) At the commencement of each Interest Period for any Eurocurrency Revolving Facility Borrowing, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. At the time that each ABR Revolving Facility Borrowing is made, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; provided that an ABR Revolving Facility Borrowing may be in an aggregate amount that is equal to the entire unused available balance of the Revolving Facility Commitments or that is required to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5). Each Swingline Borrowing will be in an amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type may be outstanding at the same time; provided that there will not at any time be more than ten Eurocurrency Revolving Facility Borrowings outstanding.

(4) Notwithstanding any other provision of this Agreement, no Borrower Party will be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03 Requests for Borrowings.

(1) To request a Revolving Facility Borrowing, (a) with respect to any initial ABR Borrowing on the Closing Date, the Borrower will deliver to the Administrative Agent a Borrowing Request not later than 2:00 p.m., New York City time, one Business Day before the anticipated Closing Date, requesting that the Lenders make the Loans on the Closing Date; provided that such Borrowing Request may be conditioned upon occurrence of the Closing Date and (b) with respect to any other Borrowing, the Borrower will notify the Administrative Agent of such request by telephone (i) in the case of a Eurocurrency Revolving Facility Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (ii) in the case of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing; provided that any such notice of an ABR Borrowing to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5) may be given not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request will be irrevocable and will be confirmed promptly by hand delivery, facsimile or e mail to the Administrative Agent of a written Borrowing Request substantially in the form of Exhibit D-1 and signed by the Borrower.

(2) Each such telephonic and written Borrowing Request will specify the following information in compliance with Section 2.02:

(a) the aggregate amount of the requested Borrowing, which amount will not exceed Excess Availability;

(b) the date of such Borrowing, which will be a Business Day;

(c) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing;
(d) in the case of a Eurocurrency Revolving Facility Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term “Interest Period;” and

(e) the location and number of the applicable Borrower Party’s account to which funds are to be disbursed.

(3) **Disbursement.** Each Borrower Party hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each Loan requested pursuant to this Section 2.03. The proceeds of each Revolving Loan requested under this Section 2.03 will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, in the case of a borrowing on the Closing Date permitted under Section 2.01(1), in accordance with the terms of the written disbursement letter from the Borrower and, in the case of each Borrowing after the Closing Date, by wire transfer to such bank account as may be agreed upon by the Borrower and the Administrative Agent, from time to time or elsewhere if pursuant to a written direction from the Borrower. If at any time any Loan is funded in excess of the amount requested by the Borrower, the Borrower Parties agree, jointly and severally, to repay the excess to the Administrative Agent immediately upon notice thereof to the Borrower from the Administrative Agent or any Lender.

(4) If no election as to the Type of Revolving Facility Borrowing is specified, then the requested Revolving Facility Borrowing will be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Facility Borrowing, then the Borrower will be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent will advise the Lenders of the details thereof and of the amount of each such Lender’s Loan to be made as part of the requested Borrowing.

**SECTION 2.04 Swingline Loans.**

(1) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower Parties from time to time during the Availability Period in an aggregate principal amount at any time outstanding that will not result in (a) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Commitment; (b) the Revolving Facility Credit Exposure exceeding the total Available Revolving Facility Commitments; or (c) the Revolving Facility Credit Exposure exceeding the Borrowing Base; provided that the Swingline Lender will not be required to make a Swingline Loan to refinance an outstanding Swingline Borrowing. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower Parties may borrow, prepay and reborrow Swingline Loans.

(2) To request a Swingline Borrowing, the Borrower will notify the Administrative Agent and the Swingline Lender of such request by telephone (confirmed by a Swingline Borrowing Request by email or facsimile), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Borrowing. Each such notice and Swingline Borrowing Request will be irrevocable and will specify the requested (a) date (which will be a Business Day) and (b) amount of the Swingline Borrowing. The Swingline Lender will consult with the Administrative Agent as to whether the making of the Swingline Loan is in accordance with the terms of this Agreement prior to the Swingline Lender funding such Swingline Loan. The Swingline Lender will make each Swingline Loan in accordance with Section 2.02(2) on the proposed date thereof by wire transfer of immediately available funds by 5:00 p.m., New York City time, to the account of the Borrower.
Parties (or, in the case of a Swingline Borrowing made to finance the reimbursement of an L/C Disbursement as provided in Section 2.05(5), by remittance to the applicable Issuing Bank); provided that the Swingline Lender will not be obligated to make any Swingline Loan at any time when any Lender is at such time a Defaulting Lender, unless the Swingline Lender (i) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders pursuant to clause (3) below or (ii) has otherwise entered into satisfactory arrangements with the Borrower Parties or such Lender to eliminate the Swingline Lender’s risk with respect to such Lender.

(3)

(a) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the outstanding Swingline Loans made by it. Such notice will specify the aggregate amount of such Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each such Lender, specifying in such notice such Revolving Lender’s Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent for the account of the Swingline Lender, such Revolving Lender’s Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its respective obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and will not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender will comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Revolving Lender (and Section 2.06 will apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent will promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders.

(b) The Administrative Agent will notify the Borrower of any participations in any Swingline Loan acquired pursuant to paragraph (3)(a), and thereafter payments in respect of such Swingline Loan will be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from any Borrower Party (or other party on behalf of any Borrower Party) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein will be promptly remitted to the Administrative Agent and any such amounts received by the Administrative Agent will be promptly remitted by the Administrative Agent to the Revolving Lenders that made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted will be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to any Borrower Party for any reason. The purchase of participations in a Swingline Loan pursuant to paragraph (3)(a) will not relieve any Borrower Party of any default in the payment thereof.

(4) If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs at a time when Extended Commitments are in effect, then

(i) on such Maturity Date all then outstanding
Swingline Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of such Maturity Date) or refinanced with a borrowing of an Extension pursuant to Section 2.23; provided that, if on the occurrence of the such Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.05), there shall exist sufficient unutilized Extended Commitments so that the respective outstanding Swingline Loans could be incurred pursuant to the Extended Commitments which will remain in effect after the occurrence of such Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the Extended Commitments and such Swingline Loans shall not be so required to be repaid in full on such Maturity Date.

SECTION 2.05 Letters of Credit.

(1) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (a) trade letters of credit in support of trade obligations of the Borrower or any Subsidiary Loan Party incurred in the ordinary course of business (such letters of credit issued for such purposes, "Trade Letters of Credit") and (b) standby letters of credit issued for any other lawful purposes of the Borrower or any Subsidiary Loan Party (such letters of credit issued for such purposes, "Standby Letters of Credit") for their own account or for the account of any Subsidiary in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period and prior to the date that is five Business Days prior to the Maturity Date. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement will control. "Letters of Credit" will include Trade Letters of Credit and Standby Letters of Credit and the Existing Letters of Credit. Each Existing Letter of Credit will be deemed to have been issued under this Section 2.05 on the Closing Date.

(2) Notice of Issuance, Amendment, Renewal, Extension.

(a) To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic extension in accordance with paragraph (3) of this Section 2.05) or extension of an outstanding Letter of Credit) the Borrower will deliver by hand or facsimile (or transmit by e-mail, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent three Business Days in advance of the requested date of issuance, amendment or extension (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree) a Letter of Credit Request requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree) a Letter of Credit Request requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which will be a Business Day), the date on which such Letter of Credit is to expire (which will comply with paragraph (3) of this Section 2.05), the amount of such Letter of Credit, the name and address of the beneficiary thereof, whether such Letter of Credit constitutes a Standby Letter of Credit or a Trade Letter of Credit, and such other information as is necessary to issue, amend or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower will also submit a letter of credit application on such Issuing Bank’s standard form in connection with any request for a
Letter of Credit. A Letter of Credit will be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrower Parties will be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension:

(i) the Revolving L/C Exposure will not exceed the Letter of Credit Sublimit; and

(ii) the Revolving Facility Credit Exposure will not exceed the Line Cap.

(b) Notwithstanding anything to the contrary contained herein, the Issuing Bank will not issue (or be obligated to issue) any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain the Issuing Bank from issuing such Letter of Credit;

(ii) any applicable law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank prohibits the issuance of letters of credit generally;

(iii) such Letter of Credit imposes upon the Issuing Bank any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date;

(iv) such Letter of Credit imposes upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it;

(v) any Lender is at such time a Defaulting Lender, unless the Issuing Bank (A) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders pursuant to Section 2.26(1) or (B) has otherwise entered into satisfactory arrangements with the Borrower Parties or such Lender to eliminate the Issuing Bank’s risk with respect to such Lender; or

(vi) the issuance of such Letter of Credit would cause the aggregate face amount of all Letters of Credit issued and outstanding by the Issuing Bank to exceed such Issuing Bank’s Letter of Credit Commitment.

(3) **Expiration Date.**

(a) Each Standby Letter of Credit will expire at or prior to the close of business on the earlier of (i) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of issuance of such Standby Letter of Credit (or, in the case of any extension thereof, one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; provided that any Standby Letter of Credit with a one-year tenor may provide for the automatic extension thereof for additional one-year periods (which will in no event extend beyond the date referred to in the preceding clause (ii)) so long as such Standby Letter of Credit permits the Issuing Bank to prevent any such extension at least once in each
12-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof within a time period during such 12-month period to be agreed upon at the time such Standby Letter of Credit is issued; provided, further, that if the Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date of any Standby Letter of Credit may extend beyond the date referred to in clause (ii) above; and, provided, further, that (A) if any such Standby Letter of Credit is outstanding or is issued after the date that is 30 days prior to the Maturity Date, the Borrower Parties will provide cash collateral pursuant to documentation reasonably satisfactory to the Administrative Agent and the relevant Issuing Bank in an amount equal to 103% of the face amount of each such Standby Letter of Credit on or prior to the date that is 30 days prior to the Maturity Date or, if later, such date of issuance, and (B) each Revolving Lender’s participation in any undrawn Letter of Credit that is outstanding on the Maturity Date will terminate on the Maturity Date.

(b) Each Trade Letter of Credit will expire on the earlier of (A) 180 days after such Trade Letter of Credit’s date of issuance or (B) the date that is five Business Days prior to the Maturity Date.

(4) **Participations.** By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender’s Revolving Facility Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, its Revolving Facility Percentage of each L/C Disbursement made by such Issuing Bank and not reimbursed by the Borrower Parties on the date due as provided in paragraph (5) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower Parties for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever.

(5) **Reimbursement.**

(a) If the applicable Issuing Bank makes any L/C Disbursement in respect of a Letter of Credit, the Borrower Parties will reimburse such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 2:00 p.m., New York City time, on the first Business Day after the Borrower receives notice under paragraph (8) of this Section 2.05 of such L/C Disbursement (or the second Business Day, if such notice is received after 12:00 noon, New York City time), together with accrued interest thereon from the date of such L/C Disbursement at the rate applicable to ABR Loans; provided that the Borrower Parties may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Facility Borrowing or a Swingline Borrowing, as applicable, in an equivalent amount and, to the extent so financed, the Borrower Parties’ obligations to make such payment will be discharged and replaced by the resulting ABR Revolving Facility Borrowing or Swingline Borrowing. If such Letter of Credit is denominated in a currency
other than Dollars, all reimbursements by the Borrower Parties of the honoring of any drawing under such Letter of Credit will be paid in the currency in which such Letter of Credit was denominated.

(b) If the Borrower Parties fail to reimburse any L/C Disbursement when due, then the Administrative Agent will promptly notify the applicable Issuing Bank and each other Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower Parties in respect thereof and, in the case of a Revolving Lender, such Lender’s Revolving Facility Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent its Revolving Facility Percentage of the payment then due from the Borrower Parties in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 will apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Any payment made by a Revolving Lender pursuant to this paragraph (5) to reimburse an Issuing Bank for any L/C Disbursement (other than the funding of an ABR Revolving Loan or a Swingline Borrowing as contemplated above) will not constitute a Loan and will not relieve the Borrower Parties of their obligations to reimburse such L/C Disbursement.

(c) Promptly following receipt by the Administrative Agent of any payment from the Borrower Parties pursuant to paragraph (5)(a), the Administrative Agent will distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to paragraph (5)(b) to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear.

(6) **Obligations Absolute.** The obligations of the Borrower Parties to reimburse L/C Disbursements as provided in paragraph (5) of this Section 2.05 will be absolute, unconditional and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(a) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein;

(b) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;

(c) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; or

(d) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against, any Borrower Party’s obligations hereunder.

(7) **Limited Liability.** None of the Administrative Agent, the Lenders, any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any
error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank, or any of the circumstances referred to in clauses (a), (b) or (c) of Section 2.05(6); provided that the foregoing will not be construed to excuse the applicable Issuing Bank from liability to the Borrower Parties to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower Parties to the extent permitted by applicable law) suffered by any Borrower Party that are determined by a final and binding decision of a court of competent jurisdiction to have been caused by such Issuing Bank’s failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the applicable Issuing Bank, such Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(8) Disbursement Procedures. The applicable Issuing Bank will, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank will promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile or e-mail) of any such demand for payment under a Letter of Credit and whether such Issuing Bank has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice will not relieve the Borrower Parties of their obligations to reimburse such Issuing Bank and/or the Revolving Lenders with respect to any such L/C Disbursement.

(9) Interim Interest. If an Issuing Bank makes any L/C Disbursement, then, unless the Borrower Parties reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower Parties reimburse such L/C Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if such L/C Disbursement is not reimbursed by the Borrower Parties when due pursuant to paragraph (5) of this Section 2.05, then Section 2.13(3) will apply. Interest accrued pursuant to this paragraph will be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (5) of this Section 2.05 to reimburse such Issuing Bank will be for the account of such Revolving Lender to the extent of such payment.

(10) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent will notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, the Borrower Parties will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12. From and after the effective date of any such replacement, (a) the successor Issuing Bank will have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (b) references herein to the term “Issuing Bank” will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all
previous Issuing Banks, as the context will require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement but will not be required to issue additional Letters of Credit.

(11) **Cash Collateralization.** If any Event of Default occurs and is continuing, (a) in the case of an Event of Default described in Section 8.01(8) or (9), on the Business Day, or (b) in the case of any other Event of Default, on the third Business Day, in each case, following the date on which the Borrower receives notice from the Administrative Agent demanding the deposit of cash collateral pursuant to this paragraph (11), the Borrower Parties will deposit in an account with or at the direction of the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders, an amount in cash equal to the Revolving L/C Exposure as of such date plus any accrued and unpaid interest thereon; provided that upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(8) or (9), the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind. Each such deposit pursuant to this paragraph will be held by the Collateral Agent as collateral for the payment and performance of the obligations of the Borrower Parties under this Agreement. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of (i) for so long as an Event of Default is continuing, the Administrative Agent and (ii) at any other time, the Borrower, in each case, in Cash Equivalents and at the risk and expense of the Borrower, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in such account. Interest or profits, if any, on such investments will accumulate in such account. Moneys in such account will be applied by the Administrative Agent to reimburse each Issuing Bank for L/C Disbursements for which such Issuing Bank has not been reimbursed and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrower Parties for the Revolving L/C Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders)), be applied to satisfy other obligations of the Borrower Parties under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(12) **Additional Issuing Banks.** From time to time, the Borrower may, by notice to the Administrative Agent, designate any Lender to act as an Issuing Bank; provided that such Lender agrees in its sole discretion to act as such and such Lender is reasonably satisfactory to the Administrative Agent as an Issuing Bank. Each such additional Issuing Bank will execute a counterpart of this Agreement upon the approval of the Administrative Agent (which approval will not be unreasonably withheld) and will thereafter be an Issuing Bank hereunder for all purposes. The Borrower may, in its sole discretion, request a Letter of Credit issuance from any Issuing Bank.

(13) **Reporting.** Unless otherwise requested by the Administrative Agent, each Issuing Bank will (a) provide to the Administrative Agent copies of any notice received from the Borrower or any Co-Borrower pursuant to Section 2.05(2) no later than the next Business Day after receipt thereof and (b) report in writing to the Administrative Agent as follows:

(i) on or prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or
extension, and the aggregate face amount of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), and the Issuing Bank will be permitted to issue, amend or extend such Letter of Credit if the Administrative Agent will not have advised the Issuing Bank that such issuance, amendment or extension would not be in conformity with the requirements of this Agreement;

(ii) on each Business Day on which such Issuing Bank makes any L/C Disbursement, the date of such L/C Disbursement and the amount of such L/C Disbursement; and

(iii) on any other Business Day, such other information with respect to the outstanding Letters of Credit issued by such Issuing Bank as the Administrative Agent reasonably requests, including but not limited to prompt verification of such information as may be requested by the Administrative Agent.

The failure of any Issuing Bank (other than the Administrative Agent or any affiliate thereof acting as an Issuing Bank) to comply with the provisions of this clause (13) with respect to any letter of credit will result in such letter of credit not being deemed a “Letter of Credit” hereunder and under the other Loan Documents.

(14) **Reallocation.** If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Revolving Facility Commitments in respect of which the Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to Section 2.05(5)) under (and ratably participated in by Lenders pursuant to) the Revolving Facility Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Facility Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be reallocated); provided, in no event shall such reallocation cause a Lender’s share of the Revolving Facility Commitment to exceed such Lender’s Commitment, and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall cash collateralize any such Letter of Credit in accordance with Section 2.05(11). If, for any reason, such cash collateral is not provided or reallocation does not occur, the Revolving Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the second preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Facility Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders in any Letter of Credit issued before such Maturity Date. Commencing with the Maturity Date of any tranche of Revolving Facility Commitments, the sublimit for Letters of Credit shall be agreed with the Lenders under the extended tranches.

**SECTION 2.06 Funding of Borrowings.**

(1) Each Lender will make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that same-day ABR Loans will be made by each Lender on the proposed date thereof by
wire transfer of immediately available funds by 2:00 p.m., New York City time; provided, further that Swingline Loans will be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower Parties by promptly crediting the amounts so received, in like funds, to an account of the applicable Borrower Party as specified in the applicable Borrowing Request; provided that ABR Revolving Loans and Swingline Borrowings made to finance the reimbursement of an L/C Disbursement and reimbursements as provided in Section 2.05(5) will be remitted by the Administrative Agent to the applicable Issuing Bank.

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.06 and may, in reliance upon such assumption, make available to the Borrower Parties a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower Parties severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower Parties to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower Parties, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender’s Loan included in such Borrowing.

(3) The foregoing notwithstanding, the Administrative Agent, in its sole discretion, may from its own funds make a Revolving Loan on behalf of any such Lender, (including by means of Swingline Loans to the Borrower Parties). In such event, the Lender, on behalf of whom Administrative Agent made the Revolving Loan, will reimburse the Administrative Agent for all or any portion of such Revolving Loan made on its behalf upon written notice given to such Lender not later than 12:00 noon, New York City time, on the Business Day such reimbursement is requested. On each such settlement date, the Administrative Agent will pay to each Lender the net amount owing to such Lender in connection with such settlement, including amounts relating to Loans, fees, interest and other amounts payable hereunder. The entire amount of interest attributable to such Revolving Loan for the period from and including the date on which such Revolving Loan is made on such Lender’s behalf, to but excluding the date the Administrative Agent is reimbursed in respect of such Revolving Loan by such Lender, will be paid to the Administrative Agent for its own account.

SECTION 2.07 Interest Elections.

(1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Revolving Facility Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Revolving Facility Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section 2.07 will not apply to Swingline Borrowings, which may not be converted or continued.
To make an election pursuant to this Section 2.07 following the Closing Date, the Borrower will notify the Administrative Agent of such election by telephone (a) in the case of an election to convert to or continue a Eurocurrency Revolving Facility Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of such election or (b) in the case of an election to convert to or continue an ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day before the effective date of such election. Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit E and signed by the Borrower.

Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below will be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing; and

(iv) if the resulting Borrowing is a Eurocurrency Revolving Facility Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of “Interest Period.”

If any such Interest Election Request requests a Eurocurrency Revolving Facility Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month’s duration.

Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

If the Borrower Parties fail to deliver a timely Interest Election Request with respect to a Eurocurrency Revolving Facility Borrowing two Business Days prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid, as provided herein, at the end of such Interest Period, such Borrowing will be continued as a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month’s duration.

Notwithstanding any contrary provision hereof, but subject to Section 2.13(3) in respect of a Specified Event of Default, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Revolving Facility Borrowing and (b) unless repaid, each Eurocurrency Revolving Facility Borrowing will be
converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

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SECTION 2.08 Termination and Reduction of Commitments.

(1) Unless previously terminated, the Commitments will terminate on the Maturity Date.

(2) The Borrower may at any time terminate, or from time to time reduce, the Revolving Facility Commitments; provided that (i) each reduction of the Revolving Facility Commitments will be in an amount that is an integral multiple of $1.0 million and not less than $5.0 million (or, if less, the remaining amount of the applicable Revolving Facility Commitments) and (ii) the Borrower will not terminate or reduce the Revolving Facility Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Revolving Facility Credit Exposure would exceed the lesser of the total Available Revolving Facility Commitments and the Borrowing Base.

(3) The Borrower will notify the Administrative Agent of any election to terminate or reduce the Revolving Facility Commitments under paragraph (2) of this Section 2.08 at least three Business Days prior to the date of such termination or reduction, specifying such election and the date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 will be irrevocable; provided that a notice of termination of the Revolving Facility Commitments delivered by the Borrower may state that such notice is revocable or conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified Closing Date). Any termination or reduction of the Commitments will be permanent. Each reduction of the Commitments will be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09 Promise to Pay; Evidence of Debt.

(1) Each of the Borrower Parties, jointly and severally, hereby unconditionally promises to pay (a) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan, Protective Advance, 2013 Term Loan Reserve Advance and Overadvance to such Borrower Party on the Maturity Date and (b) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Maturity Date.

(2) Any Lender may request that Loans made by it be evidenced by a promissory note (a "Note"). In such event, the Borrower Parties will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Loans evidenced by such Note and interest thereon at all times (including after assignment pursuant to Section 10.04) will be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

(3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Loan to any of the Borrower Parties made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower Parties to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof. The entries made in the accounts maintained pursuant to this paragraph (3) will be prima
facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower Parties to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional Repayment of Loans.

(1) The Borrower Parties will have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty (but subject to Section 2.16), in an aggregate principal amount, (a) in the case of Eurocurrency Revolving Loans, that is an integral multiple of $500,000 and not less than $2.5 million, and (b) in the case of ABR Loans, that is an integral multiple of $100,000 and not less than $1.0 million, or, in each case, if less, the amount outstanding; provided that no portion of the principal of any ABL Term Loans may be prepaid prior to the Discharge of ABL Revolving Claims unless such prepayment (i) is permitted under Section 6.09(2) or (ii) constitutes a scheduled amortization payment expressly contemplated under Section 2.21(7)(c).

(2) Prior to any repayment of any Revolving Loans, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, (a) in the case of an ABR Borrowing, one Business Day before the anticipated date of such repayment and (b) in the case of a Eurocurrency Revolving Facility Borrowing, three Business Days before the anticipated date of such repayment. Each repayment of a Borrowing will be applied to the Revolving Loans included in the repaid Borrowing such that each Revolving Lender receives its ratable share of such repayment (based upon the respective Revolving Facility Credit Exposures of the Revolving Lenders at the time of such repayment). Notwithstanding anything to the contrary in the immediately preceding sentence, prior to any repayment of a Swingline Loan hereunder, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, on the scheduled date of such repayment. Repayments of Eurocurrency Revolving Facility Borrowings will be accompanied by accrued interest on the amount repaid, together with any amounts due under Section 2.16.

SECTION 2.11 Mandatory Repayment of Loans.

(1) In the event the aggregate amount of the Revolving Facility Credit Exposure exceeds the Line Cap at such time, then the Borrower will on such Business Day repay outstanding Revolving Loans and Swingline Loans, and, if there remains an excess after paying all Revolving Loans and Swingline Loans, cash collateralize Letters of Credit (in accordance with Section 2.05(11)) in an aggregate amount equal to such excess.

(2) On any date on or prior to April 25, 2014, the Borrower will cause the aggregate principal amount of outstanding Revolving Loans (excluding, for the avoidance of doubt, all other Revolving Facility Credit Exposure) on such date to be equal to or less than an amount (the “Threshold Level”) equal to (a) $25.0 million plus (b) the amount funded on the Closing Date to finance original issue discount and upfront fees arising in connection with any exercise of the Flex Provisions. The foregoing sentence will not be construed in any manner to restrict the ability of the Borrower Parties to request any Borrowing under the Revolving Facility, and this Section 2.11(2) will have no further force or effect following the date on which outstanding Revolving Loans are equal to or less than the Threshold.
In the event and on such occasion as the Revolving L/C Exposure exceeds the Letter of Credit Sublimit, the Borrower will deposit cash collateral (in accordance with Section 2.05(11)) in an amount equal to such excess.

Upon the occurrence and during the continuance of a Cash Dominion Period, all amounts in the Dominion Account shall be applied by the Administrative Agent pursuant to clause (b) of the proviso to Section 5.11.

The Borrower will prepay Revolving Loans (with no reduction in commitments) or cash collateralize Letters of Credit with 100% of all net cash proceeds from non-ordinary course sales of Collateral included in the Borrowing Base to the extent such net cash proceeds are required to be applied to repay Revolving Loans in order to remain in compliance with the Borrowing Base. Any amounts prepaid pursuant to this clause (5) will be applied pursuant to the waterfall set forth in Section 2.18(3), provided that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:

(a) first, to ABR Loans;
(b) second, to Eurocurrency Revolving Loans; and
(c) third, to the cash collateralization of Letters of Credit.

SECTION 2.12 Fees.

The Borrower Parties agree, jointly and severally, to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the fifth Business Day after the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter of the Borrower ending in January 2014, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a commitment fee (a “Commitment Fee”) on the daily amount of the Available Unused Commitment of such Lender during the preceding fiscal quarter (or other period commencing with the Closing Date or ending with the date on which the last of the Commitments of such Lender will be terminated, as applicable) at a rate equal to the Applicable Commitment Fee Percentage. All Commitment Fees will be computed on the basis of the actual number of days elapsed in a year of 360 days. For the purpose of calculating any Lender’s Commitment Fee, the outstanding Swingline Loans during the period for which such Lender’s Commitment Fee is calculated will be deemed to be zero. The Commitment Fee due to each Lender will commence to accrue on the Closing Date and will cease to accrue on the date on which the last of the Commitments of such Lender will be terminated as provided herein.

The Borrower Parties agree, jointly and severally, to pay to:

(a) the Administrative Agent for the account of each Revolving Lender (other than any Defaulting Lender, it being understood that at any time the Issuing Bank has Fronting Exposure to such Defaulting Lender, the L/C Participation Fee with respect to such Fronting Exposure will be payable to the Issuing Bank for its own account), on the fifth Business Day after the end of each fiscal quarter of the Borrower in each year, commencing with the fiscal quarter of the Borrower ending in January 2014, and on each Maturity Date
and any date on which the Commitments of all the Lenders are terminated as provided herein, a fee (an “L/C Participation Fee”) on such Lender’s Revolving Facility Percentage of the daily aggregate Revolving L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements), during the preceding fiscal quarter (or other period commencing with the Closing Date or ending with the Maturity Date or the date on which the Revolving Facility Commitments are terminated, as applicable) at the rate per annum equal to the Applicable Margin for Eurocurrency Revolving Facility Borrowings effective for each day in such period; and

(b) each Issuing Bank, for its own account (i) on the fifth Business Day after the end of each fiscal quarter of the Borrower, commencing with the fiscal quarter of the Borrower ending in January 2014, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a fronting fee in respect of each Letter of Credit issued by, or the term of which is extended by, such Issuing Bank for the period from and including the date of issuance or extension of such Letter of Credit to and including the termination of such Letter of Credit, computed at a rate equal to 0.125% per annum of the daily stated amount of such Letter of Credit plus (ii) such Issuing Bank’s customary issuance fees and customary documentary and processing fees and charges (collectively, “Issuing Bank Fees”). All L/C Participation Fees and Issuing Bank Fees that are payable in Dollars on a per annum basis will be computed on the basis of the actual number of days elapsed in a year of 360 days.

(3) The Borrower Parties agree, jointly and severally, to pay to the Administrative Agent, for its own account, the agency fees set forth in the Fee Letter at the times specified therein or in such other amounts and at such other times as may be separately agreed in writing by the Administrative Agent and the Borrower from time to time (the “Administrative Agent Fees”).

(4) All Fees will be paid on the dates due, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders, except that Issuing Bank Fees will be paid directly to the applicable Issuing Banks. Once paid, none of the Fees will be refundable under any circumstances.

SECTION 2.13 Interest.

(1) The Loans comprising each ABR Borrowing (including each Swingline Loan) will bear interest at the ABR plus the Applicable Margin.

(2) The Loans comprising each Eurocurrency Revolving Facility Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(3) Following the occurrence and during the continuation of a Specified Event of Default, the Borrower Parties will pay interest on overdue amounts hereunder at a rate per annum equal to (a) in the case of overdue principal of any Loan, 2.0% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (b) in the case of overdue interest or any other overdue amount, 2.0% plus the rate applicable to ABR Loans as provided in clause (1) of this Section 2.13.
Accrued interest on each Loan will be payable by the Borrower Parties, jointly and severally, in arrears (a) on each Interest Payment Date for such Loan; (b) on the applicable Maturity Date; and (c) upon termination of the Revolving Facility Commitments; provided that:

(i) interest accrued pursuant to paragraph (3) of this Section 2.13 will be payable on demand;

(ii) in the event of any repayment of any Loan (other than a repayment of an ABR Revolving Loan or Swingline Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment; and

(iii) in the event of any conversion of any Eurocurrency Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan will be payable on the effective date of such conversion.

All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the prime rate will be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBO Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

**SECTION 2.14 Alternate Rate of Interest.**

(a) If prior to the commencement of any Interest Period for a Eurocurrency Revolving Facility Borrowing:

(1) the Administrative Agent determines (which determination will be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(2) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent will give notice thereof to the Borrower and the applicable Lenders by telephone, facsimile transmission or e-mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (a) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Revolving Facility Borrowing will be ineffective and such Borrowing will be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing, and (b) if any Borrowing Request requests a Eurocurrency Revolving Facility Borrowing, such Borrowing will be made as an ABR Borrowing.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(1) of this Section 2.14 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(1) of this Section have not arisen but either (w) the supervisor for the administrator of the LIBO Rate has made a public statement that the administrator of the LIBO Rate is insolvent (and there is no successor administrator that will continue publication of the LIBO Rate), (x) the administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or
indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBO Rate), (v) the supervisor for the administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate may no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States of America at such time and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that if such alternate rate of interest as so determined would be less than zero, then such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 10.08, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from Required Lenders stating that such Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this Section 2.14(b), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.15  Increased Costs.

(1) If any Change in Law:

(a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank;

(b) imposes on any Lender or Issuing Bank or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Revolving Loans made by such Lender or any Letter of Credit or participation therein; or

(c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes and (ii) Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Eurocurrency Revolving Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.
If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s or Issuing Bank’s capital or on the capital of such Lender’s or Issuing Bank’s holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender’s or such Issuing Bank’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s or such Issuing Bank’s policies and the policies of such Lender’s or such Issuing Bank’s holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender’s or such Issuing Bank’s holding company for any such reduction suffered.

A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within ten days after receipt thereof.

Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank will notify the Borrower thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender’s or Issuing Bank’s right to demand such compensation; provided that the Borrower will not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s or Issuing Bank’s intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

1. the payment of any principal of any Eurocurrency Revolving Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);
2. the conversion of any Eurocurrency Revolving Loan other than on the last day of the Interest Period applicable thereto;
3. the failure to borrow, convert, continue or prepay any Eurocurrency Revolving Loan on the date specified in any notice delivered pursuant hereto; or
4. the assignment of any Eurocurrency Revolving Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19.

Such loss, cost or expense to any Lender will be deemed to be the amount determined by such Lender to be the excess, if any, of (a) the amount of interest which would have accrued on the principal amount of
such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan (but not including the Applicable Margin applicable thereto), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Revolving Loan, for the period that would have been the Interest Period for such Loan), over (b) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the Eurocurrency market.

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.17 Taxes.

(1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by a Loan Party, then the applicable Loan Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if a Loan Party is required to deduct any Indemnified Taxes or Other Taxes from such payments, then (a) the sum payable hereunder will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.17) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made, (b) such Loan Party will make such deductions, and (c) such Loan Party will timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(2) In addition, the Loan Parties will timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(3) Each Loan Party will, jointly and severally, indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender (other than as a result of the Administrative Agent’s or any Lender’s gross negligence or willful misconduct) on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority.
Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(5)(b), 2.17(5)(c), 2.17(5)(d) and 2.17(6) below) will not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the effect of Section 2.17(5)(a) above, each Foreign Lender will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit G to the effect that such Foreign Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code; (2) a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN or Form W-8BEN-E (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and additional Form W-8IMYs) or Internal Revenue Service Form W-9 as may be required; or
any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

In addition, in each of the foregoing circumstances, each Foreign Lender will deliver such forms, if legally entitled to deliver such forms, promptly upon the obsolescence, expiration or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender will promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States of America or other taxing authorities for such purpose). In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender. Notwithstanding any other provision of this paragraph, a Lender will not be required to deliver any form pursuant to this paragraph (5) unless such Lender is not legally able to deliver; and

(c) Deutsche Bank AG New York Branch in its capacity as the Administrative Agent (and any Person succeeding the Administrative Agent upon assignment or succession under Section 9.09, if applicable) will also deliver, to the Borrower, on or prior to the execution and delivery of this Agreement, (i) two duly completed copies of Internal Revenue Service Form W-8ECI with respect to any amounts payable to DBNY for its own account and (ii) two duly completed copies of Internal Revenue Service Form W-8IMY certifying that it is a “U.S. branch” and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a United States person with respect to such payments (and the Borrower and DBNY agree to so treat DBNY as a United States person with respect to such payments), with the effect that the Borrower can make payments to DBNY (acting as the Administrative Agent) without deduction or withholding of any taxes imposed by the United States.

(d) In addition, each Lender that is not a Foreign Lender will deliver to the Borrower and the Administrative Agent two copies of Internal Revenue Service Form W-9 (or any subsequent versions thereof or successors thereto) on or before the date such Lender becomes a party and upon the expiration of any form previously delivered by such Lender.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause Section
Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(7) If the Administrative Agent or any Lender determines, in its sole discretion, exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.17, it will pay over reasonably promptly such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund) as is determined by the Administrative Agent or such Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent, such Issuing Bank or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in Section 2.14(7), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.17(7) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.17(7) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(8) Each party’s obligations under this Section 2.17 will survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and this repayment, satisfaction or discharge of all obligations under any Loan Document.

(9) For purposes of this Section 2.17, the term “applicable law” includes FATCA and the term “Lender” includes any Issuing Bank.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(1) Unless otherwise specified, the Borrower Parties will make each payment required to be made by them hereunder (whether of principal, interest, fees, reimbursement of L/C Disbursements or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 10.05 will be made directly to the Persons entitled thereto, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account.
of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(2) The amount of each Lender’s Revolving Facility Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) will be computed weekly (or more frequently in the Administrative Agent’s discretion) and will be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 4:00 p.m. on the first Business Day (such date, the “Settlement Date”) following the end of the period specified by the Administrative Agent. The Administrative Agent will deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (a) the Administrative Agent will transfer to each Lender its Revolving Facility Percentage of repayments and (b) each Lender will transfer to the Administrative Agent (as provided below) or the Administrative Agent will transfer to each Lender such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender will be equal to such Lender’s Revolving Facility Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 2:00 p.m. on a Business Day, such transfers will be made in immediately available funds no later than 5:00 p.m. that day and, if received after 2:00 p.m., then no later than 4:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender has not so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

(3) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower Parties to pay fully all amounts of principal, unreimbursed L/C Disbursements, interest and fees and other Obligations then due from the Borrower or any Co-Borrower hereunder or (b) at any time during a Cash Dominion Period (including in connection with any termination of the Revolving Facility Commitments pursuant to Section 8.01) and the Administrative Agent or the Collateral Agent receives proceeds of Collateral, such funds will be applied,

(i) first, toward payment of any expenses, fees and indemnities due to the Agents hereunder;

(ii) second, toward payment of interest and fees then due from the Borrower Parties
hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(iii)  third, toward payment of principal of Swingline Loans, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due from the Borrower Parties hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due to such parties;

(iv)  fourth, toward payment of other principal then due from the Borrower Parties hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties;

(v)  fifth, if an Event of Default has occurred and is continuing, to cash collateralize Letters of Credit issued for the account of the Borrower, any Co-Borrower or any other Subsidiary in accordance with Section 2.05(11);

(vi)  sixth, to pay any other Obligations (excluding Obligations (x) with respect to ABL Term Loans or (y) as described in items (2) and (3) of the definition of “Obligations” contained herein) ratably among the parties thereto in accordance with such amounts so owed them;

(vii) seventh, to payment of obligations pursuant to Specified Hedge Agreements then due from the Borrower or any Co-Borrower, ratably among the parties entitled thereto in accordance with the amounts of obligations under such Specified Hedge Agreements then due to such parties;

(viii) eighth, to payment of Cash Management Obligations of the Borrower or any Co-Borrower then due from the Borrower or such Co-Borrower, ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties;

(ix)  ninth, to payment of all other Obligations (other than those relating to ABL Term Loans) of the Borrower Parties then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties;

(x)  tenth, toward payment of interest then due from the Borrower Parties hereunder with respect to the ABL Term Loans, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties;

(xi)  eleventh, toward payment of principal then due from the Borrower Parties hereunder with respect to the ABL Term Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties; and

(xii) twelfth, to payment of all other Obligations of the Borrower Parties then due and payable with respect to the ABL Term Loans, ratably among the parties
entitled thereto in accordance with the amounts of such Obligations then due to such parties;

provided that the application of such proceeds at all times will be subject to the application of proceeds provisions contained in the ABL/Term Loan/Notes Intercreditor Agreement.

(4) Subject to express priorities set forth in Section 2.18(3) above, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Revolving Loans or participations in L/C Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in L/C Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Revolving Loans and participations in L/C Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest in their respective Revolving Loans and participations in L/C Disbursements and Swingline Loans; provided that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (4) will not be construed to apply to any payment made by the Borrower Parties pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower Parties or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower Parties consent to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Borrower Party rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower Party in the amount of such participation.

(5) Subject to the priorities set forth in Section 2.18(3) above, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its ABL Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its ABL Term Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the ABL Term Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective ABL Term Loans; provided that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (5) will not be construed to apply to any payment made by the Borrower Parties pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its ABL Term Loans to any assignee or participant, other than to the Borrower Parties or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (5) apply). The Borrower Parties consent to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against any Borrower Party rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower Party in the amount of such participation.
Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrower Parties will not make such payment, the Administrative Agent may assume that the Borrower Parties have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as applicable, the amount due. In such event, if the Borrower Parties have not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

If any Lender fails to make any payment required to be made by it pursuant to Section 2.04(3), 2.05(4) or (5), 2.06(2) or 2.18(6), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender’s obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.15, or if the Borrower Parties are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.15 or is a Defaulting Lender, or if the Borrower Parties are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then the Borrower Parties may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (a) the Borrower Parties shall have received the prior written consent of the Administrative Agent, the Swingline Lender and the Issuing Bank, which consent shall not unreasonably be withheld, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans and funded participations in L/C Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Parties (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. Nothing in this Section 2.19 will be deemed to prejudice any rights that the Borrower Parties may have against any Lender that is a Defaulting Lender.
If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which, pursuant to the terms of Section 10.08, requires the consent of such Lender with respect to which the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) have granted their consent, then the Borrower Parties will have the right (unless such Non-Consenting Lender grants such consent) at their sole expense, to replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent, the Swingline Lender and the Issuing Bank to the extent the consent of such Person would be required under Section 10.04; provided that (a) all Obligations of the Borrower Parties owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15, 2.16 or 2.17) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) the replacement Lender will purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, which will be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower Parties, the Administrative Agent, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; provided that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Borrower’s request therefor, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.20 Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable lending office to make or maintain any Eurocurrency Revolving Loans, then, upon notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Revolving Loans or to convert ABR Borrowings to Eurocurrency Revolving Facility Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Revolving Facility Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Revolving Facility Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 Incremental Facilities.

(1) Notice. At any time and from time to time, on one or more occasions, subject to the terms and conditions set forth herein, the Borrower may, by notice to the Administrative Agent, increase the Revolving Facility Commitments (each such increase, an “Incremental Revolving Facility Increase” and such additional Revolving Facility Commitments, the “Incremental Commitments”) or add one or more tranches of term loans under the Loan Documents (“Incremental Term Loans”; each such Incremental Revolving Facility Increase together with any tranche of Incremental Term Loans, an “Incremental Facility”).

(2) Ranking. Any Incremental Commitments will (a) rank pari passu in right of payment with the Revolving Facility Claims and (b) be secured by the Collateral on a pari passu basis with the Revolving Facility Claims. Incremental Term Loans shall be secured on a (g) rank junior basis in right of payment to the Revolving Facility Claims in the manner set forth herein, including (without
(3) **Size.** The principal amount of commitments in respect of Incremental Revolving Facility Increases received pursuant to this Section 2.21, Incremental Term Loans incurred pursuant to this Section 2.21 and Incremental Equivalent Debt incurred pursuant to Section 6.01(1), in each case on and after the Fourth Amendment Effective Date, will not exceed, in the aggregate, an amount equal to $300.100.0 million.

Each Incremental Revolving Facility Increase received pursuant to this Section 2.21 and Incremental Term Loans incurred pursuant to this Section 2.21 will be in an integral multiple of $1.0 million and in a minimum aggregate principal amount of $50.0 million (or such lesser minimum amount approved by the Administrative Agent).

(4) **Incremental Lenders.** Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide any Incremental Facility), or any Additional Lender (collectively, the “Incremental Lenders”); provided that the Administrative Agent shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender’s provision of such Incremental Facility if such consent by the Administrative Agent would be required under Section 10.04 for an assignment of Commitments or Loans to such Additional Lender.

(5) **Incremental Facility Amendments.**

(a) Each Incremental Facility will become effective pursuant to an amendment (each, an “Incremental Facility Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower Parties, the applicable Incremental Lenders and the Administrative Agent. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Facility Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility Amendment, this Agreement and the other Loan Documents, as applicable, will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Facility evidenced thereby.

(b) Upon each Incremental Revolving Facility Increase in accordance with this Section 2.21:

(i) each Incremental Lender in respect of such increase will automatically and without further act be deemed to have assumed a portion of each Revolving Lender’s participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans held by each Lender (including each such Incremental Lender) will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender’s Revolving Facility Commitment; and

(ii) the Administrative Agent may, in consultation with the Borrower, take any and all
actions as may be reasonably necessary to ensure that, after giving effect to such Lender’s Incremental Commitments, the percentage of the aggregate Revolving Facility Commitments held by each Lender (including each such Incremental Lender) will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender’s Revolving Facility Commitment, which may be accomplished, at the discretion of the Administrative Agent following consultation with the Borrower, by:

(A) requiring the outstanding Loans to be prepaid with the proceeds of a new Borrowing;

(B) causing non-increasing Lenders to assign portions of their outstanding Loans to Incremental Revolving Lenders holdings such Incremental Revolving Facility Increase; or

(C) a combination of the foregoing.

(6) Conditions. The initial availability of any Incremental Facility will be subject solely to the following conditions:

(a) no Default or Event of Default shall have occurred and be continuing on the date such Incremental Facility is incurred (or commitments in respect thereof are provided) or would exist immediately after giving effect thereto;

(b) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Facility (or the date on which commitments in respect thereof are provided);

(c) such other conditions (if any) as may be required by the Incremental Lenders providing such Incremental Facility, unless such other conditions are waived by such Incremental Lenders; and

(d) with respect to the incurrence of Incremental Term Loans, Excess Availability on the date of such incurrence will be at least 15% of the Line Cap;

provided that if the proceeds of such Incremental Facility will be used to finance, in whole or in part, the acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or the merger, consolidation or amalgamation with, a Person or division or line of business of a Person,

(i) the condition in the foregoing clause (a) may be waived (or not required) by the Incremental Lenders in respect of such Incremental Facility; and

(ii) the condition in the foregoing clause (b) may be limited to the accuracy in all material respects of (A) the Specified Representations and (B) any representations and warranties made with respect to such Person, division or line of business in the agreement governing such acquisition, merger, consolidation or amalgamation to the extent the breach of such representations and warranties is material to the interests of the Lenders; provided that the failure of any such representation or
warranty will not result in a failure of the conditions set forth in the foregoing clause (b) unless such breach results in a failure of a condition precedent of the obligations of the Borrower or a Restricted Subsidiary to consummate such acquisition, merger, consolidation or amalgamation or permits the Borrower or a Restricted Subsidiary to terminate such agreement (after giving effect to any applicable notice and cure provisions).

(7) **Terms.** Any Incremental Facility will be on the terms set forth in the Loan Documents, as amended by the applicable Incremental Facility Amendment; provided that (a) any Incremental Commitments will (x) rank pari passu in right of payment with the Revolving Facility Claims, (y) be secured by Collateral on a pari passu basis with the Revolving Facility Claims and (z) be on terms and pursuant to documentation applicable to the Revolving Facility Commitments; provided that Applicable Margin and Applicable Commitment Fee Percentage, in each case, applicable to Revolving Facility Commitments and the Revolving Loans may be increased without the consent of any Lender, in connection with the incurrence of any Incremental Commitments such that the Applicable Margin and the Applicable Commitment Fee Percentage of the Revolving Facility Commitments are identical to those of any Incremental Commitments; provided, further, that any arrangement or similar fees for such Incremental Commitments will be as determined by a Responsible Officer of the Borrower and the lenders providing such Incremental Commitments, (b) no Incremental Commitments may mature prior to the Maturity Date with respect to the Revolving Facility Commitments existing on the Closing Date and (c) Incremental Term Loans (x) may not mature or require any scheduled payment of principal prior to the date that is at least 90 days after the Latest Maturity Date of the Revolving Loans, other than quarterly principal payments in an aggregate annual amount not to exceed 1.00% per annum of the original aggregate principal amount of such Incremental Term Loans and (y) shall be subject to the relative priorities and intercreditor provisions as described in clause (2) above.

**SECTION 2.22 Refinancing Amendments.**

(1) **Other Term Loans.** Credit Agreement Refinancing Indebtedness may, at the election of the Borrower, take the form of term loans under a new term loan facility hereunder ("Other Term Loans") pursuant to a Refinancing Amendment. All Other Term Loans shall be secured (a) on a pari passu basis in right of payment to the Revolving Loans in the manner set forth herein, including (without limitation) as set forth in Section 2.18(3) and in the FILO Intercreditor Provisions and (b) pari passu in right of payment with all Incremental Term Loans and any other ABL Term Loans and (b) be secured by Liens on the Collateral on a pari passu basis with any Incremental Term Loans the Revolving Facility Claims in the manner set forth herein and the other Loan Documents subject, however, to the terms of Section 2.18(3) and the FILO Intercreditor Provisions.

(2) **Refinancing Amendments.** The effectiveness of any Refinancing Amendment will be subject only to the satisfaction (or waiver) on the date thereof of such of the conditions set forth in Section 4.01 of this Agreement as may be requested by the providers of Other Term Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Term Loans incurred pursuant thereto.

(3) **Required Consents.** Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Lenders or Additional Lenders providing the
applicable Credit Agreement Refinancing Indebtedness, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower Parties, to effect the provisions of this Section 2.22. This Section 2.22 supersedes any provisions in Section 10.08 to the contrary.

(4) Providers of Other Term Loans. It is understood that (a) any Lender approached to provide all or a portion of Other Term Loans may elect or decline, in its sole discretion, to provide such Other Term Loans (it being understood that there is no obligation to approach any existing Lenders to provide any Other Term Loans) and (b) the Administrative Agent has consented (such consent not to be unreasonably withheld, delayed or conditioned) to such Person’s providing such Other Term Loans if such consent would be required under Section 10.04 for an assignment of Loans or Commitments to such Person.

SECTION 2.23 Extensions of Revolving Commitments.

(1) Extension Offers. Pursuant to one or more offers (each, an “Extension Offer”) made from time to time by the Borrower to all Lenders of Loans with a like Maturity Date, the Borrower Parties may extend the Maturity Date of each such Lender’s Revolving Facility Commitments and otherwise modify the terms of such Revolving Facility Commitments pursuant to the terms of the relevant Extension Offer, including by increasing the interest rate or fees payable in respect to such Revolving Facility Commitments (each, an “Extension,” and each group of Revolving Facility Commitments so extended, as well as the original Revolving Facility Commitments not so extended, being a “tranche”). Each Extension Offer will specify the minimum amount of Revolving Facility Commitments with respect to which an Extension Offer may be accepted, which will be an integral multiple of $1.0 million and an aggregate principal amount that is not less than $50.0 million (or (a) if less, the aggregate principal amount of such Revolving Facility Commitments or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and shall be made on a pro rata basis to all Lenders having Revolving Facility Commitments with a like Maturity Date. If the aggregate outstanding principal amount of Loans and Revolving Facility Commitments (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and Revolving Facility Commitments offered to be extended pursuant to an Extension Offer, then the Loans and Revolving Facility Commitments of such Lenders will be extended ratably up to such maximum amount based on the Revolving Facility Commitments of the Lenders that have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. Each Lender accepting an Extension Offer is referred to herein as an “Extending Lender,” and the Loans and Revolving Facility Commitment held by such Lender (and so extended) accepting an Extension Offer are referred to herein as “Extended Loans” and “Extended Commitments”.

(2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an “Extension Amendment”) with the Borrower as may be necessary in order to establish new tranches in respect of Extended Commitments (and related Extended Loans) and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches, in each case, on terms consistent with this Section 2.23. This Section 2.23 supersedes any provisions in Section 10.08 to the contrary.
Terms of Extension Offers and Extension Amendments. The terms of any Extended Commitments (and related Extended Loans) will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; provided that:

(a) no Event of Default has occurred and is continuing at the time the offering document in respect of an Extension Offer is delivered to the Lenders;

(b) except as to pricing terms (interest rate and fees) and maturity, the terms and conditions of such Revolving Facility Credit Exposure are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Revolving Facility Commitments (and related Extended Loans) subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower.

Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), the Borrower and each Lender agreeing to such Extension with respect to one or more of its Revolving Facility Commitments. The transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Commitments on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.09 and 2.16) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.23 will not apply to any of the transactions effected pursuant to this Section 2.23.

SECTION 2.24 Joint and Several Liability of Borrower Parties.

(1) Each of the Borrower Parties hereby accepts joint and several, primary liability for all Obligations hereunder in consideration of the financial accommodations provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Borrower Parties and in consideration of the undertakings of each of the Borrower Parties to accept joint and several liability for the Obligations of each of them under the Loan Documents.

(2) Each of the Borrower Parties, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrower Parties with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all of the Obligations are the joint and several obligations of each of the Borrower Parties without preferences or distinction among them.

(3) If and to the extent that any of the Borrower Parties fails to make any payment with respect to any of the Obligations hereunder as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event, the other Borrower Parties will make such payment with respect to, or perform, such Obligation.

(4) The obligations of each Borrower Party under the provisions of this Section 2.24 constitute full recourse obligations of such Borrower Party, enforceable against it to the full extent of its properties and assets.
Notwithstanding any provision to the contrary contained herein or in any other Loan Document, the obligations of each Co-Borrower hereunder will be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of Title 11 of the United States Code, as now constituted or hereafter amended or any comparable provisions of any applicable state law.

SECTION 2.25  Appointment of Borrower as Agent for Borrower Parties.

Each Co-Borrower hereby appoints the Borrower to act as its exclusive agent for all purposes under this Agreement and the other Loan Documents (including with respect to all matters related to the borrowing and repayment of Loans as described in Article II hereof). Each Co-Borrower (in such capacity) acknowledges and agrees that (1) the Borrower may execute such documents on behalf of all the Borrower Parties as the Borrower deems appropriate in its sole discretion and each Borrower Party (in such capacity) will be bound by and obligated by all of the terms of any such document executed by the Borrower on its behalf, (2) any notice or other communication delivered by the Administrative Agent or any Lender hereunder to the Borrower will be deemed to have been delivered to each Borrower Party and (3) the Administrative Agent and each of the Lenders will accept (and will be permitted to rely on) any document or agreement executed by the Borrower on behalf of the Borrower Parties (or any of them).

SECTION 2.26  Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as may be determined by the Administrative Agent as follows:

(i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

(ii) second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder;

(iii) third, if so determined by the Administrative Agent or requested by the Issuing Bank or Swingline Lender, to be held as cash collateral for future funding obligations of such Defaulting Lender of any participation in any Swingline Loan or Letter of Credit;

(iv) fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;
(v) \textit{fifth}, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Revolving Loans under this Agreement;

(vi) \textit{sixth}, to the payment of any amounts owing to the Lenders, the Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement;

(vii) \textit{seventh}, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower Parties as a result of any judgment of a court of competent jurisdiction obtained by the Borrower Parties against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and

(viii) \textit{eighth}, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

\textit{provided} that if such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of, and L/C Disbursements owed to, all non-Defaulting Lenders on a \textit{pro rata} basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender. Any payments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.26(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) \textbf{Certain Fees}. Such Defaulting Lender (i) will not be entitled to receive any Commitment Fee pursuant to Section 2.12(1) for any period during which that Lender is a Defaulting Lender (and the Borrower Parties will be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) will not be entitled to receive any L/C Participation Fee pursuant to Section 2.12(2) for any period during which that Lender is a Defaulting Lender (although the Borrower Parties will be required to pay any such L/C Participation Fee that otherwise would have been required to have been paid to such Defaulting Lender to the non-Defaulting Lenders or Issuing Bank, in accordance with any reallocation of Fronting Exposure to non-Defaulting Lenders or as may be retained by the Issuing Bank, as the case may be).

(d) \textbf{Reallocation of Applicable Percentages to Reduce Fronting Exposure}. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swingline Loans pursuant to Sections 2.04 and 2.05, the \textit{“Revolving Facility Percentage”} of each non-Defaulting Lender will be computed without giving effect to the Commitment of such Defaulting Lender; \textit{provided}, that, each such reallocation will be given effect only to the extent such that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans will not exceed the positive difference, if any, of (i) the Revolving
Facility Commitment of such non-Defaulting Lender minus (ii) the aggregate outstanding amount of the Revolving Loans of such Defaulting Lender.

(e) **Elimination of Remaining Fronting Exposure.** At any time that there exists a Defaulting Lender, (i) immediately upon the request of the Administrative Agent or the Issuing Bank, the Borrower Parties will deliver to the Administrative Agent cash collateral in an amount sufficient to cover all Fronting Exposure of the Revolving Facility L/C Exposure (after giving effect to Section 2.26(1)(d)) which will be held as security for the reimbursement obligations of the Borrower with respect to the Revolving Facility L/C Exposure and (ii) immediately upon request of the Administrative Agent or the Swingline Lender, the Borrower Parties will repay an amount of Swingline Loans sufficient to eliminate the Fronting Exposure of the Swingline Lender.

(2) **Defaulting Lender Cure.** If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Bank agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), such Lender will, to the extent applicable, purchase that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Lenders in accordance with their Revolving Facility Percentages (without giving effect to Section 2.26(1)(d)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender’s having been a Defaulting Lender.

**ARTICLE III**

**Representations and Warranties**

Each of Holdings and Merger Sub represents and warrants to each Agent and to each of the Lenders, with respect to Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement Representations and the Specified Representations are true and correct in all material respects.

With respect to any Borrowing made after the Closing Date, the Borrower, with respect to itself, each Co-Borrower and each of the Restricted Subsidiaries, and Holdings, solely with respect to Sections 3.01, 3.02, 3.03 and 3.20, will represent and warrant to each Agent and to each of the Lenders that:

**SECTION 3.01 Organization; Powers.** Each of Holdings, the Borrower, each Co-Borrower and each Restricted Subsidiary:

(1) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);
has all requisite power and authority to own its property and assets and to carry on its business as now conducted;

is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and

has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrower Parties, to borrow and otherwise obtain credit hereunder.

SECTION 3.02 Authorization. The execution, delivery and performance by the Loan Parties of each of the Loan Documents to which it is a party, the Borrowings hereunder and the Recapitalization Transactions:

(1) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and

(2) will not:

(a) violate:

(i) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;

(ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or

(iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;

(b) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument; or

(c) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents and Permitted Liens;

except with respect to clauses (a) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03 Enforceability. This Agreement has been duly executed and delivered by Holdings and each of the Borrower Parties and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:
the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally;

general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

implied covenants of good faith and fair dealing; and

any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04 Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the Recapitalization Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

1. the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;

2. filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;

3. filings of deeds of trusts or mortgages with the applicable filing offices;

4. filings which may be required under Environmental Laws;

5. filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;

6. such as have been made or obtained and are in full force and effect;

7. such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or

8. filings or other actions listed on Schedule 3.04.

SECTION 3.05 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account, the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory and the cash and Cash Equivalents reflected therein as eligible for inclusion in the Borrowing Base constitute Eligible Cash.

SECTION 3.06 Title to Properties; Possession Under Leases.

1. Each of the Borrower and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title.
that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(2) Neither the Borrower Parties nor any of the Restricted Subsidiaries has defaulted under any lease to which it is a party, except for such defaults as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Borrower Parties’ and the Restricted Subsidiaries’ leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.06(2), on the Closing Fourth Amendment Effective Date the Borrower Parties and each of the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.07 Subsidiaries.

(1) Schedule 3.07(1) sets forth as of the Closing Fourth Amendment Effective Date the name and jurisdiction of incorporation, formation or organization of Holdings, the Borrower and each Restricted Subsidiary and, as to each Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Subsidiary of the Borrower.

(2) As of the Closing Fourth Amendment Effective Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests owned or held by Holdings, the Borrower or any Restricted Subsidiary.

SECTION 3.08 Litigation; Compliance with Laws.

(1) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower Parties or any Restricted Subsidiary or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.14), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Borrower, none of the Borrower Parties, the Restricted Subsidiaries or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.14) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.
(1) None of Holdings, the Borrower or any Restricted Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(2) No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.10 Investment Company Act. None of Holdings, the Borrower or any Restricted Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.11 Use of Proceeds. The Borrower Parties shall use the proceeds of the Revolving Loans and Swingline Loans, and may request the issuance of Letters of Credit, for general corporate purposes or other transaction permitted by the Loan Documents (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments and Restricted Payments, in each case to the extent not prohibited hereunder).

SECTION 3.12 Tax Returns. Except as set forth on Schedule 3.12:

(1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of Holdings, the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and

(2) Each of Holdings, the Borrower and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it on the returns referred to in clause (1) of this Section 3.12 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Fourth Amendment Effective Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which Holdings, the Borrower or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.13 No Material Misstatements.

(1) All written factual information and written factual data (other than the Projections, any other projections, estimates and information of a general economic or industry specific nature) concerning Holdings, the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of Holdings, the Borrower or any Restricted Subsidiary in connection with the Recapitalization Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. As of the Fourth Amendment Effective Date, to the best knowledge of the Borrower and each Co-Borrower, the
information included in the Beneficial Ownership Certification provided on or prior to the Fourth Amendment Effective Date to any Lender in connection with this Agreement is true and correct in all material respects.

The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of the Borrower in connection with the Recapitalization Transactions, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:

(a) the Projections are merely a prediction as to future events and are not to be viewed as facts;

(b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings, the Borrower, the Company and/or the Sponsors;

(c) no assurance can be given that any particular Projections will be realized; and

(d) actual results may differ and such differences may be material.

SECTION 3.14 Environmental Matters. Except as set forth on Schedule 3.14 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(1) each of the Borrower Parties and the Restricted Subsidiaries is in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);

(2) none of the Borrower Parties or any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower’s knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;

(3) to the Borrower’s knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by any Borrower Party or any Restricted Subsidiary and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by any Borrower Party or any Restricted Subsidiary and transported to or released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to any Borrower Party or any Restricted Subsidiary; and

(4) there are no agreements in which any Borrower Party or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.15 Security Documents.

(1) The Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) legal and valid Liens on the Collateral described therein; and when financing statements in appropriate form are filed in the offices specified on Schedule IV to the Collateral Agreement, a short form grant of security interest in intellectual property (in substantially the form of Exhibit II to the Collateral Agreement (for trademarks), Exhibit III to the Collateral Agreement (for patents) or Exhibit IV to the Collateral Agreement (for copyrights)) is properly filed in the
United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the Pledged Collateral described in the Collateral Agreement is delivered to the Collateral Agent, the Liens on the Collateral granted pursuant to the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the grantors in such Collateral in which (and to the extent) a security interest can be perfected under Article 9 of the Uniform Commercial Code, in each case prior to and superior in right of the Lien of any other Person (except for Permitted Liens).

(2) When financing statements in appropriate form are filed in the offices specified on Schedule IV to the Collateral Agreement and the Collateral Agreement or a summary thereof or a short form grant of security interest in intellectual property (in substantially the form of Exhibit II to the Collateral Agreement (for trademarks), Exhibit III to the Collateral Agreement (for patents) or Exhibit IV to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, the Liens on the Collateral granted pursuant to the Collateral Agreement shall constitute fully perfected Liens on all right, title and interest of the Loan Parties thereunder in the domestic intellectual property, in each case prior and superior in right to the Lien of any other Person (except for Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the grantors after the Closing Fourth Amendment Effective Date).

(3) Notwithstanding anything herein (including this Section 3.15) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party (i) makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, in each case, under foreign law, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law or (ii) shall be required to take any action to perfect any Lien in any intellectual property registered (or where an application for registration has been filed) in any jurisdiction other than the United States of America.

SECTION 3.16 Location of Real Property and Leased Premises.

(1) Schedule 3.16(1) correctly identifies, in all material respects, as of the Closing Fourth Amendment Effective Date, all material Real Property owned in fee by the Loan Parties. As of the Closing, including all such Real Property required to be subject to a mortgage or deed of trust pursuant to the terms of the TSA. As of the Closing, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.16(1).

(2) Schedule 3.16(2) lists correctly in all material respects, as of the Closing Fourth Amendment Effective Date, all material Real Property (including all leased full-line Neiman Marcus and Bergdorf Goodman stores and all leased warehouses or distribution centers) leased by any Loan Party and the best known addresses thereof. As of the Closing, including any such Real Property required to be subject to a mortgage or deed of trust pursuant to the terms of the TSA. As of the Closing Fourth Amendment Effective Date, the Loan Parties have in all material respects valid leases in all material Real Property set forth as being leased by them on Schedule 3.16(2).

SECTION 3.17 Solvency. On the Closing Fourth Amendment Effective Date, after giving effect to the consummation of the Recapitalization Transactions, including the Borrowing of the Loans hereunder, and after giving effect to the application of the proceeds of such Indebtedness:
the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities (subordinated, contingent or otherwise);

(2) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities (subordinated, contingent or otherwise) as such debts and other liabilities become absolute and matured;

(3) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (subordinated, contingent or otherwise) as such liabilities become absolute and matured; and

(4) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Section 3.17, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 3.18 No Material Adverse Effect. Since August 3, 2013, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.19 Insurance. Schedule 3.19 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of any Borrower Party or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.20 USA PATRIOT Act; FCPA; OFAC.

(1) To the extent applicable, each of Holdings, the Borrower Parties and the Restricted Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.

(2) No part of the proceeds of the Loans or Letters of Credit will be used by Holdings, a Borrower Party or any of their respective Subsidiaries, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended from time to time ("FCPA").

(3) None of Holdings, the Borrower or any Restricted Subsidiary is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “Executive Order”);

(b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any applicable laws with respect to terrorism or money laundering;
(d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(e) a Person that is named as a “specially designated national and blocked Person” on the most current list of Specially Designated Nationals and Blocked Persons as published by the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) at its official website or any replacement website or other replacement official publication of such list and none of the proceeds of the Loans or Letters of Credit will be, directly or (to the knowledge of Holdings, the Borrower or any Restricted Subsidiary) indirectly, offered, lent, contributed or otherwise made available to any Restricted Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC.

SECTION 3.21 Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.21:

1. except as would not reasonably be expected to have a Material Adverse Effect, each Borrower Party and Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “Intellectual Property Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

2. except as would not reasonably be expected to have a Material Adverse Effect, no Borrower Party or Restricted Subsidiary nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by any Borrower Party or Restricted Subsidiary is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person; and

3. no material claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened.

SECTION 3.22 Employee Benefit Plans.

The Borrower Parties and each of their respective ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

ARTICLE IV

Conditions of Lending

The obligations of (a) the Lenders (including the Swingline Lender) to make Loans and (b)
any Issuing Bank to issue Letters of Credit or amend, extend or renew Letters of Credit hereunder (each, a “Credit Event”) are subject to the satisfaction of the following conditions:

SECTION 4.01  All Credit Events After the Closing Date. On the date of each Credit Event, other than Credit Events on the Closing Date:

(1) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with Section 2.03(4)) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit (and if requested by such Issuing Bank, a letter of credit application) as required by Section 2.05(2).

(2) Except with respect to any Borrowing pursuant to Section 2.21 (solely when the proviso immediately following Section 2.21(6)(d) is applicable and then only to the extent required thereby), the representations and warranties set forth in the Loan Documents will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date).

(3) At the time of and immediately after any Borrowing (other than a Borrowing pursuant to Section 2.21 (solely when the proviso immediately following Section 2.21(6)(d) is applicable)) or issuance, amendment, extension or renewal of a Letter of Credit (other than an amendment, extension not beyond the Maturity Date, or renewal of a Letter of Credit without any increase in the stated amount thereof), as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom.

(4) At the time after such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit, as applicable, the sum of, without duplication, of Revolving Loans (including Swingline Loans), unreimbursed drawings under Letters of Credit and the face amount of undrawn amount of outstanding Letters of Credit does not exceed the Line Cap.

Each such Credit Event occurring after the Closing Date will be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (2), (3) and (4) of this Section 4.01.

There are no conditions, implied or otherwise, to the making of Loans after the Closing Date other than as set forth in the preceding clauses (1) through (4) of Section 4.01 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed.

SECTION 4.02  Closing Date Conditions. On the Closing Date:

(1) Loan Documents. The Administrative Agent shall have received this Agreement and the Collateral Agreement, in each case, duly executed and delivered by a Responsible Officer of each of Holdings and Merger Sub.
2 Borrowing Request. On or prior to the Closing Date, the Administrative Agent shall have received a Borrowing Request.

3 Acquisition Transactions. Merger Sub or Holdings shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Revolving Loan on the Closing Date:

(a) the Original Merger; and

(b) the Equity Contribution; and

(c) the Closing Date Refinancing repayment of debt contemplated by the Debt Payoff Letter (as defined in the Original Merger Agreement).

4 Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received a pro forma consolidated balance sheet and income statement of the Company as of August 3, 2013 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Original Transactions as if the Original Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).

5 Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the Closing Date.

6 Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit C.

7 Closing Date Certificates. The Administrative Agent shall have received a certificate of a Responsible Officer of each of Holdings and Merger Sub dated the Closing Date and certifying:

(a) that attached thereto is a true and complete copy of the charter or other similar organizational document of Holdings or Merger Sub, as applicable, and each amendment thereto, certified (as of a date reasonably near the Closing Date) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which Holdings or Merger Sub, as applicable, is organized;

(b) that attached thereto is a true and complete copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which Holdings or Merger Sub, as applicable, is organized, dated reasonably near the Closing Date, listing the charter or other similar organizational document of such Person and each amendment thereto on file in such office and, if available, certifying that (i) such amendments are the only amendments to such Person’s charter on file in such office, (ii) such Person has paid all franchise taxes to the date of such certificate and (iii) such Person, is duly organized and in good standing under the laws of such jurisdiction;

(c) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of Holdings or Merger Sub, as applicable, authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document.
delivered in connection herewith on the Closing Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect;

(d) as to the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in Section 4.02(1) (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.01(7)); and

(e) that on the Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.

(8) **Legal Opinions.** The Administrative Agent shall have received a customary legal opinion of each of (a) Latham & Watkins LLP, special counsel to the Loan Parties and (b) K&L Gates LLP, local counsel to the Loan Parties.

(9) **Pledged Equity Interests; Pledged Notes.** Except as otherwise agreed by the Administrative Agent, the Administrative Agent shall have received the certificates representing the Equity Interests (if such Equity Interests are certificated) of (a) Merger Sub and (b) to the extent obtained by Merger Sub from the Company on or prior to the Closing Date, the Company and each Subsidiary Loan Party, in each case to the extent such Equity Interests are included in the Collateral and required to be pledged pursuant to the Collateral Agreement (as defined in the Existing Credit Agreement), together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(10) **Lien Searches.** The Administrative Agent shall have received a completed Perfection Certificate dated as of the Closing Date and signed by a Responsible Officer of Holdings and the Borrower, together with, if requested by the Administrative Agent at least 21 days prior to the Closing Date, the results of a search of Uniform Commercial Code filings made with respect to the Loan Parties (for purposes of this clause (10), giving effect to the Original Transactions) in the applicable jurisdiction of organization of each Loan Party and copies of the financing statements (or similar documents) disclosed by such search.

(11) **No Material Adverse Effect.** Except as disclosed in the disclosure schedules to the Original Merger Agreement, the audited consolidated financial statements of the Company (including the related notes) at and for the fiscal year ended on August 3, 2013, certified by the Company’s auditors or in the Company SEC Documents (as defined in the Original Merger Agreement) filed with, or furnished to, the SEC prior to the date of the Original Merger Agreement (other than any risk factor disclosures contained in the “Risk Factors” section thereof, sections relating to forward-looking statements and any other disclosures that constitute predictive, cautionary or forward-looking statements), there shall not have occurred any event that has had, or would reasonably be expected to have, a Material Adverse Effect (as defined in the Original Merger Agreement) since August 3, 2013 that would result in a failure of a condition precedent to the obligations of Merger Sub under the Original Merger Agreement.

(12) **Initial Borrowing Base Certificate.** The Administrative Agent shall have received an executed Borrowing Base Certificate prepared as of October 5, 2013 in form and substance reasonably satisfactory to the Administrative Agent.

(13) **Know Your Customer and Other Required Information.** All documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money
laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten calendar days prior to the Purchase Date, date that the Original Merger was required to be consummated pursuant to the Original Merger Agreement, will be provided not later than the date that is three Business Days prior to the Purchase Date.

(14) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations (as defined in the Existing Credit Agreement) will be true and correct in all material respects; provided that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure gives Merger Sub the right to terminate the Original Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

There are no conditions, implied or otherwise, to the making of Loans on the Closing Date other than as set forth in the preceding clauses (1) through (14) of Section 4.02 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed. Notwithstanding anything herein to the contrary, capitalized terms used in this Article IV to the extent not otherwise defined in this Agreement shall have the meaning given such terms in the Existing Credit Agreement.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement is in effect and until the Commitments have been terminated, the Obligations (other than Obligations in respect of Letters of Credit (except for any Obligations relating to Letters of Credit which are then due and payable), Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) otherwise consent in writing, the Borrower will, and will cause each Co-Borrower and each Restricted Subsidiary, to:

SECTION 5.01 Existence; Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except:

(a) in the case of a Restricted Subsidiary, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or

(b) in connection with a transaction permitted under Section 6.05.

(2) (a) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions,
improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

(i) as expressly permitted by this Agreement;
(ii) such as may expire, be abandoned or lapse in the ordinary course of business; or
(iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02 Insurance.

(1) Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Borrower will furnish to the Administrative Agent or Collateral Agent, upon request, information in reasonable detail as to the insurance so maintained. Notwithstanding the foregoing, it is understood and agreed that no Loan Party will be required to maintain flood insurance unless any material Real Property owned by what constitutes Collateral is required to be so insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder Laws, because such material Real Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a “special flood hazard area.”

(2) Use commercially reasonable efforts to: (a) if insurance is procured from insurance companies, obtain certificates and endorsements reasonably acceptable to the Administrative Agent with respect to property and casualty insurance; (b) cause each insurance policy referred to in this Section 5.02 and procured from an insurance company to provide that it shall not be cancelled, modified or not renewed (x) by reason of nonpayment of premium except upon not less than 10 days’ prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon not less than 30 days’ prior written notice thereof by the insurer to the Administrative Agent; and (c) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium thereof.

(3) With respect to all Real Property constituting Collateral (and any Real Property that is required to be mortgaged pursuant to the terms of this Credit Agreement) that is located in an area identified by the Federal Emergency Management Agency (or any successor agency thereto) as a “special flood hazard area” with respect to which flood insurance has been made available under the Flood Insurance Laws, the applicable Loan Party (a) shall obtain and maintain with financially sound and reputable insurance companies (except to the extent that any insurance company insuring such Real Property of such Loan Party ceases to be financially sound and reputable after the Fourth Amendment Effective Date, in which case such Loan Party shall promptly replace such insurance company with a financially sound and reputable insurance company), such flood insurance in such reasonable total amount as the Administrative Agent and each Lender may from time to time reasonably require and otherwise sufficient to comply with all applicable rules and regulations.
promulgated under the Flood Insurance Laws and (b) promptly upon request of the Administrative Agent or any Lender, shall deliver to the Administrative Agent or such Lender as applicable, evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent or such Lender, including, without limitation, evidence of annual renewals of such flood insurance.

SECTION 5.03 Taxes

(1) Pay and discharge promptly when due all material Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; provided that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) Holdings, the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

(2) The Loan Parties agree, for U.S. federal (and applicable state and local) income tax purposes, to treat TNMG LLC and NMG Sub, in each case, as an entity disregarded as separate from the Borrower.

SECTION 5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders) and, subject to customary confidentiality undertakings, make available to potential Lenders/assignees:

(1) within 120 days following the end of the fiscal year ending August 2, 2014, and within 90 days following the end of each fiscal year thereafter (commencing with the fiscal year ending August 3, 2019), a consolidated balance sheet and related statements of operations, cash flows and owners’ equity showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, starting with the fiscal year ending August 2, 2014, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners’ equity will be audited by independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any “going concern” statement, explanatory note or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP (the applicable financial statements delivered pursuant to this clause (1) being the “Annual Financial Statements”);

(2) within 60 days following the end of the fiscal quarters ending November 2, 2013 and February 1, 2014, and, thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year (commencing with the fiscal quarter ending April 27, 2019), a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and
related statements of operations and cash flows will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes (the applicable financial statements delivered pursuant to this clause (2) being the “Quarterly Financial Statements” and, together with the Annual Financial Statements, the “Required Financial Statements”);

(3) concurrently with any delivery of Required Financial Statements (except that with respect to the fiscal quarter ending April 27, 2019, within 60 days following the end of such fiscal quarter), a certificate of a Financial Officer of the Borrower:

(a) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(b) setting forth in reasonable detail calculations of the Fixed Charge Coverage Ratio and the Senior Secured First Lien-Net Leverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of the fiscal year or fiscal quarter, as applicable; and

(c) certifying a list of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (ii) of the definition of the term “Immaterial Subsidiary;” and

(c) certifying a list of all Unrestricted Subsidiaries at such time and that each Subsidiary set forth on such list qualifies as an Unrestricted Subsidiary;

(4) together with any such Required Financial Statements, (a) the revenue of the Borrower and the Restricted Subsidiaries derived from (i) “brick and mortar” or retail stores at owned and leased locations, on the one hand, and (ii) online operations or e-commerce sales, on the other hand, in each case on a current and prior-year period comparable basis and (b) condensed consolidating financial information regarding Holdings, the Borrower and its subsidiaries in form and substance substantially the same as that disclosed in the Parent Entity’s latest Form 10-K and Form 10-Q prior to the Fourth Amendment Effective Date (or at the Borrower’s election, as to the businesses conducted as of the Fourth Amendment Effective Date by Bergdorf Goodman Inc., a New York corporation, Bergdorf Graphics, Inc., a New York corporation, and BG Productions, Inc., a Delaware corporation, on a consolidated basis) irrespective of whether such information is required to be disclosed under law; provided that the Borrower shall not be required to furnish the foregoing information described in this clause (4) if such information is not required to be delivered to the lenders under the Term Loan Credit Agreement pursuant to the terms thereof;

(5) whether or not NMG or any of its Subsidiaries is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the following reports: (a) together with any such Annual Financial Statements delivered pursuant to Section 5.04(1), a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” containing the information required under such caption of Form 10-K of the Exchange Act, and (b) together with any such Quarterly Financial Statements delivered pursuant to Section 5.04(2), a “Management’s Discussions and Analysis of Financial Condition and Results of Operations” containing the information required under such
caption of Form 10-Q of the Exchange Act, and in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter, which shall include, in the case of each of the foregoing (a) and (b), a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million; provided that the Borrower shall not be required to furnish the foregoing reports and information described in this clause (5) if such reports and information are not required to be delivered to the lenders under the Term Loan Credit Agreement pursuant to the terms thereof.

whether or not NMG is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, within the time period specified for filing current reports on Form 8-K by the SEC, all current reports that would be required to be filed with the SEC on Form 8-K if the Borrower were required to file such reports for any of the following events (i) “Entry into a Material Definitive Agreement” pursuant to Item 1.01 on Form 8-K (ii) “Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant” pursuant to Item 2.03 on Form 8-K, (iii) any significant acquisitions or dispositions by the Borrower or any of its Restricted Subsidiaries, (iv) the bankruptcy of the Borrower or any of its Restricted Subsidiaries, (v) the acceleration of any Indebtedness of the Borrower or any of its Restricted Subsidiaries having a principal amount in excess of $15.0 million, (vi) a change in the Borrower’s certifying independent auditor, (vii) the appointment or departure of the Chief Executive Officer or Chief Financial Officer (or persons fulfilling similar duties) of the Borrower or any of its Restricted Subsidiaries, (viii) non-reliance on previously issue financial statements of the Borrower or any of its Restricted Subsidiaries, (ix) entering into, materially modifying, or terminating material contracts (to the extent not otherwise required under clause (i) above) of the Borrower or any of its Restricted Subsidiaries, (x) the bankruptcy of any of its Restricted Subsidiaries; provided that the Borrower shall not be required to furnish the foregoing reports described in this clause (6) if such reports are not required to be delivered to the lenders under the Term Loan Credit Agreement pursuant to the terms thereof.

promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by Holdings, the Borrower or any Restricted Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable;

within 120 days following the end of the fiscal year ending August 2, 2014, and within 90 days following the end of each fiscal year thereafter (commencing with the fiscal year ending August 3, 2019), a consolidated annual budget for such fiscal year in the form customarily prepared by the Borrower (the “Budget”), which Budget will in each case be accompanied by the statement of a Financial Officer of the Borrower on behalf of the Borrower to the effect that the Budget is based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof;

upon the reasonable request of the Collateral Agent, concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (6) or Section 5.10;

promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Restricted Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender);
promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; provided that if the Borrower or any of its ERISA Affiliates has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof; and

on or before the 15th Business Day of each month from and after the Closing Date, a Borrowing Base Certificate from the Borrower as of the last day of the immediately preceding month, with such supporting materials as the Administrative Agent may reasonably request (which requests may be more frequent with respect to information regarding Eligible Cash); provided that, after the occurrence and during the continuance of a Liquidity Condition or a Designated Event of Default, the Administrative Agent may require the Borrower to deliver the Borrowing Base Certificate more frequently as reasonably determined by the Administrative Agent. Notwithstanding the foregoing, the Administrative Agent may not require the Borrower to deliver a Borrowing Base Certificate more frequently than weekly, and in the case of such weekly reporting the Borrowing Base Certificate will be due on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day) calculated as of the close of business on Saturday of the immediately preceding calendar week.

Anything to the contrary notwithstanding, the obligations in clauses (1) and (2), (4), (5) and (6) of this Section 5.04 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (1) the applicable financial statements of Holdings (or any other Parent Entity) or (2) the Borrower’s or Holdings’ (or any such other Parent Entity’s), as applicable, Form 10-K, 10-Q or 8-K, as applicable, filed with the SEC; provided that with respect to each of the foregoing clauses clause (1) and (2) of this paragraph (a) to the extent such information relates to Holdings (or a Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (b) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are accompanied by a report and opinion of independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any “going concern” statement, explanatory note or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)). The obligations in clauses (1) and (2), (4), (5) and (6) of this Section 5.04 may be satisfied by delivery of financial information of the Borrower and its Subsidiaries so long as such financial statements include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Borrower and the Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Borrower.

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).
Within 10 Business Days of the date the Required Financial Statements for the prior fiscal period have been furnished pursuant to this Section 5.04(1) and (2), as applicable, the Borrower shall cause a Financial Officer of the Borrower and such other members of senior management of the Borrower as the Borrower deems appropriate in consultation with the Administrative Agent, to hold a conference call to which all Lenders will be invited, which shall include a reasonable “question and answer” session with the Lenders and the Lenders’ respective representatives and advisors to discuss the state of the Borrower’s business, including but not limited to recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes. Provided that (i) any such conference call shall be held at a reasonable time within the specified ten-Business Day period to be mutually agreed by the Borrower and the Administrative Agent and (ii) any such conference call may, at the Borrower’s option, be held together with the corresponding conference call pursuant to the Term Loan Credit Agreement; provided, further that the Borrower shall not be required to comply with this paragraph if the terms of Term Loan Credit Agreement cease to require a lender conference call on terms similar to this paragraph. No fewer than two Business Days prior to the date such conference call is to be held, the Administrative Agent shall inform the Lenders of the time and the date of such conference call and provide the dial-in details of such conference call.

SECTION 5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

(1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(2) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings or any of the Restricted Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and

(3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to result in a material liability to a Loan Party; and

(4) any material change in accounting policies or financial reporting practices by any Loan Party with respect to the Borrower’s Accounts and Inventory or which otherwise could reasonably be expected to affect the calculation of the Borrowing Base or Reserves.

SECTION 5.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including ERISA, FCPA, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; provided that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07 Maintaining Records; Access to Properties and Inspections; Appraisals.

(1) Permit any Persons designated by the Administrative Agent to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon
reasonable prior notice to the Borrower, and as often as reasonably requested, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Borrower, to discuss the affairs, finances and condition of Holdings, the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant’s policies and procedures).

(2) At any time in the Administrative Agent’s sole discretion upon the occurrence and during the continuance of a Designated Event of Default, and at such other times not more frequently than (a) once per 12-month period if subclause (b) does not apply and (b) twice per 12-month period during any period commencing upon the date on which Excess Availability has been less than 20.0% of the Line Cap then in effect for at least five consecutive Business Days and ending on the date on which Excess Availability has been at least equal to the Line Cap then in effect for 20 consecutive calendar days, the Loan Parties will, at their expense and upon the Administrative Agent’s request, permit any Persons designated by the Administrative Agent to conduct field examinations at reasonable business times and upon reasonable prior notice to the Borrower; provided that if a field exam has commenced pursuant to immediately preceding clause (b) but not completed prior to such time as Excess Availability has been at least equal to the Line Cap then in effect for 20 consecutive Business Days, such field exam will be completed at the expense of the Loan Parties. The Loan Parties will reasonably cooperate with the Administrative Agent and such Persons in the conduct of such field examinations.

(3) At any time in the Administrative Agent’s sole discretion upon the occurrence and during the continuance of a Designated Event of Default, and at such other times not more frequently than (a) once per 12-month period if subclause (b) does not apply and (b) twice per 12-month period during any period commencing upon the date on which Excess Availability has been less than 20.0% of the Line Cap then in effect for at least five consecutive Business Days and ending on the date on which Excess Availability has been at least equal to the Line Cap then in effect for 20 consecutive calendar days, the Loan Parties will, at their expense and upon the Administrative Agent’s request, permit any Acceptable Appraiser to conduct appraisals of the Collateral at reasonable business times and upon reasonable prior notice to the Borrower; provided that if an appraisal of the Collateral has commenced pursuant to immediately preceding clause (b) but not completed prior to such time as Excess Availability has been at least equal to the Line Cap then in effect for 20 consecutive Business Days, such appraisal will be completed at the expense of the Loan Parties. The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals. Such appraisals will be prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, such appraisals to include, without limitation, information required by applicable law and by the internal policies of the Lenders. In addition, the Loan Parties will have the right (but not the obligation), at their expense, at any time and from time to time to provide the Administrative Agent with additional appraisals or updates thereof of any or all of the Collateral from any Acceptable Appraiser prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, in which case such appraisals or updates shall be used in connection with the determination of the Net Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. With respect to each appraisal made pursuant to this Section 5.07(3) after the Closing Date, (i) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such appraisal.

(4) The Borrower Parties will conduct a physical count of the Inventory at least once per fiscal year,
and after an occurrence and during the continuation of an Event of Default, at such other times as the Administrative Agent requests. The Borrower Parties, at their own expense, shall deliver to the Administrative Agent the results of each physical verification that the Borrower Parties have made, or have caused any other Person to make on its behalf, at all or any portion of its Inventory. The Borrower Parties will maintain a retail stock ledger inventory reporting system at all times.

(5) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7)), 5.05, 5.07(1) through (4) and 5.12 or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making of copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information; (2) in respect of which disclosure is prohibited by law or any binding agreement; (3) is subject to attorney-client or similar privilege or constitutes attorney work product; or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08 Use of Proceeds. Use the proceeds of the Revolving Loans and the Swingline Loans and request issuance of Letters of Credit solely for general corporate purposes (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments and Restricted Payments, in each case to the extent not prohibited hereunder); provided, however, that Revolving Loans or Swingline Loans incurred utilizing Revolving Facility Commitments in reliance on the 2013 Term Loan Reserve shall be used solely to repay principal of outstanding 2013 Term Loans.

SECTION 5.09 Compliance with Environmental Laws. Comply, and make commercially reasonable efforts to cause all lessees and other Persons occupying its free-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10 Further Assurances; Additional Security.

(1) If (a) a Restricted Subsidiary (other than an Excluded Subsidiary) of the Borrower is formed or acquired or ceases to be an Excluded Subsidiary after the Closing Fourth Amendment Effective Date or, (b) an Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, or (c) an Immaterial Subsidiary existing on the Fourth Amendment Effective Date is not dissolved, liquidated or merged out of existence within 90 days following such date, then, in each case, the Borrower shall promptly notify the Collateral Agent thereof and, within 15 Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable, notify the Collateral Agent thereof and, within 15 Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable, notify (or such longer period as the Collateral Agent agrees, in its discretion), or, for Immaterial Subsidiaries, within 20 Business Days after the post-closing date such Restricted Subsidiary is formed or acquired set forth in clause (c) above (or such longer period as the Collateral Agent agrees), as applicable, the Borrower will or will cause such Restricted Subsidiary or Immaterial Subsidiary, as applicable, to:

(i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such Restricted Subsidiary;
(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents; and

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder.

(v) deliver all documentation and other information about such Restricted Subsidiary or Immaterial Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(2) (A) If any Loan Party (i)(a) acquires fee simple title in Real Property after the Closing Fourth Amendment Effective Date or (b) owns fee simple title in Real Property on the date it enters a joinder pursuant to Section 5.10(1)(i) hereof, that, combined with all other Real Property owned in fee simple by the Loan Parties in each case of subclauses (a) and (b) of this clause (A)(i), on the date of such acquisition or joinder, as applicable, has an aggregate individual fair market value (as determined in good faith by a Responsible Officer of the Borrower) of $50.0 million or more in consultation with the Collateral Agent) of $2.5 million or more or (ii)(a) acquires a leasehold interest in Real Property after the Fourth Amendment Effective Date with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center or (b) owns leasehold title in Real Property with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center on the date it enters a joinder pursuant to Section 5.10(1)(i) hereof or (B) any Non-Mortgageable Lease of a Loan Party with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center ceases to be a Non-Mortgageable Lease hereunder, then in each case of the foregoing clauses (A) and (B) above, within 20 Business Days (unless otherwise agreed by the Collateral Agent in its sole discretion) after such acquisition or entry of a joinder or such Non-Mortgageable Lease ceases to be a Non-Mortgageable Lease hereunder (as applicable):

(a) notify the Collateral Agent thereof;
(b) cause any such acquired Real Property owned in fee simple that has a fair market value (as determined in good faith by a Responsible Officer of the Borrower) of $7.5 million or more to be subjected to a customary mortgage or deed of trust securing the Obligations;

c) cause any such acquired or owned leasehold Real Property to be subjected to a customary mortgage or deed of trust securing the Obligations;

(d) with respect to any such Real Property, to the extent requested by the Collateral Agent in its sole discretion, obtain fully paid American Land Title Association Lender’s Extended Coverage title insurance policies, with endorsements (including a standard survey endorsement or equivalent (only with respect to any such Real Property acquired or owned in fee simple) and zoning endorsements where available) and in customary amounts that in no event shall be less than fair market value of such Real Property (the “Mortgage Policies”);

(e) with respect to any such Real Property acquired or owned in fee simple pursuant to Section 5.10(2)(A), to the extent necessary to issue the Mortgage Policies, obtain American Land Title Association/American Congress on Surveying and Mapping form surveys, dated no more than 30 days before the date of their delivery to the Collateral Agent, certified to the Collateral Agent, on behalf of itself and each Lender, and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Collateral Agent and sufficient for the issuer of the Mortgage Policies to omit as an exception to each title policy the standard printed survey exception relating to such Real Property;

(f) provide evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Collateral Agent on behalf of itself and each Lender as lender loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks, as are reasonably available for similar properties in the same geographical area and as are reasonably satisfactory to the Collateral Agent, including the insurance required by the terms of any mortgage or deed of trust;

(g) obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Loan Parties in the states in which such acquired Real Properties owned in fee simple are located; and

(h) take, or cause the applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to perfect such Liens, in each case, at the expense of the Loan Parties, subject to paragraph (5) of this Section 5.10.

(3) Furnish to the Collateral Agent five Business Days prior written notice of any change in any Loan Party’s:

(a) corporate or organization name;

(b) organizational structure;
(c) location (determined as provided in UCC Section 9-307); or

(d) organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number, except, in the case of each of the foregoing clauses (a) through (c), in connection with the Closing Date Conversions.

The Borrower will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Loan Party.

(4) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) through (3) and that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Collateral Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(5) Notwithstanding anything herein to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the perfection requirements set forth in the Collateral Agreement;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent; and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case other than with respect to (1) debt or Equity Interests acquired pursuant to a Permitted Acquisition and (2) Foreign Subsidiaries that are or become Subsidiary Loan Parties; provided, however, that (i) in the event a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking perfections steps in any such foreign jurisdictions outweighs the benefit afforded thereby to the Secured Parties or obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security
Documents nor creation or the taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Subsidiary Loan Party and (i) notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this clause (c), the Borrower and the Collateral Agent shall mutually agree on customary "Agreed Security Principles" and a reasonable and customary timeline to complete such Security Documents and/or filings or perfection actions or steps (which may be longer than the timelines otherwise agreed to in this Section 5.10).

(6) Notwithstanding anything herein to the contrary, if Holdings, the Borrower, or any Restricted Subsidiary consummates a Permitted Acquisition, within 5 business days (or such longer period as the Collateral Agent agrees) after the date such Permitted Acquisition is consummated the Borrower shall notify the Collateral Agent thereof and, within 15 Business Days after the date such Permitted Acquisition is consummated (or such longer period as the Collateral Agent agrees), the Borrower will or will cause such Restricted Subsidiary to:

(a) pledge the outstanding Equity Interests (regardless of whether otherwise constituting Excluded Equity Interests or Excluded Assets) acquired by Holdings, the Borrower, or a Restricted Subsidiary in such Permitted Acquisition, and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(b) deliver to the Collateral Agent such other documents and take such other actions reasonably requested by the Collateral Agent to create and perfect the Liens contemplated by this Section 5.10(6);

(c) obtain all consents and approvals required to be obtained in connection with (A) the execution and delivery of all Security Documents (or supplements thereto), if applicable, in connection with the foregoing clauses (6)(a) and (6)(b) and the granting of the Liens contemplated thereby and (B) the performance of any obligations thereunder; and

(d) deliver all documentation and other information about such Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(7) Notwithstanding anything herein to the contrary, (i) within 15 Business Days of the incurrence of any Indebtedness pursuant to Section 6.01(8) or otherwise (or such longer period as the Collateral Agent agrees), owing to Holdings, the Borrower or any Restricted Subsidiary that is a Subsidiary Loan Party by any Restricted Subsidiary that is not a Guarantor, pledge such Indebtedness (other than Excluded Assets), including instruments and promissory notes, if any, evidencing such Indebtedness, and all interest, cash, instruments, and other property from time to time received, receivable or otherwise distributed in exchange for any or all of such Indebtedness, together with duly executed instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof), in each case in form and substance satisfactory to the Collateral Agent and (ii) within 15 Business Days of any Investments made (x) pursuant to Section 6.04(4) (or such longer period as the Collateral Agent agrees), by any Loan Party in Restricted Subsidiaries that are not Guarantors and (y) pursuant to Section 6.04(27) or 6.04(28) (other than Excluded Equity Interests) acquired or obtained by a Loan Party in connection with such Investment, deliver
all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof), in each case in form and substance satisfactory to the Collateral Agent.

(8) Notwithstanding anything herein to the contrary, (i) within 15 Business Days of the contribution of any Non-Mortgageable Lease to a PropCo Guarantor (or such longer period as the Collateral Agent agrees), the applicable PropCo Guarantor receiving such Non-Mortgageable Lease shall grant a lease or license with respect to such contributed Non-Mortgageable Lease, substantially in the form of Exhibit J or such other form that is approved by the Collateral Agent in consultation with the Lenders and reasonably satisfactory to the Borrower and reasonably satisfactory to the Collateral Agent in consultation with the Lenders, to each applicable Subsidiary of Holdings to operate on the relevant 2019 Extended Term Loan PropCo Asset or Notes PropCo Asset contributed to such PropCo Guarantor, as applicable, and (ii) from and after the Fourth Amendment Effective Date, each of 2019 Extended Term Loan PropCo, Notes PropCo, and the Loan Parties shall at all times maintain, preserve, and keep in full force and effect without any amendment thereto that would adversely affect the Lenders in any material respect the PropCo Operating Licenses with respect to any Non-Mortgageable Lease that remains in existence on or after the Fourth Amendment Effective Date.

(9) Notwithstanding anything herein to the contrary, in the event any MYT Entity is required to be contributed to Holdings or its Subsidiaries, 100% of the Equity Interests of the top-tier MYT Entity (the “Contributed MYT Equity Interests”) held by Holdings or any Subsidiary Loan Party immediately following such contribution shall be required to be pledged as Collateral to the Collateral Agent to secure the Obligations on a fourth-priority basis; provided, however, that notwithstanding the foregoing, such pledge of Contributed MYT Equity Interests shall not affect the MYT Waterfall contemplated herein or the “Distributions Upon Realizations of Value by MYT HoldCo” contemplated in the Offering Circular; provided, further, however that in the event such Contributed MYT Equity Interests are distributed in accordance with clause (12) of Section 6.06, then any such equity pledges or Liens granted on such Contributed MYT Equity Interests contemplated by this Section 5.10(9) shall be automatically and immediately released without any further action by any party.

(10) Notwithstanding anything herein to the contrary, no Real Property located in the State of New York (“Excluded NY Real Property”) shall be mortgaged under Section 5.10(2) or Section 5.15 hereof and the requirements set forth therein with respect to Real Property to be mortgaged shall not be applicable to such Excluded NY Real Property; provided, that, at the request of Collateral Agent, in its sole discretion, taking into account the cost (including mortgage recording taxes) and benefit of such mortgage, the applicable Loan Party shall, within 20 Business Days of such request (which can be extended in Collateral Agent’s sole discretion), deliver to Collateral Agent a mortgage on any Excluded NY Real Property and comply with the requirements in Section 5.10(2) or Section 5.15, as applicable. For the avoidance of doubt, the failure to deliver a mortgage on an Excluded NY Real Property shall not violate any Intercreditor Agreement unless and until the Collateral Agent has requested a mortgage and the time period to deliver such mortgage (together with any extensions) has elapsed.

(11) Notwithstanding the foregoing, the Collateral Agent shall not enter into or obtain any mortgage, deed of trust or any lien upon the Real Property referred to on Schedule 5.15 or any Real Property acquired by any Loan Party after the Fourth Amendment Effective Date until (A) the Administrative Agent has delivered to all of the Lenders (which may be delivered electronically) the following documents in respect of such Real Property: (i) a completed flood hazard determination from a third party vendor, (ii) if such Real Property is located in a “special flood
hazard area,” (A) a “Life-of-Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower or the applicable Loan Party in the event any such Mortgaged Property is located in a special flood hazard area) and (b) all other evidence of flood insurance as required by Section 5.02 of the Credit Agreement and any other documentation required by any Lender, and (2) the Administrative Agent shall have received written confirmation from each of the Lenders that flood insurance due diligence and flood insurance compliance has been reasonably satisfactorily completed by the Lenders.

SECTION 5.11 Cash Management Systems; Application of Proceeds of Accounts.

(1) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed):

(a) enter into blocked account agreements (each, a “Blocked Account Agreement”), in form reasonably satisfactory to the Administrative Agent, with the Collateral Agent and any bank with which any Borrower Party or any Subsidiary Loan Party maintains any DDA other than an Excluded Account (a “Blocked Account”) covering each such Blocked Account maintained with such bank;

(b) ensure that all cash, checks, proceeds of collections of Accounts and other amounts received by or on behalf of any Borrower Party or any Subsidiary Loan Party are deposited promptly upon receipt in accordance with historical practices into a DDA maintained in the name of such Borrower Party or such Subsidiary Loan Party; and

(c) deliver notifications to each depository institution with which any DDA is maintained, in form reasonably satisfactory to the Administrative Agent (each, a “DDA Notification”), instructing such depository institution to sweep, no less frequently than once per Business Day, all available cash balances and cash receipts, including the then contents or then entire ledger balance of such DDA net of such minimum balance (not to exceed $100,000 per account), if any, required by the bank at which such DDA is maintained to a concentration account of the Borrower Parties and the other Subsidiary Loan Parties that are subject to Blocked Account Agreements; provided that Holdings, the Borrower Parties and other Subsidiary Loan Parties may maintain credit balances (including cash and cash equivalents) in DDAs or other deposit or securities accounts that are Excluded Accounts.

Notwithstanding anything herein to the contrary, the provisions of this Section 5.11(a) will not apply to any deposit account that is acquired by a Loan Party in connection with a Permitted Acquisition or other Investment permitted under this Agreement prior to the date that is 90 days (or such later date as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed) following the date of such Permitted Acquisition or other Investment, and the balances held in such deposit accounts at the date of such Permitted Acquisition or other Investment shall not be counted toward the amount set forth in clause (1) of the definition of “Excluded Account” until the end of such 90 day period (or later period, if applicable).

(2) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), deliver to the Administrative Agent notifications in form reasonably satisfactory to the
Administrative Agent executed on behalf of each applicable Borrower Party and addressed to such Borrower Party’s Credit Card Processors (each, a “Credit Card Notification”);

provided that, with respect to each of Sections 5.11(1) and (2):

(a) Each Blocked Account Agreement and Credit Card Notification will require, during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent, the ACH or wire transfer no less frequently than once per Business Day of all available cash balances and cash receipts, including the then contents or then entire ledger balance of each Blocked Account net of such minimum balance (not to exceed $100,000 per account), if any, required by the bank at which such Blocked Account is maintained to an account established with, and subject to the control of, the Administrative Agent (the “Dominion Account”).

(b) All collected amounts received in the Dominion Account shall be distributed and applied on a daily basis to the repayment of all Loans outstanding under this Agreement and to the payment of all other Obligations then due and owing pursuant to the waterfall set forth in Section 2.18(3); provided that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:

(i) first, to ABR Loans;

(ii) second, to Eurocurrency Revolving Loans; and

(iii) third, to the cash collateralization of Letters of Credit;

with any excess, unless an Event of Default shall have occurred and be continuing, to be remitted to the Borrower Parties.

(c) At any time after the occurrence and during the continuance of a Cash Dominion Period as to which the Administrative Agent has notified the Borrower, any cash or Cash Equivalents owned by any Borrower Party or Subsidiary Loan Party are deposited to any account, held or invested in any manner, otherwise than in a Blocked Account subject to a Blocked Account Agreement (or a DDA which is swept daily to such Blocked Account), the Administrative Agent will be entitled to require the applicable Borrower Party or Subsidiary Loan Party to close such account and have all funds therein transferred to a Blocked Account;

provided that the foregoing will not apply to cash or Cash Equivalents constituting Term Note Priority Collateral required to be deposited in a Blocked Account in favor of the lenders under the Term Loan Credit Agreement pursuant to the terms of the Term Loan Credit Agreement; provided, further, that the foregoing will not apply to cash or Cash Equivalents deposited, held or invested in any of the following:

(i) any Excluded Account;

(ii) an amount not to exceed $20,000,000 in the aggregate that is on deposit in a segregated DDA that the Borrower designates in writing to the Agent as being the “uncontrolled cash account” (the “Designated Disbursement Account”), which funds will not be funded from, or when withdrawn from the Designated
Disbursement Account, will not be replenished by, funds constituting Collateral (or proceeds of Collateral) so long as such Cash Dominion Period continues; or

(iii) de minimis cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Restricted Subsidiary.

(d) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject to the contemporaneous execution and delivery to the Administrative Agent of a DDA Notification or Blocked Account Agreement consistent with the provisions of this Section 5.11; provided, that the Loan Parties may close DDAs or open new DDAs that are Excluded Accounts without executing or delivering any such DDA Notification or Blocked Account Agreement. Unless consented to in writing by the Administrative Agent, the Loan Parties will not enter into any agreements with credit card processors unless contemporaneously therewith a Credit Card Notification is executed by a Loan Party or Restricted Subsidiary and a copy thereof is delivered to the Administrative Agent.

(e) The Dominion Account will at all times be under the sole dominion and control of the Collateral Agent.

(f) So long as (i) no Event of Default has occurred and is continuing and (ii) no Cash Dominion Period is then in effect, the Loan Parties will have full and complete access to, and may direct the manner of disposition of, funds in the Blocked Accounts.

(g) Any amounts held or received in the Dominion Account (including all interest and other earnings with respect thereto, if any) at any time (i) after this Agreement has been terminated, the Commitments have been terminated and the Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash collateralized on terms satisfactory to the Issuing Bank or (ii) when all Events of Default have been cured and no Cash Dominion Period is then in effect will be remitted to the Loan Parties as the Borrower may direct.

SECTION 5.12 Creation and Release of Co-Borrowers

(1) Provide to the Administrative Agent, to the extent the Borrower intends to qualify any Subsidiary that is a Wholly Owned Domestic Restricted Subsidiary of the Borrower as a Co-Borrower (a) a written request to designate such Subsidiary as a Co-Borrower, (b) no later than five Business Days prior to the date on which such Subsidiary will become a Co-Borrower, all documentation and other information about such Subsidiary that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and (c) a Co-Borrower Joinder Agreement executed by each Borrower Party and such Subsidiary pursuant to which such Subsidiary agrees that it is jointly and severally liable for all Obligations.

(2) Provide to the Administrative Agent, to the extent the Borrower intends to cause the release of any Co-Borrower from its qualification as a Co-Borrower hereunder and so long as no Default or Event of Default shall have occurred and be continuing immediately prior to, or would result immediately after, giving effect to such release, (a) a written request for the release of the applicable
Co-Borrower stating that such Co-Borrower is concurrently being released from all of its obligations as a Co-Borrower in accordance with the terms of the Loan Documents and (b) an updated Borrowing Base Certificate demonstrating that, after giving effect to the exclusion of such Co-Borrower’s assets from the Borrowing Base, the Revolving Facility Credit Exposure will not exceed the Line Cap (or that Loans are being repaid or Letters of Credit cash collateralized in connection with such requested release to the extent necessary to eliminate such excess);

provided that any such request for release will be effective upon the release of such Co-Borrower from the Collateral Agreement and the receipt of the materials referred to in the preceding clauses (a) and (b) of this Section 5.12(2): provided, further, that:

(i) the Administrative Agent and/or the Lenders will, upon the release of any Co-Borrower hereunder, return to the Borrower any Notes executed by such Co-Borrower; and

(ii) the Administrative Agent will, at the request of the Borrower, provide evidence of the release of any Co-Borrower in a form reasonably acceptable to the Borrower to the extent such release is permitted pursuant to this Section 5.12(2): and

SECTION 5.13 Lender Calls. Following receipt by the Borrower of a request by the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders), use commercially reasonable efforts to hold an update call (which call shall take place on or prior to the date that is 10 Business Days following the receipt of such notice) with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders’ respective representatives and advisors to discuss the state of the Borrower’s business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; provided that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the Term Loan Credit Agreement);

(iii) no Co-Borrower shall be released pursuant to this Section 5.12(2) if such Co-Borrower is (and remains) a borrower under the Term Loan Credit Agreement.

SECTION 5.13 MIRE Events. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, no MIRE Event may be closed until the date that is (a) if there are no Mortgaged Properties in a “special flood hazard area”, ten (10) Business Days or (b) if there are Mortgaged Properties in a “special flood hazard area”, thirty (30) days (in each case, the “Notice Period”), after the Administrative Agent has delivered to the Lenders the following documents in respect of each Mortgaged Property: (i) a “Life-of-Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower or the applicable Loan Party in the event any such Mortgaged Property is located in a special flood hazard area) and (ii) evidence of flood insurance as required by Section 5.02 of the Credit Agreement; provided that no such MIRE Event may be closed if the Administrative Agent has received notice prior to the expiration of the Notice Period from any Lender that it has not completed any necessary flood insurance due diligence to its reasonable satisfaction and provided further that any such MIRE Event may be closed prior to the Notice Period if the Administrative Agent shall have received confirmation from each Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.
SECTION 5.14 Capital One Agreement and Permitted Replacement Credit Card Program. At least fifteen (15) days prior to the execution by any Borrower or any Subsidiary of documents evidencing the proposed adoption of any Permitted Replacement Credit Card Program (or of the consummation of any Permitted Acquisition of the type referred to in the definition of the term “Permitted Replacement Credit Card Program”), the Borrower shall deliver or cause to be delivered notice to the Agent of such adoption, which notice shall include a copy, in the then-existing form, of any documents to be executed in connection with such Permitted Replacement Credit Card Program. The Borrower shall deliver or cause to be delivered to the Agent copies of all such documents delivered in connection with such Permitted Replacement Credit Card Program within a reasonable period of time after the execution of such documents, and shall deliver any Credit Card Notification in connection therewith required under Section 5.11 in accordance with the terms of Section 5.11.

SECTION 5.15 Post-Closing Matters. Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.15 hereof on or before the dates specified with respect to such items on Schedule 5.15 (or, in each case, such later date as may be agreed to by Administrative Agent in its sole discretion or, with respect to matters relating primarily to the Term/Note Priority Collateral, in the sole discretion of the administrative agent under the Term Loan Credit Agreement). All representations and warranties contained in this Agreement and the other Loan Documents will be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.15 within the time periods specified thereon, rather than as elsewhere provided in the Loan Documents).

ARTICLE VI

Negative Covenants

The Borrower covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than Obligations in respect of Letters of Credit (except for any Obligations relating to Letters of Credit which are then due and payable), Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and Letters of Credit have expired, terminated or been cash-collateralized in terms satisfactory to the Issuing Bank, unless the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) otherwise consent in writing, it will not and will not permit any Co-Borrower or any Restricted Subsidiary to:

SECTION 6.01 Indebtedness. Issue, incur or assume any Junior Lien Term/Note Indebtedness or unsecured Indebtedness; provided that the Borrower, any Co-Borrower and the Restricted Subsidiaries may issue, incur or assume Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Interest Coverage Ratio is 2.25 to 1.00 or greater (“Ratio Debt”); and provided, further, that the aggregate principal amount of Ratio Debt incurred by Restricted Subsidiaries that are not Guarantors may not exceed $100.0 million at any time outstanding.

The foregoing limitation will not apply to (collectively, “Permitted Debt”):

1. Indebtedness created under the Loan Documents (including Indebtedness created under Incremental Facilities, Other Term Loans and Extended Commitments), Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness and any Guarantees thereof, in each case incurred by one or more Loan Parties (subject to the case of the Guarantees provided by

2019
Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority;

(2) (a) Indebtedness incurred by the Term Loan Borrowers pursuant to the Term Loan Credit Agreement (including all Incremental 2013 Term Loans, Other Term Loans and 2019 Extended Term Loans, in each case, as and all Other Term Loans, Extended Term Loans and Non-Participating Term Loan Exchange Indebtedness (as each such term is defined in the Term Loan Credit Agreement)); (b) any Incremental Equivalent Term Debt (as defined in the Term Loan Credit Agreement); and (c) Credit Agreement Refinancing Indebtedness (as defined in the Term Loan Credit Agreement) in respect of the Indebtedness described in preceding clause (a); and (c) any Guarantees of the foregoing by the Loan Parties (in the case of the Guarantee thereof by 2019 Extended Term Loan PropCo and Notes PropCo, having the Required PropCo Guarantee Priority); provided that the aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness), as of the date any such Indebtedness is incurred, does not exceed the sum of:

(i) the 2019 Extended Term Loan Amount plus the 2013 Term Loan Amount plus, solely in the event the Call Right is exercised, an amount equal to the aggregate principal amount of Third Lien Notes and Second Lien Notes redeemed in connection therewith (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses, in each case, in connection with any Refinancings);

(3) (a) (i) the Second Lien Notes issued on or prior to the Fourth Amendment Effective Date (and any Second Lien Notes issued under the Second Lien Notes Indentures in respect of interest paid in kind), (ii) any Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i) and (iii) any Guarantee by a Loan Party of the foregoing (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(b) (i) the Third Lien Notes issued on or prior to the Fourth Amendment Effective Date, (ii) any Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i) and (iii) any Guarantees by a Loan Party of the foregoing (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(c) (i) the 2028 Debentures outstanding on or prior to the Fourth Amendment Effective Date and the Guarantees thereof by 2019 Extended Term Loan PropCo and Notes PropCo having the Required PropCo Guarantee Priority and (ii) any Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i); and

(d) (i) the Remaining Senior Notes and (ii)(a) any Remaining Senior Notes Exchange Indebtedness or other Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (i) and (b) any Guarantee by a Loan Party of the Indebtedness incurred pursuant to clause (ii)(a) (subject, in the case of the Guarantees provided by 2019 Extended Term Loan PropCo and Notes PropCo, to such Guarantee having the Required PropCo Guarantee Priority);

(i) $3,600.0 million; plus

(ii) (A) with respect to any such Incremental Term Loans or Incremental Equivalent...
Term Debt to be secured on a pari passu basis to the Term Loans (as defined in the Term Loan Credit Agreement), such amount as would not result in the Senior Secured First Lien Net Leverage Ratio, as of the date of such incurrence, being greater than 4.25 to 1.00; and

(B) with respect to any such Incremental Term Loans to be secured on a junior basis to the Term Loans (as defined in the Term Loan Credit Agreement), such amount as would not result in the Total Net Leverage Ratio, as of the date of such incurrence, being equal to, or greater than, the Closing Date Total Net Leverage Ratio;

(3) the Senior Notes issued on the Closing Date and any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement;

(4) Indebtedness existing on the Closing Date (other than Indebtedness described in clause (1), (2) or (3) above), including the Existing 2028 Debentures, or clause (5) below); provided that any such Indebtedness outstanding as of the Fourth Amendment Effective Date which was incurred or allocated under a specific clause of the definition of “Permitted Debt” under the Existing Credit Agreement shall be deemed to be incurred on the Fourth Amendment Effective Date under the corresponding specific clause of the definition of “Permitted Debt” under this Agreement, and not under this clause (4):

(5) Capital Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness (including, for the avoidance of doubt, the Hudson Yards Indebtedness outstanding as of the date hereof) to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (5) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) $200.0 million and (b) 2.25% of Consolidated Total Assets as of the date any such Indebtedness is incurred (the “Capital Lease Obligations Cap”); provided that (i) such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness, and (ii) the Capital Lease Obligations Cap shall be reduced from time to time by an amount equal to the amount that the Hudson Yards Indebtedness is reduced from time to time (whether by repayment, retirement, recharacterization, discharge or otherwise) after the Fourth Amendment Effective Date (provided that (i) once so reduced, the Capital Lease Obligations Cap shall not be increased and (ii) such reductions shall not result in a Capital Lease Obligations Cap of less than the greater of (a) $100.0 million and (b) 1.125% of Consolidated Total Assets as of the date any such Indebtedness is incurred);

(6) Indebtedness owed to (including obligations in respect of letters of credit or bank Guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance;
provided that upon the incurrence of any Indebtedness with respect to reimbursement obligations regarding workers’ compensation claims, such obligations are reimbursed not later than 45 days following such incurrence;

(7) Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Original Transactions, any Permitted Acquisition or the disposition of any business, assets or Restricted Subsidiaries not prohibited by this Agreement, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiaries for the purpose of financing any such Permitted Acquisition;

(8) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries; provided that the aggregate outstanding principal amount of such Indebtedness that is owing by any Restricted Subsidiary that is not a Guarantor to a Loan Party may not exceed the amount, as of the date such Indebtedness is incurred, permitted pursuant to Sections 6.04(3) and (4); no such Indebtedness owing by 2019 Extended Term Loan PropCo or Notes PropCo shall be incurred hereunder except to the extent permitted pursuant to Section 6.04(4); provided, further that (i) such Indebtedness owing to a Restricted Subsidiary that is not a Guarantor shall be subordinated in right of payment to the Obligations or Guarantee of such Loan Party, as applicable, and (ii) any subsequent issuance or transfer of any Equity Interests or any other event that results in such Restricted Subsidiary lending such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to a Loan Party) will be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (8);

(9) Indebtedness pursuant to Hedge Agreements;

(10) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion Guarantees and similar obligations, in each case, provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(11) Guarantees of Indebtedness of the Borrower or the Restricted Subsidiaries Subsidiary Loan Parties or any other Subsidiary permitted to be incurred under this Agreement to the extent such Guarantees are not prohibited by the provisions of Section 6.04 (other than Section 6.04(18));

(12) (a) Indebtedness incurred or assumed in connection with a Permitted Acquisition and Indebtedness of any Person that becomes a Restricted Subsidiary if such Indebtedness was not created in anticipation or contemplation of such Permitted Acquisition or such Person becoming a Restricted Subsidiary and (b) Indebtedness incurred or assumed in anticipation or contemplation of a Permitted Acquisition; provided that, in each case of the foregoing subclauses (a) and (b):

(i) no Event of Default is continuing immediately before such Permitted Acquisition or would result therefrom;

(ii) immediately after giving effect to such Permitted Acquisition, on a Pro Forma Basis, either (A) the Borrower would be permitted to incur at least $41,000 of Ratio Debt or (B) the Interest Coverage Ratio would increase; and
the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) by Restricted Subsidiaries that are not Guarantors, together with any Permitted Refinancing Indebtedness incurred by Restricted Subsidiaries that are not Guarantors to Refinance any Indebtedness originally incurred pursuant to this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed $75,500 million at any one time outstanding as of the date such Indebtedness is incurred;

the aggregate principal amount of any Indebtedness incurred or assumed under the foregoing subclauses (a) and (b), together with (y) the aggregate principal amount of any Permitted Refinancing Indebtedness in respect thereof and (v) the aggregate amount of any Investments outstanding under clause (4) of the definition of Permitted Investments, does not exceed the limits set forth in that clause; and

(v) the assets acquired, if held in a Borrower Party or a Subsidiary Loan Party (other than a PropCo Guarantor), shall be pledged as Collateral, subject to Liens with the Required Collateral Lien Priority;

Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification received by the Borrower of its incurrence;

Indebtedness supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;

Indebtedness in an aggregate outstanding principal amount not to exceed an amount equal to 100% of the net proceeds received by the Borrower from the issuance or sale of its Equity Interests or as a contribution to its capital, other than (a) proceeds from the issuance or sale of the Borrower’s Disqualified Stock, (b) Excluded Contributions, (c) Cure Amounts and (d) any such proceeds that are used prior to the date of incurrence to make a Restricted Payment under Section 6.06(1) or Section 6.06(2)(b) (any such Indebtedness, “Contribution Indebtedness”);[reserved];

Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

Indebtedness incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings);[reserved];

Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Borrower or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 6.06;
Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures; provided that the aggregate outstanding principal amount of such Indebtedness, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (20) (and any successive Permitted Refinancing Indebtedness) may not exceed the greater of (a) $50.0 million and (b) 0.50% of Consolidated Total Assets as of the date any such Indebtedness is incurred;[reserved];

Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness incurred by Foreign Subsidiaries to Refinance any Indebtedness originally incurred pursuant to this clause (21) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) $50.0 million and (b) 0.50% of Consolidated Total Assets as of the date any such Indebtedness is incurred;

unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with the Original Transactions or any Permitted Investment;

any Permitted Refinancing Indebtedness incurred to Refinance Indebtedness incurred under clauses (2), (4), (5), (12), (15), (20), (21), this clause (24) or clauses (27), (28) or (29) of this Section 6.01;

customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

unsecured Indebtedness of the Borrower or any Restricted Subsidiary so long as (a) immediately after giving effect to the incurrence of such Indebtedness the Payment Conditions are satisfied and (b) the maturity date and Weighted Average Life to Maturity of such Indebtedness is at least six months after the Latest Maturity Date at the time of incurrence of such Indebtedness, and any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (27) (and any successive Permitted Refinancing Indebtedness);

other Indebtedness that is secured by Liens that are in all respects subordinated or junior to the Liens securing the Obligations; provided that such Indebtedness (a) is subject to an ABL Junior Lien Intercreditor Agreement and (b) has a maturity date and Weighted Average Life to Maturity that is at least six months after the Latest Maturity Date at the time of incurrence of such Indebtedness, and any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant this clause (28) (and any successive Permitted Refinancing Indebtedness); and
additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (29) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of

(a) $250.0 million and
(b) 2.75% of Consolidated Total Assets as of the date; provided that the cash interest rate on any such Indebtedness is incurred pursuant to this clause (29) shall not exceed 8.00% per annum.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be incurred as Ratio Debt, the Borrower may, in its sole discretion, at the time of incurrence, combine, divide, classify or reclassify, or at any later time combine, divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; provided that (i) all Indebtedness outstanding under this Agreement (and the Term Loan Credit Agreement) will be deemed to have been incurred in reliance on the exception in clauses (1) and (2), respectively, of the definition of “Permitted Debt” and shall not be permitted to be reclassified pursuant to this paragraph. All unsecured Permitted Debt, (ii) all Indebtedness under the Term Loan Credit Agreement or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (2) of the definition of “Permitted Debt,” (iii) all Indebtedness under the Second Lien Notes or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3) of the definition of “Permitted Debt,” (iv) all Indebtedness under the Third Lien Notes or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(b) of the definition of “Permitted Debt,” (v) all Indebtedness under the 2028 Debentures or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(c) of the definition of “Permitted Debt,” (vi) all Indebtedness under the Remaining Senior Notes or Guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been incurred pursuant to clause (3)(d) of the definition of “Permitted Debt,” and, in each case, of clauses (i) through (vi) above, the Borrower will not be permitted to reclassify at any later date all or any portion of such Indebtedness. All Indebtedness originally incurred under clause (5), (20), (21) or (27) of the definition of “Permitted Debt” will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be incurred by the obligor thereon as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including pay-in-kind interest on the 2019 Extended Term Loans, Second Lien Notes, or Senior Notes), and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; provided that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency.
exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

Notwithstanding anything to the contrary contained herein, in no event may any Future Senior ABL Indebtedness (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) be incurred, or any ABL Pari Passu Intercreditor Agreement (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) be permitted to be entered into.

SECTION 6.02 **Liens.** Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, **“Permitted Liens”**):

1. Liens securing Indebtedness incurred in accordance with Sections 6.01(1) or 6.01(2); provided that, in the case of Indebtedness incurred in accordance with Section 6.01(2), the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower:

   a. Liens securing the Indebtedness incurred in accordance with clause (1) of the definition of “Permitted Debt” and Obligations related thereto;

   b. Liens on the Collateral having the Required Collateral Lien Priority for Term Loan Obligations pursuant to the applicable Intercreditor Agreements securing Indebtedness incurred in accordance with clause (2) of the definition of “Permitted Debt” and Term Loan Obligations related thereto (other than the 2013 Term Loans and the other 2013 Term Loan Obligations);

   c. Liens on the Collateral (and Other Second Lien Collateral (as defined in the Junior Lien Term/Note Intercreditor Agreement as in effect on the Fourth Amendment Effective Date)) having the Required Collateral Lien Priority pursuant to the applicable Intercreditor Agreements securing the Second Lien Notes and Indebtedness incurred in accordance with clause (3)(a) of the definition of “Permitted Debt” and the Second Lien Notes Obligations related thereto;

   d. Liens on the Collateral (and Other Third Lien Collateral (as defined in the Junior Lien Term/Note Intercreditor Agreement as in effect on the Fourth Amendment Effective Date)) having the Required Collateral Lien Priority pursuant to the applicable Intercreditor Agreements securing the Third Lien Notes and Indebtedness incurred in accordance with clause (3)(b) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto;

   e. Liens on the 2028 Debentures Collateral having the Required Collateral Lien Priority pursuant to the applicable Intercreditor Agreements and the Term Loan Security Documents securing the 2028 Debentures and Indebtedness incurred in accordance with clause (3)(c) of the definition of “Permitted Debt” and the 2028 Debentures Obligations related thereto;

   f. Liens on 2013 Collateral securing 2013 Term Loans and 2013 Term Loan Obligations; and
Liens securing any Remaining Senior Notes Third Lien Exchange Indebtedness incurred in accordance with clause 3(d)(ii) of the definition of "Permitted Debt" and Remaining Senior Notes Exchange Obligations related thereto;

provided that, in the case of clauses (b) through (g), the applicable Liens are subject to the ABL/Term Note Intercreditor Agreement;

(2) Liens securing Indebtedness existing on the Closing Fourth Amendment Effective Date; provided that such Liens only secure the obligations that they secure on the Closing Fourth Amendment Effective Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto; provided further that Liens outstanding as of the Fourth Amendment Effective Date that were incurred or allocated under a specific Liens clause under the Existing Credit Agreement shall be deemed to be incurred on the Fourth Amendment Effective Date under the corresponding Liens clause under this Agreement, and not under this clause (2);

(3) Liens securing Indebtedness incurred in accordance with Sections 6.01(5); provided that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(4) Liens on accounts receivable and related assets of the type specified in the definition of Qualified Receivables Financing securing Indebtedness incurred in accordance with Section 6.01(17);

(5) Liens on assets of Foreign Subsidiaries that are not Subsidiary Loan Parties and (b) Junior Liens on assets of Foreign Subsidiaries that are Subsidiary Loan Parties, in either case securing Indebtedness incurred in accordance with Section 6.01(21);

(6) Liens securing Permitted Refinancing Indebtedness incurred in accordance with Section 6.01(24); provided that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto) that secured the Indebtedness so Refinanced that are not higher in priority than the original Lien;

(7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Borrower or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrower or any of the Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;
Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

Liens securing judgments that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which Holdings, the Borrower or any affected Restricted Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;

Liens imposed by law, including landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

(a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;

Deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers (but not to secure Indebtedness or receivables or Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Restricted Subsidiary, in each case, in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

Survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;

Any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;
Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (b) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

Leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

Liens solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment;

Liens arising from precautionary Uniform Commercial Code financing statements;

Liens on Equity Interests of any joint venture, to the extent such Equity Interests are Excluded Equity Interests, (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

Liens securing insurance premium financing arrangements;

Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;

Liens on property or assets used to defease or to satisfy and discharge Indebtedness; provided that such defeasance or satisfaction and discharge is not prohibited by this Agreement;

Liens:

(a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;

(b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or
in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(29) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(30) [reserved];

(31) Junior Liens that rank pari passu with the Liens securing the Term Loan Obligations if the Senior Secured First Lien Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the Closing Date Senior Secured First Lien Net Leverage Ratio which secure Ratio Debt and/or other Indebtedness incurred in accordance with Section 6.01(29); provided that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of (x) the ABL/Term Loan/Notes Intercreditor Agreement and a First, if applicable, an ABL Junior Lien Intercreditor Agreement (as defined in the Term Loan Credit Agreement) or (y) an intercreditor agreement in form and substance satisfactory to the Administrative Agent;

(32) Junior Liens that rank junior to the Liens securing the Obligations and the Term Loan Obligations if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the Closing Date Total Net Leverage Ratio on the Collateral securing additional obligations in an aggregate outstanding principal amount not to exceed $50.0 million; provided that the cash interest rate on any such obligations may not exceed 8.00% per annum; provided that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of (x) the ABL/Term Loan/Notes Intercreditor Agreement and a, an ABL Junior Lien Intercreditor Agreement (as defined in the Junior Lien/TL Note Intercreditor Agreement) or (y) an intercreditor agreement in form and substance satisfactory to the Administrative Agent; and

(33) Liens securing additional obligations in an aggregate outstanding principal amount not to exceed the greater of (a) $250.0 million and (b) 2.75% of Consolidated Total Assets as of the date such Liens are first created; and

(34) Liens securing (a) amounts owing to any Qualified Counterparty under any Specified Hedge Agreement and Cash Management Obligations, which amounts are secured under the Loan Documents and (b) Specified Hedge Obligations (as defined in the Term Loan Credit Agreement) and Cash Management Obligations (as defined in the Term Loan Credit Agreement), which amounts are secured under the Term Loan Documents; provided that, in each case, the applicable Liens are subject to the ABL/Term Loan/Notes Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the ABL/Term Loan/Notes Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower.

For purposes of this Section 6.02, Indebtedness will not be considered incurred under a subsection or clause of Section 6.01 if it is later reclassified as outstanding under another subsection or clause of Section 6.01 (in which event, and at which time, same will be deemed incurred under the
subsection or clause to which reclassified). (v) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but may be incurred under any combination of such categories (including in part under one such category and in part under any other such category), (vi) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Borrower will, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (vii) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (1) or (33) above (giving effect to the incurrence of such portion of such Indebtedness), the Borrower, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (1) or (33) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition. Notwithstanding the foregoing, (A) all Liens securing Term Loan Obligations shall be incurred under clause (1)(b) of this Section 6.02, (B) all Liens securing Second Lien Notes and other Indebtedness incurred under clause (3)(a) of the definition of “Permitted Debt” and the Second Lien Notes Obligations and other Indebtedness Obligations related thereto shall be incurred under clause (1)(c) of this Section 6.02, (C) all Liens securing Third Lien Notes and other Indebtedness incurred under clause (3)(b) of the definition of “Permitted Debt” and the Third Lien Notes Obligations and other Indebtedness Obligations related thereto shall be incurred under clause (1)(d) of this Section 6.02, (D) all Liens securing the 2028 Debentures and other Indebtedness Obligations incurred under clause (3)(c) of the definition of “Permitted Debt” shall be incurred under clause (1)(e) of this Section 6.02, (E) all Liens securing Remaining Senior Notes Third Lien Exchange Indebtedness incurred under clause (3)(d)(ii) of the definition of “Permitted Debt” and the Indebtedness Obligations related thereto shall be incurred under clause (1)(f) of this Section 6.02, and (F) all Liens securing 2013 Term Loans and the 2013 Term Loan Obligations shall be incurred under clause (1)(f) of this Section 6.02 and, in each case of subclauses (A) through (F) above, such Liens may not be later reallocated.

SECTION 6.03 Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a “Sale and Lease-Back Transaction”), except the following:

1. Sale and Lease-Back Transactions with respect to property owned (a) by the Borrower or any of its Domestic Subsidiaries that is acquired after the Closing Date so long as such Sale and Lease-Back Transaction is consummated within 270 days of the acquisition of such property or (b) by any Foreign Subsidiary of the Borrower regardless of when such property was acquired; and

2. Sale and Lease-Back Transactions approved by the Required 2019 Extending Term Lenders with respect to any property owned by the Borrower Parties or any Restricted Subsidiary, if at the time the lease in connection therewith is entered into, and after giving effect to the entering into of such lease, the Remaining Present Value of such lease to the extent that (a) the Net Cash Proceeds (as defined in the Term Loan Credit Agreement) would not exceed $200.0 million-250.0 million and (b) the Net Cash Proceeds (as defined in the Term Loan Credit Agreement) thereof are applied to the Term Loans in accordance with Section 2.07(3) of the Term Loan Credit Agreement.

SECTION 6.04 Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or
Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, a "Investment"), any other Person, except the following (collectively, "Permitted Investments"):

1. the Investments made in order to consummate or complete the Recapitalization Transactions (including payment of the purchase consideration under the Merger Agreement);

2. loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed $25.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made); provided that loans and advances to consultants in the form of upfront payments made in connection with employment or consulting arrangements entered into in the ordinary course of business shall not be subject to such $5.0 million cap;

3. Investments made with Available Contribution Proceeds;

4. (i) intercompany Investments among the Borrower and the Restricted Subsidiaries (including intercompany Indebtedness) if among the Borrower and the Subsidiary Loan Parties (other than Notes PropCo or 2019 Extended Term Loan PropCo), provided that any Loan Party (other than Notes PropCo and 2019 Extended Term Loan PropCo) shall be permitted to fund, solely in the form of cash equity Investments, lease and other operating payments that are due in the ordinary course of business, or to maintain the legal existence, of Notes PropCo or the 2019 Extended Term Loan PropCo, as applicable), and (ii) among the Loan Parties (other than Notes PropCo and 2019 Extended Term Loan PropCo) and Restricted Subsidiaries that are not Guarantors; provided that (a) the sum of (a1) the aggregate fair market value of all such Investments under subclause (ii) (other than intercompany Indebtedness and Guarantees of Indebtedness) made since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value) by the Borrower and the Guarantors Loan Parties in Restricted Subsidiaries that are not Guarantors; (b) the aggregate principal amount of Indebtedness owing to the Borrower and the Guarantors Loan Parties by Restricted Subsidiaries that are not Guarantors at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors that is Guaranteed by the Borrower and the Guarantors, may not exceed $25.0 million at any time outstanding, may not exceed the greater of (i) $50.0 million and (ii) 0.50% of Consolidated Total Assets as of the date; and (b) any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made); consisting of an intercompany loan by the Borrower or the Guarantors in Restricted Subsidiaries that are not Guarantors shall be pledged as Collateral to secure the Obligations, subject to carve outs for Excluded Assets; provided, further that Investments by the Borrower or its Restricted Subsidiaries in Subsidiaries that are not Wholly Owned Subsidiaries shall be on arm’s-length terms;

4. Investments in Foreign Subsidiaries; provided that the sum of (a) the aggregate fair market value of all such Investments (other than intercompany Indebtedness and Guarantees of Indebtedness) made by the Borrower and the Restricted Subsidiaries since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value); (b) the aggregate principal amount of Indebtedness of Foreign Subsidiaries owing to the Borrower and the other...
Restricted Subsidiaries at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Foreign Subsidiaries that is Guaranteed by
the Borrower and the other Restricted Subsidiaries at any time outstanding, when taken together with the aggregate amount of payments made with
respect to entities that do not become Guarantors following Permitted Acquisitions, may not exceed the greater of (i) $100 million and (ii) 1.15% of
Consolidated Total Assets as of the date any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually
received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time
such Investment was made);

(5) [reserved];

(6) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or
Investment Grade Securities when made;

(7) Investments arising out of the receipt by the Borrower or any of the Restricted Subsidiaries of non-cash consideration in connection with any sale
of assets permitted under Section 6.05;

(8) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments
received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the
bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in
each case in the ordinary course of business;

(9) Investments acquired as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investments or other
transfer of title with respect to any secured Investment in default;

(10) Hedge Agreements;

(11) Investments existing on, or contractually committed as of, the Closing Fourth Amendment Effective Date and set forth on Schedule 6.04 and any
replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to
this clause (11) is not increased at any time above the amount of such Investments existing or committed on the Closing Fourth Amendment
Effective Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date; Fourth
Amendment Effective Date); provided that Investments outstanding as of the Fourth Amendment Effective Date which were incurred or allocated
under clause (5) of this Section 6.04 under the Existing Credit Agreement shall be deemed incurred on the Fourth Amendment Effective Date under
clause (5) of this Section 6.04 under this Agreement and not under this clause (11);

(12) Investments resulting from pledges and deposits that are Permitted Liens;

(13) Intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(21);

(14) acquisitions of obligations of one or more officers or other employees of any Parent Entity, Borrower or any Subsidiary of Borrower in
connection with such officer’s or employee’s acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the
Borrower or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

Guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;

Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

Guarantees permitted under Section 6.01;

advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or any Restricted Subsidiary;

Investments, including loans and advances, to any Parent Entity so long as Borrower or any Restricted Subsidiary would otherwise be permitted to make a Restricted Payment in such amount; provided that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.06 for all purposes of this Agreement;

Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

Investments in assets useful in the business of the Borrower or any Restricted Subsidiary made with (or in an amount equal to) any Reinvestment Deferred Amount (as defined in the Term Loan Credit Agreement as originally in effect) or Below Threshold Asset Sale Proceeds; provided that if the underlying Asset Sale was with respect to assets of the Borrower or a Subsidiary Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Loan Party;

any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;

[reserved];
(26) Investments that are made with Excluded Contributions;

(27) Investments; provided that the aggregate fair market value of such Investments made since the Closing Fourth Amendment Effective Date that remain outstanding (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(a) and Restricted Payments pursuant to Section 6.06(15) does not exceed, as of the date such Investments are made, $75.0 million; provided that any Investments pursuant to this clause (27) cannot be in any Parent Entity or its Subsidiaries (other than a Loan Party or any of its Subsidiaries), including any MYT Entity, and any such Investment in the form of an intercompany loan shall be pledged as Collateral to secure the Obligations, subject to carve outs for Excluded Assets; provided, further that Investments by the Borrower or its Restricted Subsidiaries in Subsidiaries that are not Wholly Owned Subsidiaries shall be on arm’s-length terms; and

(28) additional Investments; provided that (i) both immediately before such Investment is made and immediately after giving effect to such Investment, the Payment Conditions are satisfied and (ii) any Investments pursuant to this clause (28) cannot be in any Parent Entity or its Subsidiaries (other than a Loan Party or any of its Subsidiaries), including any MYT Entity, and any such Investment in the form of an intercompany loan shall be pledged as Collateral to secure the Obligations, subject to carve outs for Excluded Assets;

provided that a Loan Party shall not, directly or indirectly, use any Investments made pursuant to the definition of “Permitted Investments” to (i) provide assets to a Person that incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to purchase, Refinance or otherwise invest in any Indebtedness of Holdings and its Subsidiaries or (ii) make a Restricted Payment.

SECTION 6.05 Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, or sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets, or issue, sell, transfer or otherwise dispose of any Equity Interests of any Restricted Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person, except that this Section 6.05 will not prohibit:

(1) if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing or would result therefrom:

(a) the merger, consolidation or amalgamation of any Restricted Subsidiary into (or with) the Borrower in a transaction in which the Borrower is the survivor;

(b) the merger, consolidation or amalgamation of any Restricted Subsidiary (other than a PropCo Guarantor) into or with any Subsidiary Loan Party (other than a PropCo Guarantor) in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party; and,
(c) the merger, consolidation or amalgamation of any Restricted Subsidiary that is not a Loan Party into or with any other Restricted Subsidiary that is not a Loan Party;

(d) any transfer of inventory among the Borrower and its Restricted Subsidiaries or between Restricted Subsidiaries and any other transfer of property or assets among the Borrower and its Restricted Subsidiaries or between Restricted Subsidiaries, in each case, in the ordinary course of business; or (ii) any other transfer of property or assets among the Borrower and any Subsidiary Loan Party (other than a PropCo Guarantor); provided any Collateral so transferred pursuant to this clause (ii) shall remain Collateral subject to valid and perfected Liens in favor of the Collateral Agent;

(e) the liquidation or dissolution or change in form of entity of any Restricted Subsidiary of the Borrower if a Responsible Officer of the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders;

(f) the merger, consolidation or amalgamation of any Restricted Subsidiary with or into any other Person in order to effect a Permitted Investment so long as the continuing or surviving Person will be a Subsidiary Loan Party if the merging, consolidating or amalgamating Subsidiary was a Subsidiary Loan Party and which, together with each of its Subsidiaries, shall have complied with the requirements of Section 5.10; or

(g) the liquidation or dissolution of (i) any Immaterial Subsidiary or (ii) in the event that none of the Notes PropCo Assets constitute Non-Mortgageable Leases, Notes PropCo;

(2) any sale, transfer or other disposition if:

(a) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents; and

(b) such sale, transfer or disposition is made for fair market value (as determined by a Responsible Officer of the Borrower in good faith); provided that each of the following items will be deemed to be cash for purposes of this Section 6.05(2):

(i) any liabilities of the Borrower or the Restricted Subsidiaries (as shown on the most recent Required Financial Statements or in the notes thereto), other than liabilities that are by their terms Junior Financing and subordinated in right of payment to the Term Loan Obligations), that are assumed by the transferee with respect to the applicable disposition and for which the Borrower and the Restricted Subsidiaries have been validly released by all applicable creditors in writing; and

(ii) any securities received by the Borrower or any Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable disposition; and
(iii) any Designated Non-Cash Consideration received in respect of such disposition, provided that the aggregate fair market value of all such Designated Non-Cash Consideration, as determined by a Responsible Officer of the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (iii) that is then outstanding, does not exceed the greater of (A) $125.0 million and (B) 1.50% of Consolidated Total Assets as of the date any such Designated Non-Cash Consideration is received, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;

(3) the purchase and sale of inventory in the ordinary course of business; (b) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business; (c) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business; or (d) the disposition of Cash Equivalents (or Investments that were Cash Equivalents when made);

(4) Sale and Lease-Back Transactions permitted by Section 6.03;

(5) Investments permitted by Section 6.04, Permitted Liens, and Restricted Payments permitted by Section 6.06;

(6) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;

(7) Permitted Acquisitions, including any merger, consolidation or amalgamation in order to effect a Permitted Acquisition; provided that following any such merger, consolidation or amalgamation: (a) involving the Borrower Party, the Borrower Party is the surviving corporation; and (b), immediately before and immediately after such transaction, the Payment Conditions are satisfied;

(8) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;

(9) sales, licenses, transfers, abandonments, allowances to lapse or other dispositions of Intellectual Property (as defined in the Collateral Agreement) that are immaterial or no longer useful or necessary in the operation of the business of the Borrower or such Restricted Subsidiary, as determined by a Responsible Officer of the Borrower reasonably and in good faith;

(10) sales, leases or other dispositions of inventory of the Borrower or any Restricted Subsidiary determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or such Restricted Subsidiary, as determined by a Responsible Officer of the Borrower reasonably and in good faith;

(11) acquisitions and purchases made with Below Threshold Asset Sale Proceeds;

(12) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any Restricted Subsidiary that is not in contravention of Section 6.08;
(13) any sale, transfer or other disposition, in a single transaction or a series of related transactions, of any asset or assets having a fair market value, as determined by a Responsible Officer of the Borrower reasonably and in good faith, of not more than $150.0 million.

(14) any sale, transfer or other disposition made to consummate any Real Property monetization or financing transaction consummated after the Fourth Amendment Effective Date the net cash proceeds of which are applied in accordance with Section 2.07(3) of the Term Loan Credit Agreement; or

(15) any sale, transfer or other disposition made in connection with, and for the sole purpose of the implementation of, the Recapitalization Transactions.

To the extent any Collateral is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than Holdings, a Borrower Party or any Guarantor, such Collateral will be free and clear of the Liens created by the Loan Documents, and the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Borrower in order to evidence the foregoing, in each case, in accordance with Section 10.18.

SECTION 6.06 Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, "Restricted Payments") other than:

(1) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of, Equity Interests of the Borrower (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Borrower, other than (a) Excluded Contributions, (b) Cure Amounts and (c) any such proceeds that are used prior to the date of determination to make a Restricted Payment under Section 6.06(2)(b) or incur Contribution Indebtedness; and

(2) Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors (collectively, "Related Persons") of Holdings, the Borrower or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (2), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; provided that the aggregate amount of such purchases or redemptions may not exceed:
$30.0 million in any fiscal year (with any unused amounts in any fiscal year being carried over to the next three succeeding fiscal years) for purchases or redemptions from Persons that are current Related Persons at the time of such purchase or redemption; plus

$5.0 million in aggregate from the Fourth Amendment Effective Date for purchases or redemptions from former Related Persons; plus

the amount of net cash proceeds contributed to the Borrower that were received by any Parent Entity since the Closing Fourth Amendment Effective Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements, other than (a) Excluded Contributions, (b) Cure Amounts and (c) any such proceeds that are used prior to the date of determination (1) to make a Restricted Payment under Section 6.06(1) or (2) to incur Contribution Indebtedness; plus

the amount of net proceeds of any key man life insurance policies received during such fiscal year; plus

the amount of any bona fide cash bonuses otherwise payable (but not actually paid) to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year;

and provided, further, that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(3) [reserved];

(4) [reserved];

(2) Restricted Payments to consummate the Transactions or to pay any amounts pursuant to the Merger Agreement;

(4) at any time after the consummation of a Qualified IPO, Restricted Payments in an amount equal to 6.0% per annum of the net cash proceeds received from any public sale of the Equity Interests of the Borrower or any Parent Entity that are contributed to the Borrower;

(5) Restricted Payments to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal or combined or unitary state tax return that includes the Borrower and the Subsidiaries (or the taxable income thereof), or to any Parent Entity that is a partner or a sole owner of the Borrower in the event the Borrower is treated as a partnership or a “disregarded entity” for U.S. federal income tax purposes, in each case, in an amount not to exceed the amount that the Borrower and its Subsidiaries would have been required
to pay in respect of federal, state or local taxes (as the case may be) in respect of such fiscal year if the Borrower and its Subsidiaries paid such taxes directly as a stand-alone taxpayer (or stand-alone group); provided that such amounts, plus any cash actually distributed by an Unrestricted Subsidiary for such period pursuant to the second proviso below, the "Tax Amount", provided that (i) any amounts paid pursuant to this clause (5) shall actually be used by a Parent Entity to pay taxes to an applicable taxing authority; (ii) Restricted Payments will be permitted in respect of the income of an Unrestricted Subsidiary only to the extent of the amount of cash distributed to the Borrower or any Restricted Subsidiary by such Unrestricted Subsidiary for such purpose; provided, further that amounts paid under this clause (5), taken together with any amounts paid in respect of federal, state or local Taxes under clause (16) of Section 6.07, shall not exceed the Tax Amount for any applicable year;

(6) Restricted Payments to permit any Parent Entity to:

(a) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Borrower and the Restricted Subsidiaries, but not for the avoidance of doubt, any costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Loan Parties and their respective Subsidiaries, for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, by any Restricted Payment to a Parent Entity, subject to reasonable pro-ration of joint services, costs, fees and expenses;

(b) pay fees and expenses related to any public offering or private placement of debt or equity securities of, or incurrence of any Indebtedness by, any Parent Entity or any Permitted Investment, whether or not consummated, to the extent the proceeds of any of the foregoing transactions are contributed to the Borrower;

(c) pay franchise taxes and other fees, income or other taxes and expenses in connection with any Parent Entity’s ownership of any Restricted Subsidiary or the maintenance of its legal existence;

(d) make payments under transactions permitted under Section 6.07 (other than Section 6.07(8)) or Article VII, in each case to the extent such payments are due at the time of such Restricted Payment; or

(e) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Borrower and the Restricted Subsidiaries, but not for the avoidance of doubt, any indemnities, costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Loan Parties and their respective Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, by any Restricted Payment to a Parent Entity, incurred after the
(7) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(8) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;

(9) so long as no Event of Default is continuing, Restricted Payments to any Parent Entity for the purpose of paying (a) monitoring, consulting, management, transaction, advisory, termination or similar fees payable to any Sponsor in accordance with the Management Agreement in an amount not to exceed amounts payable pursuant to the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default shall accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived) and (b) indemnities, reimbursements and reasonable and documented out-of-pocket fees and expenses of any Sponsor;

(9) Restricted Payments to any Parent Entity for the purpose of paying indemnities of, and reimbursement of reasonable and documented out-of-pocket fees and expenses to Sponsors, in each case incurred in connection with the provision by Sponsors of bona fide services (including such services provided under the Management Agreement) to any Parent Entity for the benefit of Holdings and its Subsidiaries and not, for the avoidance of doubt, in respect of MYT Entities, the MyTheresa Distribution or any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Loan Parties and their respective Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, by any Restricted Payment to a Parent Entity), subject to reasonable pro-ration of joint services, indemnities, fees, costs and expenses;

(10) Restricted Payments to the Borrower or any Restricted Subsidiary (or, in the case of non-Wholly Owned Subsidiaries, to the Borrower and to each other owner of Equity Interests of such Restricted Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Borrower or such Restricted Subsidiary) based on their relative ownership interests so long as any repurchase of its Equity Interests from a Person that is not the Borrower or a Restricted Subsidiary is permitted under Section 6.04);

(11) Restricted Payments to any Parent Entity to finance, or to any Parent Entity for the purpose of paying, any Permitted Investment, provided that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such Parent Entity causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or any Restricted Subsidiary of the Borrower or (ii) the merger, consolidation or amalgamation (to the extent permitted by Section 6.05) of the Person formed or acquired into the Borrower or any Restricted Subsidiary of the Borrower in order to consummate
such Permitted Investment, in each case, in accordance with the requirements of Section 5.10;

(11) Restricted Payments that are made with Excluded Contributions [reserved];

(12) Restricted Payments of the MyTheresa Assets (or the net cash proceeds received from a sale of the MyTheresa Assets or the MYT Entities) in the event the MyTheresa Assets (or proceeds from such sale) are contributed to Holdings or any of its Subsidiaries on or after the Fourth Amendment Effective Date to the extent that the MyTheresa Assets (or such proceeds) are required to be distributed in accordance with any settlement, judgment, court order or other resolution of a Claim (as defined in the Term Loan Credit Agreement), Cause of Action (as defined in the Term Loan Credit Agreement) or litigation with respect to the MyTheresa Distribution or the MyTheresa Designation, subject to (i) restoration of all terms set forth in the MYT Holdco Preferred Series A Certificate, (ii) compliance by the MYT Entities with all of the MYT Covenants (as defined in the Offering Circular), and (ii) the automatic release of any pledges or Liens on the Contributed MYT Equity Interests contemplated by the definition of "Unrestricted Subsidiary";

(14) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Borrower or any Restricted Subsidiary by, one or more Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash or Cash Equivalents);

(16) Restricted Payments; provided that both immediately before such Restricted Payment is made and immediately after giving effect thereto, the Payment Conditions are satisfied.

SECTION 6.07 Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates in a transaction involving aggregate consideration in excess of $15.0 million, unless such transaction is (i) otherwise permitted (or required) under this Agreement or (ii) upon terms no less favorable to the Borrower and the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit:

(1) transactions between or among (a) the Borrower and the Restricted Subsidiaries, or (b) the Borrower Parties and the Subsidiary Loan Parties or (ii) the Borrower Parties, and any Person that becomes a Restricted Subsidiary Loan Party as a result of such transaction (including by way of a merger, consolidation or amalgamation in which a Loan Party is the surviving entity) - and (b) the Borrower Parties and any Restricted Subsidiary that is not a Subsidiary Loan Party as of the date of the consummation, so long as (i) such transaction is on an arms’ length basis or (ii) involves the
sharing of operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses) in the ordinary course of business;

(2) so long as no Event of Default is continuing, payment of management, monitoring, consulting, transaction, oversight, advisory and similar fees and payment of all expenses and indemnification claims, in each case, in accordance with the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default will accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived);

(3) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Borrower or any Parent Entity in good faith;

(4) loans or advances to employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary in accordance with Section 6.04(2);

(5) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Borrower or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrower and the Restricted Subsidiaries (which shall be 100% for so long as such Parent Entity owns no assets other than the Equity Interests in the Borrower and assets incidental to the ownership of the Borrower and its Restricted Subsidiaries)); and

subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses);

(6) the Recapitalization Transactions and transactions pursuant to the Recapitalization Transaction Documents and other transactions, agreements and arrangements in existence on the Closing Fourth Amendment Effective Date and set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect as determined in good faith by a Responsible Officer of the Borrower on arm’s-length terms;

(7) (a) any employment agreements entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business, (b) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

(8) Restricted Payments permitted under Section 6.06, including payments to any Parent Entity;

(9) any purchase by any Parent Entity of the Equity Interests of the Borrower and the purchase by the Borrower of Equity Interests in any Restricted Subsidiary;

(10) payments to the Sponsors for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of
transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm’s length terms;

any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of Holdings or the Borrower from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is (a) in the good faith determination of the Borrower qualified to render such letter and (b) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrower or the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate;

transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

the issuance, sale or transfer of Equity Interests of the Borrower to any Parent Entity and capital contributions by any Parent Entity to the Borrower (and payment of reasonable out-of-pocket expenses incurred by the Sponsors in connection therewith);

the issuance of Equity Interests to the management of Holdings, the Borrower or any of the Restricted Subsidiaries in connection with the Original Transactions;

payments by Holdings any Parent Entity, the Borrower or any of the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings any Parent Entity, the Borrower and any of the Restricted Subsidiaries, which payments would otherwise be permitted under clause (5) of Section 6.06 and shall be subject to the same restrictions as set forth under clause (5) of Section 6.06, provided that amounts paid under this clause (16) in respect of federal, state or local Taxes, taken together with any amounts paid under clause (5) of Section 6.06, shall not exceed the Tax Amount for any applicable year;

payments or loans (or cancellation of loans) to employees or consultants that are:

approved by a majority of the Disinterested Directors of Holdings or the Borrower in good faith;

made in compliance with applicable law; and

otherwise permitted under this Agreement;

transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, that are fair to the Borrower and the Restricted Subsidiaries;

[reserved];

[reserved];
transactions between or among the Borrower and the Restricted Subsidiaries and any Person, a director of which is also a director of the Borrower or any Parent Entity, so long as (a) such director abstains from voting as a director of the Borrower or such Parent Entity, as the case may be, on any matter involving such other Person and (b) such Person is not an Affiliate of the Borrower for any reason other than such director’s acting in such capacity;

transactions pursuant to, and complying with, the provisions of Section 6.01, Section 6.04 or Section 6.05(1);

the existence of, or the performance by any Loan Party of its obligations under the terms of, any customary registration rights agreement to which a Loan Party or any Parent Entity is a party or becomes a party in the future; and

intercompany transactions undertaken in good faith (as certified by a Responsible Officer of the Borrower) for the purpose of improving the consolidated tax efficiency of Holdings and the Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

SECTION 6.08 Business of the Borrower and its Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by the Borrower and the Restricted Subsidiaries on the Closing Fourth Amendment Effective Date (after giving effect to the Recapitalization Transactions) and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto.

SECTION 6.09 Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.

(1) amend or modify in any manner materially adverse to the Lenders the articles or certificate of incorporation (or similar document), by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Borrower or any Restricted Subsidiary;

(2) make (I) any cash payment or other distribution in cash in respect of, or amend or modify, or permit the amendment or modification of, any provision of, any (x) Junior Financing or (y) Indebtedness outstanding pursuant to Section 6.01(2) (or any Permitted Refinancing Indebtedness in respect thereof) or (x) any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposits, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Junior Financing or Indebtedness described in preceding clause (y); except in the case of this clause (2):

(a) aggregate payments which when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(27) and the aggregate Restricted Payments pursuant to Section 6.06(15), do not exceed $75.0 million;

(b) payments in an amount not to exceed $5.0 million in the aggregate in respect of (a) Senior Notes pursuant to Section 5.10 of the Senior Notes Indentures and/or (b) Third Lien Notes pursuant to the “AHYDO” provisions of the Third Lien Notes Indentures. (i) for the avoidance of doubt, the redemption of Third Lien Notes in accordance with clause (4)(y)
under the MYT Waterfall with the cash or other assets received in connection with a MYT Secondary Sale, and (iii) the redemption or repurchase of Third Lien Notes Obligations or Second Lien Notes Obligations in accordance with the exercise of the Call Right as contemplated by Section 2.18(7) of the Term Loan Credit Agreement (as in effect on the Fourth Amendment Effective Date);

(b) transactions described in clause (4) of this Section in respect of the Senior Notes;

(c) additional payments if immediately before and immediately after consummation of such payment, the Payment Conditions are satisfied;

(d) the refinancing or replacement of any Junior Financing or Indebtedness described in preceding clause (y) with Permitted Refinancing Indebtedness in respect thereof;

(e) (i) the conversion or exchange of any Indebtedness into or for Equity Interests of any Parent Entity and (ii) any payment (other than on account of the Senior Notes or Third Lien Notes, as to which clause (a)(i) shall apply) that is intended to prevent any Junior Financing from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code;

(f) any conversion or exchange of any Indebtedness into or for Indebtedness incurred (and permitted to be incurred) under Section 6.01 (other than Permitted Debt under clause (1) of the definition thereof), or any payment of Indebtedness with net cash proceeds of any substantially contemporaneous issue of Indebtedness incurred (and permitted to be incurred) under Section 6.01 (other than Permitted Debt under clause (1) of the definition thereof);

(g) (i) payments of regularly scheduled principal and interest (including the repayment of the 2013 Term Loans on the maturity date applicable thereto); (ii) mandatory offers to repay, repurchase or redeem (including in connection with the net cash proceeds of Asset Sales); (iii) mandatory prepayments of principal, premium and interest; and (iv) payments of fees, expenses and indemnification obligations, in each case, with respect to such Indebtedness, in accordance with contractual requirements in effect as of the Fourth Amendment Effective Date (or with respect to any refinancing, no less favorable in any material respect to the Lenders than those in effect as of the Fourth Amendment Effective Date);

(h) payments or distributions in respect of all or any portion of such Indebtedness with the proceeds contributed directly or indirectly to the Borrower by any Parent Entity using Available Contribution Proceeds from the issuance, sale or exchange by any Parent Entity of Equity Interests made within 18 months prior thereto; or

(i) the prepayment of the 2013 Term Loans prior to the final stated maturity date applicable thereto in accordance with Section 2.07(2) of the Term Loan Credit Agreement;

(3) permit any MaterialRestricted Subsidiary to enter into any agreement or instrument that by its terms restricts (a) with respect to any such MaterialRestricted Subsidiary that is not a Guarantor or Co-Borrower, Restricted Payments from such MaterialRestricted Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such MaterialRestricted Subsidiary or
(b) with respect to any such Material Restricted Subsidiary that is a Guarantor or Co-Borrower, the granting of Liens by such Material Restricted Subsidiary pursuant to the Security Documents, except in the case of this clause (3);

(a) restrictions imposed by applicable law;

(b) contractual encumbrances or restrictions:

(i) under the Term Loan Documents;

(ii) under the Senior Notes Documents; or

(iii) under the Secured Notes Documents; or

(iv) under any other agreement relating to Ratio Debt, Indebtedness incurred pursuant to Section 6.01(1), (2), (3), (4), (5), (7), (12), (15), (20), (21), (24), (27), (28) or (29), Indebtedness that is secured on a pari passu basis with Indebtedness under the Loan Documents or under the Term Loan Credit Agreement, or any Permitted Refinancing Indebtedness in respect thereof, that does not materially expand the scope of any such encumbrance or restriction;

(c) any restriction on a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Restricted Subsidiary pending the closing of such sale or disposition;

(d) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(e) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(f) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(g) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(h) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(i) customary restrictions and conditions contained in any agreement relating to the sale, transfer or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer or other disposition;

(j) customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;
customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and the other Restricted Subsidiaries to meet their ongoing obligations;

any agreement in effect at the time any Person becomes a Restricted Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary;

restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (o) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing:

repurchase, redeem, retire, repay, refinance or exchange the Remaining Senior Notes Obligations, whether at maturity or otherwise, except in the case of this clause (4):

repurchasing, repaying, exchanging for or refinancing any such Remaining Senior Notes Obligations using the proceeds of Remaining Senior Notes Exchange Indebtedness (including by means of an exchange offer, conversion or modification of the Remaining Senior Notes Obligations to become Remaining Senior Notes Exchange Indebtedness):

repurchasing, repaying, exchanging for or refinancing any such Remaining Senior Notes Obligations using (i) the common Equity Interests of, or the cash proceeds of common equity sales by, or common equity contributions to, Holdings, or (ii) any non-cash assets contributed, exchanged or sold to Holdings in respect of Holdings’ common equity or any cash proceeds received from the sale or disposition of any assets which are contributed to Holdings (including any interests, including Equity Interests of, MYT Holdco so contributed to or purchased by Holdings, or the cash proceeds of which are contributed to Holdings following a sale or disposition of such interests); or

repurchasing or repaying all or any portion of any Remaining Senior Notes Obligations with cash proceeds from any other source not otherwise described in clauses (a) or (b) above, in an aggregate amount, together with any cash payments or other cash distributions
made pursuant to Section 6.09(2)(i), made in reliance on Section 2.07(2)(c) of the Term Loan Credit Agreement, not to exceed $60.0 million for the term of this Agreement; provided that the total purchase price or repayment amount of any such Remaining Senior Notes Obligations repurchased or repaid (or any portion of which is repurchased or repaid) pursuant to this clause (c) more than 45 days prior to October 15, 2021 may not be greater than 40% of the aggregate face value of any such Remaining Senior Notes.

SECTION 6.10 Financial Performance Covenant. Upon the occurrence and during the continuance of a Covenant Trigger Event, the Borrower will maintain a Fixed Charge Coverage Ratio of not less than 1.0 to 1.0 measured for the most recent period of four consecutive fiscal quarters for which Required Financial Statements are available (or were required to be furnished) at the time of occurrence of such Covenant Trigger Event, and each subsequent four fiscal quarter period ending during the continuance of such Covenant Trigger Event.

ARTICLE VII

Holdings Covenant and PropCo Guarantors Covenants

SECTION 7.01 Holdings Covenant. Holdings will not, so long as this Agreement is in effect and until the Commitments have been terminated, the Obligations (other than Obligations in respect of Letters of Credit (except for any Obligations relating to Letters of Credit which are then due and payable), Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) otherwise consent in writing, conduct, transact or otherwise engage in any active trade or business or operations other than through the Borrower and its Subsidiaries.

The foregoing will not prohibit Holdings from taking actions related to the following (and activities incidental thereto):

1. its ownership of the Equity Interests of the Borrower;
2. the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance);
3. the performance of its obligations with respect to the Revolving Facility, the Term Loan Credit Agreement, and other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger Agreement;
4. any offering of its common stock or any other issuance of its Equity Interests;
5. the making of Restricted Payments; provided that Holdings will not be permitted to make Restricted Payments using the cash from the Borrower or any Subsidiary unless such cash has been dividended or otherwise distributed to Holdings as a permitted Restricted Payment;
6. the incurrence of Permitted Holdings Debt;
7. making contributions to the capital or acquiring Equity Interests of its Subsidiaries;
guaranteeing the obligations of the Borrower and its Subsidiaries;

participating in tax, accounting and other administrative matters as a member or parent of the consolidated group;

holding any cash or property (including cash and property received in connection with Restricted Payments made by the Borrower, but excluding the Equity Interests of any Person other than the Borrower);

providing indemnification to officers and directors;

the making of Investments consisting of Cash Equivalents or, to the extent not made for speculative purposes, Investment Grade Securities; and

activities incidental to the businesses, activities or operations described above.

SECTION 7.02 PropCo Guarantors Covenant. No PropCo Guarantor will, so long as this Agreement is in effect and until the Commitments have been terminated, the Obligations (other than Obligations in respect of Letters of Credit (except for any Obligations relating to Letters of Credit which are then due and payable), Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, and Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) otherwise consent in writing, (i) conduct, transact or otherwise engage in any active trade or business or operations other than own interests in, and perform its obligations pursuant to, any Non-Mortgageable Leases, (ii) issue, incur or assume any Indebtedness or Guarantee any Indebtedness of another Person, (iii) create, incur, assume or permit to exist any Lien securing Indebtedness or on any property or assets at the time owned by it, (iv) sell, lease, transfer or otherwise dispose of any of its properties or assets or (v) own or acquire any property or assets other than Non-Mortgageable Leases and immaterial assets incident thereto.

The foregoing will not prohibit either PropCo Guarantor from taking actions related to the following (and activities incidental thereto):

1. the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance);
2. the performance of its obligations with respect to Permitted PropCo Guaranteed Obligations;
3. the making of Restricted Payments permitted under Section 6.06;
4. holding, as applicable, the 2019 Extended Term Loan PropCo Assets and the Notes PropCo Assets and the performance of its obligations with respect to any PropCo Operating License;
5. participating in tax, accounting and other administrative matters as a member of the consolidated group;
6. providing indemnification to officers and directors; and
7. activities incidental to the businesses, activities or operations described above.
ARTICLE VIII

Events of Default

SECTION 8.01  Events of Default. In case of the happening of any of the following events (each, an “Event of Default”):

(1) any representation or warranty made by Holdings, the Borrower or any other Loan Party herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made or deemed made;

(2) default is made in the payment of any principal of any Loan when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise (other than Swingline Loans that become Revolving Loans in accordance with Article II);

(3) default is made in the payment of any interest on any Loan or the reimbursement of any L/C Disbursement or in the payment of any Fee or any other amount due under any Loan Document (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of five Business Days;

(4) (a) default is made in the due observance or performance by Holdings, the Borrower or any other Restricted Subsidiary Loan Party or, solely with respect to Article VII, Holdings, of any covenant, condition or agreement contained in Section 5.01(1), 5.05(1), 5.07, 5.08, 5.11 (but only if such default occurs during a Cash Dominion Period), or in Article VI or Article VII of this Agreement, or in any provision of the Fourth Amendment or (b) Section 5.04(912) and such default shall continue unremedied for a period of five Business Days (or, after the occurrence and during the continuance of a Liquidity Condition or a Designated Event of Default, two Business Days) following notice thereof from the Administrative Agent to the Borrower;

(5) default is made in the due observance or performance by the Borrower or any other Restricted Subsidiary Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3) and (4) of this Section 8.01), and such default continues unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower;

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) 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 or (b) the Borrower Parties or any Restricted Subsidiary fail to pay the principal of any Material Indebtedness at the stated final maturity thereof; provided that this clause (6) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; provided, further, that such event or condition is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Loans and termination of the Commitments pursuant to the final paragraph of this Section 8.01;
a Change in Control occurs;

an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:

(a) relief in respect of Holdings, any Borrower Party or any of the Material Restricted Subsidiaries, or of a substantial part of the property or assets of Holdings, any Borrower Party or any Material Restricted Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, or similar law and such proceeding or petition continues undischarged, undismissed or unstayed for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

(b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, any Borrower Party or any of the Material Restricted Subsidiaries or for a substantial part of the property or assets of Holdings, any Borrower Party or any Restricted Subsidiary and such appointment occurs and continues undischarged, undismissed or unstayed for 60 calendar days from the date of such appointment, or an order or decree approving or ordering any of the foregoing is entered; or

(c) the winding up or liquidation of Holdings, any Borrower Party or any Material Restricted Subsidiary (except, in the case of any Material Restricted Subsidiary, in a transaction permitted by Section 6.05) and such proceeding or petition continues undischarged, undismissed or unstayed for 60 calendar days, or an order or decree approving or ordering any of the foregoing is entered;

Holdings, the Borrower or any Material Restricted Subsidiary:

(a) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;

(c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrower or any Material Restricted Subsidiary;

(d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(e) makes a general assignment for the benefit of creditors; or

(f) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

any Borrower Party or any Restricted Subsidiary fails to pay one or more final judgments aggregating in excess of (a) if Excess Availability is greater than $100.0 million as of the date of
such judgment, $40.0 million or (b) if Excess Availability is less than or equal to $100.0 million as of the date of such judgment, $20.0 million (to
the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any
action is legally taken by a judgment creditor to levy upon assets or properties of any Borrower Party or any other Restricted Subsidiary to enforce
any such judgment;

(11) (a) a trustee is appointed by a United States district court to administer any Plan or (b) an ERISA Event or ERISA Events occurs with respect to any
Plan or Multiemployer Plan, and, in each case, with respect to clauses (a) and (b) above, such event or condition, together with all other such events
or conditions, if any, is reasonably expected to have a Material Adverse Effect; or

(12) (a) any material provision of any Loan Document ceases to be, or is asserted in writing by Holdings, the Borrower or any Restricted Subsidiary not
to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security
Document and to extend to assets that are included in the Borrowing Base or otherwise are not immaterial to Holdings, the Borrower and the
Restricted Subsidiaries on a consolidated basis ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, a valid and
perfected security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of validity, perfection or
priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the
application thereof, or from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities
pledged under a Security Document or to file Uniform Commercial Code continuation statements or take any other action and except to the extent
that such loss is covered by a lender’s title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the
Guarantees pursuant to the Security Documents by any Loan Party of any of the Obligations cease to be in full force and effect (other than in
accordance with the terms thereof) or are asserted in writing by Holdings, any Borrower Party or any Subsidiary Loan Party not to be in effect or not
to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

then, (i) upon the occurrence of any such Event of Default (other than with respect to any Borrower Party described in clause (8) or (9) of this Section 8.01)
and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the request of the Required Lenders (or, after the
Discharge of ABL Revolving Claims, the Required Term Lenders), will, by notice to the Borrower, take any or all of the following actions, at the same or
different times: (A) terminate forthwith the Commitments, (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part,
whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other
liabilities of the Borrower Parties accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment,
demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower Parties, anything contained herein or in any other
Loan Document to the contrary notwithstanding; (C) if the Loans have been declared due and payable pursuant to clause (B) above, demand cash collateral
pursuant to Section 2.05(11); and (D) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable
law or in equity, and (ii) in any event with respect to the Borrower Parties described in clause (8) or (9) of this Section 8.01, the principal of the Loans then
outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower Parties accrued hereunder and under
any other Loan Document, will automatically become due and payable and the Administrative Agent shall be deemed to have made a demand for cash
collateral to the full extent permitted under Section 2.05(11), without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly

waived by the Borrower Parties, anything contained herein or in any other Loan Document to the contrary notwithstanding; provided that, notwithstanding any of the foregoing, (w) upon the occurrence of and during the continuance of an Event of Default under Section 8.01(2) or (3) with respect to the ABL Term Loans, the Administrative Agent, at the request of the Required Term Lenders, will, by notice to the Borrower, declare the ABL Term Loans then outstanding to be forthwith due and payable in whole or in part pursuant to the foregoing clause (B), (x) upon the acceleration of the Revolving Loans hereunder, the principal of the ABL Term Loans then outstanding, together with accrued interest thereon and all other Obligations accrued in respect thereof, shall be automatically due and payable in whole immediately and all ABL Term Loan Commitments shall automatically terminate, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower Parties, (y) upon the acceleration of the ABL Term Loans hereunder, the principal of the Revolving Loans then outstanding, together with accrued interest thereon and all other Obligations accrued in respect thereof, shall be automatically due and payable in whole immediately and all Commitments shall automatically terminate, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower Parties and (z) except as expressly set forth herein (including, without limitation, in the FILO Intercreditor Provisions), no ABL Term Lender shall have any right to affirmatively exercise any remedy with respect to the Collateral upon the occurrence and during the continuance of an Event of Default until the Discharge of ABL Revolving Claims.

SECTION 8.02  Right to Cure.  Notwithstanding anything to the contrary contained in Section 8.01, in the event that the Borrower Parties fail (or, but for the operation of this Section 8.02, would fail) to comply with the requirements of the Financial Performance Covenant, until the expiration of the tenth Business Day subsequent to the date the Required Financial Statements are required to be delivered pursuant to Section 5.04(1) or (2) for the applicable fiscal quarter, Holdings shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Borrower (collectively, the “Cure Right”) and, upon the receipt by the Borrower of such cash (the “Cure Amount”) pursuant to the exercise by Holdings of such Cure Right, the Financial Performance Covenant shall be recalculated giving effect to a pro forma adjustment by which Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any four-quarter period that contains such quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount. The resulting increase to Consolidated EBITDA from the application of a Cure Amount shall not result in any adjustment to Consolidated EBITDA or any other financial definition for any purpose under this Agreement other than for purposes of calculating the Financial Performance Covenant. In each four fiscal quarter period there shall be at least two fiscal quarters in which the Cure Right is not exercised and the Cure Right may not be exercised more than five times during the term of this Agreement and, for purposes of this Section 8.02, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant. If, after giving effect to the adjustments in this Section 8.02, the Borrower shall then be in compliance with the requirements of the Financial Performance Covenant, the Borrower shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Financial Performance Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.
ARTICLE IX

The Agents

SECTION 9.01 Appointment.

(1) Each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby irrevocably designates and appoints the Administrative Agent as agent of such Lender under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, 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 the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders and the Issuing Banks hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender’s or Issuing Bank’s behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, 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 the Administrative Agent. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence.

(2) In furtherance of the foregoing, each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on the Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In connection therewith, the Administrative Agent (and any Subagents appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Administrative Agent) shall be entitled to the benefits of this Article IX (including Section 9.07) as though the Administrative Agent (and any such Subagents) were an “Agent” under the Loan Documents, as if set forth in full herein with respect thereto.

(3) Each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) irrevocably authorizes the Administrative Agent, at its option and in its discretion:
(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document

(i) upon termination of the Commitments, the payment in full of all Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) and the expiration, termination or cash-collateralization (to the satisfaction of the respective Issuing Bank) of all Letters of Credit;

(ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document; or

(iii) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;

(b) to release any Loan Party from its obligations under the Loan Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3) (and to the extent required by the terms thereof as of the Closing Date).

Upon request by the Administrative Agent at any time, the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) will confirm in writing the Administrative Agent’s authority to release its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents.

(4) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation 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 Borrower) 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 any or all of the 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 and the Agents and any Subagents 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, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank 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, 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 under the Loan Documents. 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 or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.
The Lenders and each other holder of an Obligation under a Loan Document shall act collectively through the Administrative Agent and, without limiting the delegation of authority to the Administrative Agent set forth herein and subject to the proviso to the final paragraph of Section 8.01, the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) shall direct the Administrative Agent with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders) and, the exercise of rights and remedies with respect to (i) the Recapitalization Transactions, (ii) the Loans and any securities, notes, or other interests issued pursuant to this Agreement or the Existing Credit Agreement and (iii) any Collateral with respect to the Obligations. Any such rights and remedies shall not be exercised other than through the Administrative Agent; provided that, None of the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Loans made by it.

SECTION 9.02  Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a “Subagent”) with respect to all or any part of the Collateral; provided that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent’s gross negligence or willful misconduct.

SECTION 9.03  Exculpatory Provisions. None of the Administrative Agent, its Affiliates or any of their respective officers, directors, employees, agents or attorneys-in-fact shall be (1) 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 non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person’s own gross negligence or willful misconduct) or (2) 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 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. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) the Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into:

(i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
(ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
(iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
(iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
(v) the value or the sufficiency of any Collateral; or
(vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Credit Event, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to Holdings or the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The 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 the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders (including, after the Discharge of ABL Revolving Claims, the Required Term Lenders)) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative 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, all or other Lenders (including, after the Discharge of ABL Revolving Claims, the Required Term 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 9.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender, Holdings or the 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 the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent 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, all or other Lenders (including, after the Discharge of ABL Revolving Claims, the Required Term Lenders)); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent 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 9.06 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the 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 the Administrative 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 the Administrative Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon the Administrative 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 the Administrative 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 the Administrative Agent hereunder, the Administrative Agent 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 the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07 Indemnification. The Lenders agree to indemnify each Agent and each Issuing Bank, in each case in its capacity as such (to the extent not reimbursed by Holdings or the Borrower Parties and without limiting the obligation Holdings or the Borrower Parties to do so), in the
amount of its pro rata share (based on its aggregate Revolving Facility Credit Exposure and, in the case of the indemnification of each Agent, unused Commitments hereunder; provided that the aggregate principal amount of Swingline Loans owing to the Swingline Lender and of L/C Disbursements owing to any Issuing Bank shall be considered to be owed to the Revolving Lenders ratably in accordance with their respective Revolving Facility Credit Exposure) (determined at the time such indemnity is sought), 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 the Administrative Agent or such Issuing Bank 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 the Administrative Agent or such Issuing Bank 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 the Administrative Agent’s or such Issuing Bank’s gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent or any Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent or such Issuing Bank, as the case may be, for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent or such Issuing Bank, as the case may be, for such other Lender’s ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Loans and all other amounts payable hereunder.

SECTION 9.08 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 the Administrative Agent were not the Administrative Agent. With respect to its Loans made or renewed by it and with respect to any Letter of Credit issued, or Letter of Credit or Swingline Loan participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as though it were not the Administrative Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

SECTION 9.09 Successor Agent. The Administrative Agent may resign as Administrative Agent upon ten days’ notice to the Lenders and the Borrower. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as an Issuing Bank and the Swingline Lender, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit or make any additional Swingline Loans hereunder and (y) shall maintain all of its rights as Issuing Bank or Swingline Lender, as the case may be, with respect to any Letters of Credit issued by it, or Swingline Loans made by it, prior to the date of such resignation. If the Administrative Agent resigns as the Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders) shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the reference to the resigning Administrative Agent means such successor agent effective upon such appointment and approval, and the former Administrative Agent’s rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is ten days following a retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s
resignation shall nevertheless thereupon become effective, and the retiring Administrative Agent hereunder shall, on behalf of the Lenders and the Issuing Bank appoint a successor agent which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent’s resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10  Arrangers; Co-Syndication Agents; Co-Documentation Agents; Senior Managing Agents. None of the Arrangers, Second Amendment Arrangers, Co-Syndication Agents, Second Amendment Co-Syndication Agents, Co-Documentation Agents, Second Amendment Documentation Agent, Senior Managing Agent or Second Amendment Senior Managing Agent will have any duties, responsibilities or liabilities hereunder in their respective capacities as such.

ARTICLE X

Miscellaneous

SECTION 10.01  Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), 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 facsimile or e-mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party, the Administrative Agent, any Issuing Bank as of the Closing Date or the Swingline Lender, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender or Issuing Bank, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders and any Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II if such Lender or any Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower 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.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic
communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(5) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower’s website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Borrower shall notify the Administrative Agent (by facsimile or e-mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; provided, further, that, upon reasonable request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; provided, further, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or L/C Disbursement or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.17 and 10.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit and the termination of the Commitments or this Agreement.

SECTION 10.03 Binding Effect. This Agreement shall become effective when the Fourth Amendment has been executed by Holdings, Merger Sub and the Borrower Parties and the Administrative Agent and when the Administrative Agent has received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower Parties, the Subsidiary Loan Parties, each Agent, each Issuing Bank, each Lender and their respective permitted successors and assigns.
SECTION 10.04 Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any affiliate of the Issuing Bank that issues any Letter of Credit), except that (a) no Borrower Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by a Borrower Party without such consent shall be null and void), except pursuant to the Merger, and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents, any Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) (a) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04, any Lender may assign to one or more assignees (other than a natural person or a Defaulting Lender) (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Revolving Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

   (i) the Borrower; provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default has occurred and is continuing, any other Person; provided, further, that such consent shall be deemed to have been given if the Borrower has not responded within ten Business Days after delivery of a written request therefor by the Administrative Agent; and

   (ii) the Administrative Agent, each Issuing Bank and the Swingline Lender; provided that no consent of the Administrative Agent will be required for an assignment of all or any portion of Loan to a Lender, an Affiliate of a Lender or an Approved Fund; and

(b) Assignments shall be subject to the following additional conditions:

   (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5.0 million, unless each of the Borrower and the Administrative Agent otherwise consent; provided that (1) no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

   (ii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the
Administrative Agent, manually), and, except in the case of an assignment to an Approved Fund, shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(iii) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17;

(iv) the Assignee will not be the Borrower or any of the Borrower’s Affiliates or Subsidiaries; and

(v) the Assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Loan.

For the purposes of this Section 10.04, “Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

(d) The Administrative Agent, acting for this purpose as the Administrative Agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount (and stated interest with respect thereto) of the Loans and Revolving L/C Exposure owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender (solely with respect to such Lender’s Loans) at any reasonable time and from time to time upon reasonable prior notice.
Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee’s completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Revolving Facility Commitment, and the outstanding balances of its Revolving Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (b) except as set forth in clause (a) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of Holdings, the Borrower or any Restricted Subsidiary or the performance or observance by Holdings, the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (e) the Assignee will independently and without reliance upon the Administrative Agent or the Collateral Agent, such assigning Lender 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 decisions in taking or not taking action under this Agreement; (f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; and (g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrower, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that

(i) such Lender’s obligations under this Agreement shall remain unchanged;

(ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and
the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.

Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents, to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents and to exercise any right or remedy with respect to the Loans and any securities or interests issued pursuant to this Agreement or the Existing Credit Agreement and any Collateral; provided that (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 10.04(1)(a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; provided that such Participant shall be subject to Section 2.18(4) as though it were a Lender. Any Participant that seeks to receive the foregoing benefits under Sections 2.15, 2.16, 2.17 or 10.06 must act through the Lender that sold the participation to the Participant, and such Lender must comply with all other requirements for seeking such benefits, including complying with Section 9.01(5) of this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Each Lender shall indemnify the Loan Parties for any Taxes (including any additions to Tax) attributable to or resulting from such Lender’s failure to comply with the
provisions of this Section 10.04(4)(a) relating to the maintenance of a Participant Register.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(5) as though it were a Lender.

(5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(6) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04.

(7) If the Borrower wishes to replace the Loans or Commitments with ones having different terms (which would otherwise have been permitted in accordance with Section 10.08(4) if made as new Loans or Commitments), it shall have the option, with the consent of the Administrative Agent and, where relevant, the Swingline Lender and each Issuing Bank, and subject to at least three Business Days’ advance notice to the Lenders, instead of repaying the Loans or reducing or terminating the Commitments to be replaced, to (i) require the Lenders to assign such Loans or Commitments to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with Section 10.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 10.08(4)). Pursuant to any such assignment, all Loans and Commitments to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrower), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 10.05(2). By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Loans or Commitments pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (7) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(8) Notwithstanding the foregoing, no assignment may be made or participation sold to an Disqualified Institution without the prior written consent of the Borrower; provided that, in connection with a participation, the Lenders shall have received a list of the Disqualified Institutions prior to the executions of such participation rights.
SECTION 10.05 Expenses; Indemnity.

(1) If the Recapitalization Transactions are consummated and the Closing Fourth Amendment Effective Date occurs, the Borrower Parties, jointly and severally, agree to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent and the Arrangers in connection with the preparation of this Agreement and the other Loan Documents, including as to post-closing matters, or by the Administrative Agent and the Arrangers (and in the case of enforcement of this Agreement, each Lender) in connection with the preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower or provided for in this Agreement) in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Administrative Agent and the Arrangers (which shall be White & Case LLP), one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the case of any actual or perceived conflict of interest, one additional firm of counsel for the Administrative Agent, the Arrangers and, in the case of enforcement of this Agreement, the Lenders.

(2) The Borrower Parties, jointly and severally, agree to indemnify the Administrative Agent, each Arranger, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for group of affected Indemnitees similarly situated taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

(a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Recapitalization Transactions and the other transactions contemplated hereby;

(b) the use of the proceeds of the Loans; or

(c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by Holdings, the Borrower or any of their Restricted Subsidiaries or Affiliates or creditors; provided that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Administrative Agent or Arrangers or their respective Affiliates, in each
(3) Subject to and without limiting the generality of the foregoing sentence, the Borrower Parties, jointly and severally, agree to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for all Indemnies, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnities taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel for all Indemnies taken as a whole) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result any claim related in any way to Environmental Laws and the Borrower or any of the Restricted Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Restricted Subsidiaries would reasonably be expected to be held liable under Environmental Laws; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to (a) Taxes other than (x) any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim and (y) expenses related to the enforcement of Section 2.17 or (b) Taxes that are duplicative of any indemnification or payments required by the Loan Parties under Section 2.17.

(5) To the fullest extent permitted by applicable law, Holdings and the Borrower shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Commitment, any Letter of Credit, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(6) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.
SECTION 10.06 Right of Set-off.

(1) If an Event of Default shall have occurred and be continuing, each Revolving Lender and each Issuing Bank is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Revolving Lender or such Issuing Bank to or for the credit or the account of Holdings, any Borrower Party or any Subsidiary Loan Party against any and all of the Obligations (except to the extent relating to ABL Term Loans) of Holdings, any Borrower Party or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Revolving Lender or such Issuing Bank, irrespective of whether or not such Revolving Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each Revolving Lender and each Issuing Bank under this Section 10.06(1) are in addition to other rights and remedies (including other rights of set-off) that such Revolving Lender or such Issuing Bank may have, but may be exercised only at the direction of the Administrative Agent or the Required Lenders (or, after the Discharge of ABL Revolving Claims, the Required Term Lenders).

(2) After the Discharge of ABL Revolving Claims, if an Event of Default shall have occurred and be continuing, each ABL Term Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such ABL Term Lender to or for the credit or the account of Holdings, any Borrower Party or any Subsidiary Loan Party against any and all of the Obligations (to the extent relating to the ABL Term Loans) of Holdings, any Borrower Party or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such ABL Term Lender, irrespective of whether or not such ABL Term Lender shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each ABL Term Lender under this Section 10.06(2) are in addition to other rights and remedies (including other rights of set-off) that such ABL Term Lender may have, but may be exercised only at the direction of the Administrative Agent or the Required Term Lenders and only after the Discharge of ABL Revolving Claims.

SECTION 10.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08 Waivers; Amendment.

(1) No failure or delay of the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent, each Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this
Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except:

(a) as provided in Sections 2.21, 2.22, 2.23 and 10.20;

(b) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower and the Required Lenders (or after the Discharge of ABL Revolving Claims, the Required Term Lenders); and

(c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders (or after the Discharge of ABL Revolving Claims, the Required Term Lenders);

provided, however, that, except as provided in Sections 2.21, 2.22, 2.23 and 10.20, no such agreement will:

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Loan or any L/C Disbursement, or extend the stated expiration of any Letter of Credit beyond the Maturity Date, without the prior written consent of each Lender adversely directly affected thereby, except as provided in Section 2.05(3) with respect to the expiration of Letters of Credit;

(ii) increase or extend the Commitment or ABL Term Loan Commitment of any Lender or decrease, waive or excuse the Commitment Fees or L/C Participation Fees or other fees of any Lender, Agent or Issuing Bank without the prior written consent of such Lender, Agent or Issuing Bank (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments or ABL Term Loan Commitments shall not constitute an increase of the Commitments or ABL Term Loan Commitments of any Lender);

(iii) extend any date on which payment of principal or interest on any Loan or any L/C Disbursement or any Fees is due, without the prior written consent of each Lender adversely affected thereby;

(iv) amend the provisions of Section 2.18 of this Agreement, Section 5.2 of the Collateral Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments, without the prior written consent of each Lender adversely affected thereby;

(v) change the definition of the term “Borrowing Base” or any component definition
thereof if as a result thereof the amounts available to be borrowed by the Borrower Parties would be increased, or increase any of
the percentages set forth in the definition of “Borrowing Base”, without the prior written consent of Lenders which would
constitute the Required Lenders if the percentage “50.0%” contained in the definition thereof were changed to “66-2/3%” (such
Lenders, the “Supermajority Lenders”); provided that the foregoing shall not limit the ability of the Administrative Agent to
implement, change or eliminate any Reserves in its Reasonable Credit Judgment as permitted hereunder without the prior written
consent of any Lenders;

(vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Supermajority Lenders”, “Required Lenders”,
or “Required Term Lenders”, as the case may be, or any other provision hereof specifying the number or percentage of
Supermajority Lenders, Required Lenders or Required Term Lenders, as the case may be, required to waive, amend or modify any
rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each applicable
Lender;

(vii) release a material portion of the Collateral (or subordinate the Liens in favor of the Administrative Agent on a material portion
of the Collateral), unless pursuant to a transaction permitted by this Agreement, or release any of Holdings, any Borrower Party or
any other Subsidiary Loan Party from their respective obligations as a Borrower Party or Subsidiary Loan Party under this
Agreement or from their respective Guarantees under the Collateral Agreement (as applicable), unless, in the case of a Subsidiary
Loan Party (other than the Borrower), all or substantially all the Equity Interests of such Subsidiary Loan Party are sold or
otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender;

(viii) increase the aggregate Revolving Facility Commitments, other than as provided in Section 2.21, without the prior written consent
of each Revolving Lender; or

(ix) at any time when there is outstanding more than one tranche of Loans, amend, modify or waive any provision of this Agreement
which adversely impacts one or more tranches in a manner different than that which applies to one or more other tranches, without
the consent of Lenders holding a majority of each tranche of such adversely affected Loans;

provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or an Issuing Bank
hereunder without the prior written consent of the Administrative Agent or such Issuing Bank acting as such at the effective date of such
agreement, as applicable.

Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender
pursuant to this Section 10.08 shall bind any assignee of such Lender.

(3) Without the consent of the Administrative Agent or any Lender or Issuing Bank, the Loan Parties and the Administrative Agent may (in their
respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan
Document,
or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(4) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.21, Refinancing Amendments in accordance with Section 2.22, Extension Amendments in accordance with Section 2.23, and such Incremental Facility Amendments, Refinancing Amendments and Extension Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.

(5) Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent to the extent necessary to integrate (a) any Incremental Commitments on substantially the same basis as the Revolving Loans or (b) any ABL Term Loans or ABL Term Loan Commitments, subject to the FILO Intercreditor Provisions and the express terms hereof as they relate to ABL Term Loans or ABL Term Loan Commitments and ABL Term Lenders.

(6) Notwithstanding the foregoing, no consent of any Defaulting Lender will be required other than with respect to any amendment or waiver set forth in clauses (a) through (c) of Section 10.08(2) that directly and adversely affects such Lender.

(7) Prior to the Discharge of ABL Revolving Claims, any amendment, modification, termination or waiver of or consent with respect to any provision of this Agreement solely affecting the ABL Term Lenders will be in writing and signed by the Administrative Agent and the Required Term Lenders. Prior to the Discharge of ABL Revolving Claims, it is understood that no ABL Term Lender will have any voting or consent rights under, or with respect to, any Loan Document other than as expressly provided herein.

(8) Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

(9) Notwithstanding the foregoing, the Borrower and any Issuing Bank may amend or modify such Issuing Bank’s Letter of Credit Commitment without the consent of the Required Lenders.

SECTION 10.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “Charges”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate;
provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission (e.g., “PDF” or “TIFF”) shall be as effective as delivery of a manually signed original.

SECTION 10.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15 Jurisdiction; Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United
States of America sitting in New York County, and any appellate court from any thereof (collectively, “New York Courts”), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(2)  Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16  Confidentiality.  Each of the Lenders, each Issuing Bank and each of the Agents agrees (and agrees to cause each of its respective Affiliates) to use all information provided to it by or on behalf of Holdings, the Borrower or its Restricted Subsidiaries under the Loan Documents or otherwise in connection with the Merger or the Original Transactions and the Recapitalization Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information (other than information that (1) has become generally available to the public other than as a result of a disclosure by such party; (2) has been independently developed by such Lender, such Issuing Bank or the Administrative Agent without violating this Section 10.16; or (3) was available to such Lender, such Issuing Bank or the Administrative Agent from a third party having, to such Person’s knowledge, no obligations of confidentiality to Holdings, the Borrower or any other Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Revolving Facility on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16), except:

(a)  to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(b)  as part of normal reporting or review procedures to, or examinations by, Governmental
Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure;

(c) to its parent companies, Affiliates or auditors (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(d) in order to enforce its rights under any Loan Document in a legal proceeding;

(e) to any pledgee or assignee under Section 10.04(5) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16); and

(f) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty’s professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16).

Notwithstanding the foregoing, no such information shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower’s prior written consent.

SECTION 10.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent or the Arrangers will make available to the Lenders and the Issuing Bank materials or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (2) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that:

(a) all the Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” shall appear prominently on the first page thereof;

(b) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and

(d) the Administrative Agent and the Arrangers shall be entitled to treat the Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”
SECTION 10.18 Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any of the Equity Interests or assets of any Loan Party (other than Equity Interests of a Borrower Party) to a Person that is not (and is not required to become) a Loan Party in a transaction not prohibited by Section 6.05, any Liens created by any Loan Document in respect of such Equity Interests or assets shall be automatically released and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower and at the Borrower’s expense in connection with the release of any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party (other than a Borrower Party) in a transaction permitted by Section 6.05 (including through merger, consolidation, amalgamation or otherwise) and as a result of which such Subsidiary Loan Party would cease to be a Restricted Subsidiary, such Subsidiary Loan Party’s obligations under this Agreement and the Collateral Agreement (as applicable) shall be automatically terminated and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower to terminate such Subsidiary Loan Party’s obligations under this Agreement and the Collateral Agreement (as applicable). In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrower and at the Borrower’s expense to terminate the Liens and security interests created by the Loan Documents when all the Obligations (other than Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are paid in full and all Commitments are terminated Letters of Credit expired, terminated or cash collateralized on terms satisfactory to the Issuing Bank.

SECTION 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 10.20 Security Documents and Intercreditor Agreements. (a) The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all Term Loan Claims (as defined in the Intercreditor Agreement), the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the Term Loan Priority Collateral in any manner that would result in a “Default” or “Event of Default” (as defined in any Term Loan Document) under the terms and provisions of the Term Loan Documents. Each Lender hereunder (i) consents to the subordination of Liens on Term Priority Collateral provided for in the Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (iii) authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement as ABL Agent (as defined in the Intercreditor Agreement) and on behalf of such Lender. The foregoing provisions are intended as an inducement to the lenders.
The parties hereto authorize the Administrative Agent to enter into any (w) the ABL/Term Loan/Notes Intercreditor Agreement in the form executed on the date hereof or in such other form as may be satisfactory to the Administrative Agent (x) the ABL Junior Lien Intercreditor Agreement in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent and (y) the PropCo Subordination Agreements in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent and (z) any other intercreditor agreement as may be contemplated herein or determined by the Administrative Agent to be consistent herewith, in such form as may be satisfactory to the Administrative Agent. The Administrative Agent may from time to time enter into a modification of the ABL/Term Loan/Notes Intercreditor Agreement, any ABL Junior Lien Intercreditor Agreement, the PropCo Subordination Agreements or any other intercreditor agreement, as the case may be, so long as the Administrative Agent reasonably determines that such modification is for the purpose of causing new or additional Indebtedness Obligations to become subject thereto, consistent with the terms of this Agreement.

Each Lender hereunder:

1. agrees to the terms of the ABL/Term Loan/Notes Intercreditor Agreement and the subordination of Guarantees provided for in the PropCo Subordination Agreements; and

2. agrees that it will be bound by and will take no actions contrary to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement or the PropCo Subordination Agreements.

The foregoing provisions of this Section 10.20 are intended as an inducement to the lenders under the ABL Credit Agreement to extend or continue to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the ABL/Term Loan/Notes Intercreditor Agreement or Junior Lien Intercreditor Agreement, as applicable.

SECTION 10.21 No Liability of the Issuing Banks. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither any Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower prove were caused by (i) such Issuing Bank’s willful misconduct or gross negligence as determined in a final, non-appealable judgment by a court of competent jurisdiction in determining whether documents presented under any Letter of Credit comply with the terms of the Letter of Credit or (ii) such Issuing Bank’s willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.
SECTION 10.22  No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of Holdings and the Borrower Parties acknowledges and agrees that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents and the Arrangers are arm's-length commercial transactions between Holdings and the Borrower Parties, on the one hand, and the Agents and the Arrangers, on the other hand, (b) the Borrower Parties and Holdings have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate, and (c) the Borrower Parties and Holdings are capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Borrower Party, Holdings, or any other Person and (b) neither any Agent nor any Arranger has any obligation to any Borrower Party, Holdings or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (3) the Agents, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower Parties, Holdings and their respective Affiliates, and neither any Agent nor any has any obligation to disclose any of such interests to the Borrower Parties, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each Borrower Party and Holdings hereby waives and releases any claims that it may have against the Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.23  Incorporation by Reference. The FILO Intercreditor Provisions are hereby incorporated by reference in this Agreement and apply to each ABL Term Lender, and to all ABL Term Loans at any time incurred or outstanding hereunder, as fully as if set forth herein in their entirety. Each ABL Term Lender, by extending ABL Term Loans or acquiring same by assignment, agrees to be bound by the FILO Intercreditor Provisions.

SECTION 10.24  Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(2) the effects of any Bail-In Action on any such liability, including, if applicable:

(a) a reduction in full or in part or cancellation of any such liability;

(b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 10.25  Reaffirmation and Ratification. Notwithstanding anything to the contrary contained herein, each Agent (on behalf of itself and the Lenders), each Lender (in its capacity as a Lender) and each Company Party (as defined in the TSA), and each Related Party of each of the foregoing, by accepting the benefits of this Agreement hereby ratifies and acknowledges the Recapitalization Transactions.

SECTION 10.26  Acknowledgment Regarding Any Supported QFCs. (1) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(2) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party"), becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(3) As used in this Section 10.26, the following terms have the following meanings:

(a) "BHC Act Affiliate" of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party;

(b) "Covered Entity" means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b),

(c) “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable,

(d) “QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. §390(c)(8)(D).

[Remainder of page intentionally left blank]
ANNEX B

Amended and Restated Schedules to Amended Credit Agreement

[See attached.]
EXISTING LETTERS OF CREDIT

None.
CO-BORROWERS

1. The Neiman Marcus Group LLC
2. NEMA Beverage Parent Corporation
3. NEMA Beverage Holding Corporation
4. NEMA Beverage Corporation
5. NMGP, LLC
6. Bergdorf Goodman Inc.
7. Worth Avenue Leasing Company
8. NM Financial Services, Inc.
9. NM Nevada Trust
11. The NMG Subsidiary LLC
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<td>Bank of America, N.A.</td>
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<td>JPMorgan Chase Bank, N.A.</td>
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</tr>
<tr>
<td>Wells Fargo Bank, N.A.</td>
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</tr>
<tr>
<td>Royal Bank of Canada</td>
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<tr>
<td>SunTrust Bank</td>
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<td>BMO Harris Bank N.A.</td>
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<td>Regions Bank</td>
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<td>Capital One, NA</td>
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<td>Citizens Bank, N.A.</td>
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<td>TD Bank, N.A.</td>
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<td>Siemens Financial Services, Inc.</td>
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<td>Webster Business Credit Corporation</td>
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<td><strong>Total:</strong></td>
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GOVERNMENTAL APPROVALS

None.
POSSESSION UNDER LEASES

None.
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TAXES

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ENVIRONMENTAL MATTERS

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<th>Location</th>
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<td>TNMG LLC</td>
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(1) This location is partially leased and owned.
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**2019 Term Loan Priority Real Estate Assets**

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<th>Location</th>
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**Notes Priority Real Estate Assets**

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### 2019 Term Loan Priority Real Estate Assets

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<td>Washington, D.C.</td>
<td>5300 Wisconsin Avenue Northwest Washington, DC 20015</td>
</tr>
<tr>
<td>TNMG LLC</td>
<td>Tampa, FL</td>
<td>2223 North West Shore Boulevard Tampa, Florida 33607</td>
</tr>
<tr>
<td>TNMG LLC</td>
<td>Dallas, TX (Downtown)</td>
<td>1622 Main Street Dallas, Texas 75201</td>
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<td></td>
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<td>1612 - 1616 Main Street Dallas, Texas 75201</td>
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<td></td>
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<td>1607 Commerce Street Dallas, Texas 75201</td>
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<td>1600 Commerce Street Dallas, Texas 75201</td>
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<tr>
<td>TNMG LLC</td>
<td>Dallas, TX (NorthPark)</td>
<td>400 NorthPark Center (a/k/a 8687 North Central Expressway) Dallas, Texas 75225</td>
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<tr>
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<td>2600 Post Oak Boulevard Houston, Texas 77056</td>
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<td>TNMG LLC</td>
<td>Bal Harbour, FL</td>
<td>9700 Collins Avenue Bal Harbour, Florida 33154</td>
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<td>601 Newport Center Drive Newport Beach, California 92660</td>
</tr>
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<td>(Westchester) White Plains, NY</td>
<td>2 East Maple Avenue White Plains, New York 10601</td>
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<tr>
<td>TNMG LLC</td>
<td>Chicago, IL</td>
<td>737 North Michigan Avenue Chicago, Illinois 60611</td>
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<tr>
<td>TNMG LLC</td>
<td>Boston, MA</td>
<td>5 Copley Place Chicago, Massachusetts 02116</td>
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<tr>
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<td>Palo Alto, CA</td>
<td>400 Stanford Shopping Center Palo Alto, California 94304</td>
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<tr>
<td>TNMG LLC</td>
<td>Short Hills, NJ</td>
<td>1200 Morris Turnpike Short Hills, New Jersey 07078</td>
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<td>Location</td>
<td>Address/City/State/Zip Code</td>
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<tr>
<td>TNMG LLC</td>
<td>Denver, CO</td>
<td>3030 East First Avenue Denver, Colorado 80206</td>
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<td>TNMG LLC</td>
<td>Scottsdale, AZ</td>
<td>6900 East Camelback Road Scottsdale, Arizona 85251</td>
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<td>170 North Gulph Road King of Prussia, Pennsylvania 19406</td>
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<td>151 Worth Avenue Palm Beach, Florida 33480</td>
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<td>503 Garden State Plaza Paramus, New Jersey 07652</td>
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<td>5860 Glades Road Boca Raton, Florida 33431</td>
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<td>New York, New York (Bergdorf Goodman Men's)</td>
<td>745 Fifth Avenue New York, New York 10151</td>
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<td>TNMG LLC</td>
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<td>5200 Monahans Avenue Fort Worth, Texas 76109</td>
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<td>TNMG LLC</td>
<td>Bellevue, WA</td>
<td>11111 Northeast 8th Street Bellevue, Washington 98004</td>
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<td>TNMG LLC</td>
<td>Garden City, NY</td>
<td>620 Old Country Road Garden City, New York 11530</td>
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<td>TNMG LLC</td>
<td>Dallas, TX</td>
<td>4121 Pinnacle Point Drive Dallas, Texas 75211</td>
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<td>TNMG LLC</td>
<td>Atlanta, GA</td>
<td>3393 Peachtree Road Northeast Atlanta, Georgia 30326</td>
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<td>TNMG LLC</td>
<td>St. Louis, MO</td>
<td>100 Plaza Frontenac Street St. Louis, Missouri 63131</td>
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<td>TNMG LLC</td>
<td>Northbrook, IL</td>
<td>5000 Northbrook Court Northbrook, Illinois 60062</td>
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<tr>
<td>NM Nevada Trust</td>
<td>Las Vegas, NV</td>
<td>3200 Las Vegas Boulevard South Las Vegas, Nevada 89109</td>
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<td>Location</td>
<td>Address/City/State/Zip Code</td>
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<tr>
<td>TNMG LLC</td>
<td>San Diego, CA</td>
<td>7027 Friars Road San Diego, California 92108</td>
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<td></td>
<td>Oakbrook, IL</td>
<td>6 Oakbrook Center Oak Brook, Illinois 60523</td>
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<tr>
<td>TNMG LLC</td>
<td>New York, NY</td>
<td>754 Fifth Avenue New York, New York 10019</td>
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<td>(Bergdorf Goodman Women's)</td>
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<td>TNMG LLC</td>
<td>New York (Hudson Yards), NY</td>
<td>20 Hudson Yards New York, New York 10001</td>
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<td>TNMG LLC</td>
<td>Pittston, PA</td>
<td>450 Centerpoint Blvd. Pittston, Pennsylvania 18640</td>
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<th>Loan Party</th>
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<td>(Topanga Plaza)</td>
<td>6550 Topanga Canyon Boulevard Woodland Hills, California 91303</td>
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<td>Canoga Park, CA</td>
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<tr>
<td>TNMG LLC</td>
<td>Walnut Creek, CA</td>
<td>1275 Broadway Plaza Walnut Creek, California 94596</td>
</tr>
<tr>
<td>Loan Party</td>
<td>Location</td>
<td>Address/City/State/Zip Code</td>
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<td>-------------------------------------------------</td>
</tr>
</tbody>
</table>
| TNMG LLC     | Fort Lauderdale, FL | 2442 East Sunrise Boulevard  
              |                               Fort Lauderdale, Florida 33304          |
| TNMG LLC     | Troy, MI         | 2705 W. Big Beaver Road  
              |                               Troy, Michigan 48084                             |
| TNMG LLC     | Charlotte, NC    | 4400 Sharon Road  
              |                               Charlotte, North Carolina 28211                              |
| TNMG LLC     | Austin, TX       | 3400 Palm Way  
              |                               Austin, Texas 78758                                          |
| TNMG LLC     | Coral Gables, FL | 390 San Lorenzo Avenue  
              |                               Coral Gables, Florida 33146                                      |
INSURANCE

On file with the Administrative Agent.
INTELLECTUAL PROPERTY

None.
1. Within 90 days of the Fourth Amendment Effective Date (or such later date as mutually agreed by the Borrower and the Administrative Agent), cause Nancy Holdings LLC to (i) merge or consolidate with TNMG LLC and (ii) terminate any intercompany lease agreements or licenses between Nancy Holdings LLC and TNMG LLC; provided that the certificate of merger filed with the Secretary of State of the State of Delaware evidencing such merger or consolidation shall be deemed to satisfy this subclause (ii) ((i) and (ii) collectively, the "Nancy Merger").

2. Within 90 days of the Fourth Amendment Effective Date (or such later date as mutually agreed by the Borrower and the Administrative Agent), the Borrower or its applicable Subsidiaries shall (i) cause the 2019 Term Loan Priority Real Estate Assets and the Notes Priority Real Estate Assets to be subjected to a customary mortgage or deed of trust securing the Obligations (in each case, having the Required Collateral Lien Priority), (ii) to the extent that any 2019 Term Loan Priority Real Estate Assets or any Notes Priority Real Estate Assets is a 2019 Extended Term Loan PropCo Asset or a Notes PropCo Asset, respectively, contribute, assign, or transfer (a) such 2019 Extended Term Loan PropCo Asset to 2019 Extended Term Loan PropCo and (b) such Note PropCo Asset to Notes PropCo, (iii) amend the mortgages granted under the Existing Credit Agreement and existing immediately prior to the Amendment No. 2 Effective Date on Real Property owned in fee simple by TNMG LLC, as necessary to secure the Obligations with the Required Collateral Lien Priority and (iv) cause each Real Property owned by Nancy Holdings LLC in fee simple immediately prior to the consummation of the Nancy Merger and owned in fee simple by TNMG LLC immediately following the consummation of the Nancy Merger to be subjected to a customary mortgage or deed of trust securing the Obligations, in each case having the Required Collateral Lien Priority and, in connection with each of the foregoing clauses (i) through (iv), to and take all actions referred to under Section 5.10(2)(d) (provided that the Administrative Agent shall use reasonable discretion with respect to requesting any such actions under clause (d)), (e) (provided that, for purposes of the foregoing clauses (i) through (iv), whether such action under clause (e) is necessary shall be mutually agreed with the Loan Parties), (f), (g), and (h), as applicable and to the extent such actions have not been taken prior to the Amendment No. 2 Effective Date.

3. Within 10 Business Days of the Fourth Amendment Effective Date (or such later date as determined by the Collateral Agent), the Collateral Agent shall file (and each Grantor (as defined in the Collateral Agreement) hereby authorizes the Collateral Agent to file) with the United States Copyright Office (or any successor office) a copyright security agreement for the purpose of perfecting, continuing, enforcing or protecting the Security Interest (as defined in the Collateral Agreement) granted by each Grantor (as defined in the Collateral Agreement) in the Intellectual Property (as defined in the Collateral Agreement) listed as items #89-95 on Exhibit B to the Perfection Certificate.
1. The Neiman Marcus Group LLC owns 170,000 Units of Fashionphile Group, LLC, a Delaware limited liability company (13.655% as of 5/17/19)
TRANSACTIONS WITH AFFILIATES

1. NM Nevada Trust is a Massachusetts business trust established on December 30, 1996. The trustee is NM Financial Services, Inc. NM Nevada Trust is owned by the Company (90%) and Bergdorf Goodman Inc. (10%) and was established for the purpose of holding the consolidated group’s intangible assets, such as the trademarks and trade names. Inter-company agreements and notes are in place establishing the royalty charges and related interest to The Neiman Marcus Group LLC and Bergdorf Goodman Inc.

2. NMGP, LLC is a Virginia limited liability company established on April 21, 2003. It is a wholly owned subsidiary of the Company, and was established for the purpose of holding and managing the gift card liabilities of the Company and Bergdorf Goodman Inc. Inter-company agreements are in place for the services provided between NMGP, LLC and the Company.
NOTICE INFORMATION

If to any Loan Party:

One Marcus Square 1618 Main Street
Dallas, Texas 75201 Attention: General Counsel Facsimile No: (214) 743-7611
Website: www.neimanmarcusgroup.com

If to the Administrative Agent or Collateral Agent:

Deutsche Bank AG New York Branch
60 Wall Street
New York, NY 10005
Attention: Frank Fazio, Stephen Lapidus, Marguerite Sutton
Facsimile No.: 212-797-5690
Email: frank.fazio@db.com, stephen.r.lapidus@db.com, marguerite.sutton@db.com
ANNEX C
Amended and Restated Exhibits to Amended Credit Agreement
[See attached.]
This Assignment and Acceptance (this "Assignment and Acceptance") is dated as of the Effective Date set forth below and is entered into by and between [the][each][1] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each][2] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees][3] hereunder are several and not joint.](4) Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and the other Loan Documents to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other Loan Documents or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by [the][any] Assignor.

(1) For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.
(2) For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.
(3) Select as appropriate.
(4) Include bracketed language if there are either multiple Assignors or multiple Assignees.
**Assignor[s]:**

**Assignee[s]:**

Borrower: NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company

Administrative Agent: Deutsche Bank AG New York Branch, as the administrative agent under the Credit Agreement.

**Credit Agreement:** Revolving Credit Agreement dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed and/or otherwise modified and in effect from time to time), by and among the Borrower, the Co-Borrowers party thereto, MARIPOSA INTERMEDIATE HOLDINGS LLC, the Lenders party thereto and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and Collateral Agent.

**Assigned Interest[s]:**

<table>
<thead>
<tr>
<th>Assignor<a href="5">s</a></th>
<th>Assignee<a href="6">s</a></th>
<th>Facility Assigned(7)</th>
<th>Amount of Assignor’s Commitment / Loans(8)</th>
<th>Amount of Assignee’s Commitment / Loans Assigned(9)</th>
<th>Percentage of Assignor’s Commitment / Loans Assigned(10)</th>
<th>Resulting Commitment / Loans Amount for Assignor</th>
<th>Resulting Commitment / Loans Amount for Assignee</th>
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[7.  Trade Date: ](11)

(5) List each Assignor, as appropriate.
(6) List each Assignee, as appropriate.
(7) Fill in appropriate terminology for each applicable type of facility under the Credit Agreement that is being assigned under this Assignment, i.e., Revolving Facility Commitments.
(8) Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
(9) Subject to minimum amount requirements pursuant to Section 10.04(2) of the Credit Agreement.
(10) Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
(11) To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

2
The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: ____________________________
Name: __________________________
Title: __________________________

ASSIGNEE
[NAME OF ASSIGNEE]

By: ____________________________
Name: __________________________
Title: __________________________
Consented to and Accepted:

DEUTSCHE BANK AG NEW YORK BRANCH
as Administrative Agent[,] [and] Collateral Agent[, Swingline Lender and
Issuing Bank]

By:                                                                                      
Name:                                                                                      
Title:                                                                                      

By:                                                                                      
Name:                                                                                      
Title:                                                                                      

[ ], as Issuing Bank

By:                                                                                      
Name:                                                                                      
Title:                                                                                      

[ ], as Swingline Lender

By:                                                                                      
Name:                                                                                      
Title:                                                                                      

[Consented to:](12)

NEIMAN MARCUS GROUP LTD LLC, as Borrower

By:                                                                                      
Name:                                                                                      
Title:                                                                                      

(12) To the extent required under Section 10.04(2) of the Credit Agreement.
ANNEX 1 TO ASSIGNMENT AND ACCEPTANCE

Reference is made to the Revolving Credit Agreement dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed and/or otherwise modified from time to time, the “Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto, the Lenders party thereto from time to time, and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and Collateral Agent.

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ACCEPTANCE

1. Representations and Warranties.

1.1 Assignor. [The] Each Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the] [the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Loan Parties or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Loan Parties or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. [The] Each Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee under the Credit Agreement (subject to such consents, if any, as may be required under Section 10.04(2)(b) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.04 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent, Collateral Agent, or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to
the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, the Collateral Agent, [the][any] Assignor 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 decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued up to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. **General Provisions.** This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be construed in accordance with and governed by the laws of the State of New York.

4. **Fees.** This Assignment and Acceptance shall be delivered to the Administrative Agent with a processing and recordation fee of $3,500.00.

5. **Administrative Questionnaire.** If the Assignee is not a Lender, annexed hereto as Exhibit A is a completed administrative questionnaire, in form and substance satisfactory to the Administrative Agent, providing such information (including credit contact information and wiring instructions) of the Assignee as the Administrative Agent may reasonably require.
Exhibit A

Administrative Questionnaire

[provided by Administrative Agent]
[FORM OF]
BORROWING BASE CERTIFICATE

[DATE]

The undersigned hereby certifies that pursuant to, and in accordance with, the terms and provisions of that certain Revolving Credit Agreement dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed and/or otherwise modified from time to time, the "Credit Agreement"), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto, the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as the Administrative Agent and Collateral Agent, the Borrower is executing and delivering to the Administrative Agent this Borrowing Base Certificate accompanied by such supporting data as the Administrative Agent has requested in accordance with the terms of the Credit Agreement (collectively referred to as the "Certificate"). Capitalized terms used herein and not otherwise defined herein have the meanings specified in the Credit Agreement. The Borrower represents and warrants to the Administrative Agent that (i) this Certificate is true and correct in all material respects, (ii) this Certificate is based on information contained in the Borrower’s own financial accounting records and (iii) the amounts set forth in this Certificate are determined in accordance with the Credit Agreement.

NEIMAN MARCUS GROUP LTD LLC

Responsible Officer:

Name:
Title:

[Attachment]
This Solvency Certificate is being delivered to you pursuant to (i) the Second Amendment to the Term Loan Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed and/or otherwise modified from time to time, the “Term Loan Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company, THE NMG SUBSIDIARY LLC, a Delaware limited liability company, the Lenders party thereto from time to time, and Credit Suisse AG, as Administrative Agent and Collateral Agent and (ii) the Fourth Amendment to Revolving Credit Agreement, dated as of June 7, 2019, which amends and restates that certain Revolving Credit Agreement, dated as of October 25, 2013 (as amended, amended and restated, supplemented, extended, renewed and/or otherwise modified from time to time, the “ABL Credit Agreement” and, together with the Term Loan Credit Agreement, the “Credit Agreements”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, the Co-Borrowers party thereto, the Lenders party thereto from time to time, and Deutsche Bank AG New York Branch, as Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the applicable Credit Agreement.

As of the date hereof, after giving effect to the consummation of the Recapitalization Transactions, on the date hereof:

(1) The fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;

(2) The present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured;

(3) The Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and

(4) The Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.
For purposes of this Solvency Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

[Signature Page Follows]
IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate on the date first written above.

NEIMAN MARCUS GROUP LTD LLC

By:

Name:
Title:

[Signature Page to ABL Solvency Certificate]
Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed, waived and/or otherwise modified from time to time, the “ABL Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto, the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as the Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the ABL Credit Agreement.

The undersigned hereby gives you notice pursuant to Section 2.03 of the ABL Credit Agreement that it, on behalf of the Borrowing Parties, requests a Borrowing under the ABL Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

Date of Borrowing

_(which shall be a Business Day)_

Principal Amount of Borrowing

_Type of Borrowing (13)_

Interest Period and the last day thereof (14) _

_(in the case of a Eurocurrency Revolving Facility Borrowing)_

Name of Borrowing Party

_Account Number and Location_

(13) Specify an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing.
(14) The initial Interest Period applicable to a Eurocurrency Revolving Facility Borrowing shall be subject to the definition of “Interest Period”.

__________________________

__________________________

__________________________
By: 

Name: 
Title: 

[Signature Page to ABL Borrowing Request]
[FORM OF]
SWINGLINE BORROWING REQUEST

To: Deutsche Bank AG New York Branch,
as Administrative Agent
   for the Lenders referred to below

To: Deutsche Bank AG New York Branch.,
as Swingline Lender

Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed waived and/or otherwise modified from time to time, the “ABL Credit Agreement”), by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto, the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as the Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the ABL Credit Agreement.

The undersigned hereby gives you notice pursuant to Section 2.04 of the ABL Credit Agreement that the Borrower requests, on behalf of the Borrower Parties, a Swingline Borrowing under the ABL Credit Agreement, and in that connection sets forth below the terms on which such Swingline Borrowing is requested to be made:

Date of Borrowing
(which shall be a Business Day)

Principal Amount of Swingline Borrowing(16)

Name of Borrowing Party

Account Number and Location

(15) To request a Swingline Borrowing, the Borrower shall notify the Administrative Agent and Swingline Lender by telephone (confirmed by a Swingline Borrowing Request by email or facsimile), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Borrowing.

(16) Swingline Borrowing shall be in an amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum as indicated in Section 2.02(3) of the ABL Credit Agreement.
NEIMAN MARCUS GROUP LTD LLC

By:

Name:

Title:
Deutsche Bank AG New York Branch, as Administrative Agent, under the ABL Credit Agreement, dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed, waived and/or otherwise modified from time to time, the “ABL Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers from time to time party thereto, the Lenders from time to time party thereto and Deutsche Bank AG New York Branch, as Administrative Agent and Collateral Agent.

Standby Letter of Credit Unit
Deutsche Bank AG New York Branch
60 Wall Street
New York, New York 10005
Tel.: (212) 250-1214
Fax: (212) 797-0403

Ladies and Gentlemen:

Pursuant to Section 2.05 of the ABL Credit Agreement, the undersigned hereby requests that the Issuing Lender referred to above issue a [Trade] [Standby] Letter of Credit for

(17) Date of Letter of Credit Request.

(18) Insert name and address of Issuing Bank. For Letters of Credit issued by Deutsche Bank AG New York Branch insert: Standby Letter of Credit Unit, Deutsche Bank AG New York Branch, 60 Wall Street, New York, NY 10005. For Letters of Credit issued by another Issuing Bank, insert the correct notice information for that Issuing Bank.
the account of the undersigned on (19) (the “Date of Issuance”) which Letter of Credit shall be denominated in Dollars and shall be in the aggregate stated amount of (20).

For purposes of this Letter of Credit Request, unless otherwise defined herein, all capitalized terms used herein which are defined in the ABL Credit Agreement shall have the respective meaning provided therein.

The beneficiary of the requested Letter of Credit will be (21), and such Letter of Credit [will be in support of (22) and] will have a stated expiration date of (23).

We hereby certify that:

(A) all representations and warranties set forth in the Loan Documents shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects), as applicable, with the same effect as though made on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date);

(B) no Default or Event of Default has occurred and is continuing nor, after giving effect to the issuance of the Letter of Credit requested hereby, would such a Default or Event of Default result therefrom;

(C) after giving effect to the [issuance][amendment][extension] requested hereby, the Revolving Facility Credit Exposure (i) will not exceed the Letter of Credit Sublimit; and (ii) will not exceed the Line Cap.

(19) Date of issuance which shall be a Business Day that is at least three (3) Business Days after the date hereof (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree).

(20) Aggregate initial stated amount of the Letter of Credit.

(21) Insert name and address of beneficiary.

(22) Insert a description of the obligations of the Borrower Party or other Subsidiary Loan Party (in the case of Standby Letters of Credit) or trade obligations of the Borrower Party or other Subsidiary Loan Party (in the case of Trade Letters of Credit).

(23) Insert the last date upon which drafts may be presented which may not be later than (i) in the case of Standby Letters of Credit, earlier of (x) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of issuance of such Standby Letter of Credit (or, in the case of any extension thereof, one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such renewal or extension) and (y) the date that is five Business Days prior to the Maturity Date and (ii) in the case of Trade Letters of Credit, the earlier of (x) 180 days after such Trade Letter of Credit’s date of issuance or (y) the date that is five Business Days prior to the Maturity Date.
Copies of all material documentation with respect to the supported transaction are attached hereto.

NEIMAN MARCUS GROUP LTD LLC, as agent for [NAME OF APPLICABLE BORROWER]

By:

Name: ________________________________
Title: ________________________________
To: Deutsche Bank AG New York Branch,  
as Administrative Agent  
for the Lenders referred to below

Ladies and Gentlemen:

Reference is made to the Revolving Credit Agreement dated as of October 25, 2013 (as amended, restated, supplemented, extended, renewed, waived and/or otherwise modified from time to time, the “ABL Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto, the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as the Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein have the meanings specified in the ABL Credit Agreement.

This notice constitutes a notice of conversion or notice of continuation, as applicable, under Section 2.07 of the ABL Credit Agreement, and Borrower, on behalf of the Borrower Parties, hereby irrevocably notifies the Administrative Agent of the following information with respect to the conversion or continuation requested hereby:

a. The Borrowing to which this Interest Election Request applies is [-](25);

b. The effective date of the election (which shall be a Business Day) made pursuant to this Interest Election Request is [-], 20[-];

c. The resulting Borrowing is to be [an ABR Borrowing][a Eurocurrency Revolving Facility Borrowing][; and]

d. The Interest Period applicable to the resulting Borrowing after giving effect to such election is [-](26).

(24) Administrative Agent must be notified as indicated in Section 2.07 of the ABL Credit Agreement in the case of an election to convert to or continue a Eurocurrency Revolving Facility Borrowing election, not later than 2:00 p.m. New York City time, three Business Days before the effective date of such election or, in the case of an election to convert to or continue an ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day before the effective date of such election.

(25) If different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information specified pursuant to (d) below shall be specified for each resulting Borrowing).
(26) Include this clause (d) if the resulting Borrowing is a Eurocurrency Revolving Facility Borrowing. Such Interest Period shall be a period contemplated by clause (1) of the definition of the term “Interest Period” as set forth in the ABL Credit Agreement. In the case of a Eurocurrency Revolving Facility Borrowing that does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.
This JOINDER AGREEMENT, dated as of , 20   (this “Joinder”), is delivered pursuant to the Revolving Credit Agreement dated as of October 25, 2013 (as the same may from time to time be amended, restated, supplemented, extended, renewed and/or otherwise modified from time to time, the “ABL Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto, the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as the Administrative Agent and Collateral Agent. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the ABL Credit Agreement.

1. Joinder in the ABL Credit Agreement. The undersigned hereby agrees that on and after the date hereof, it shall be a “Co-Borrower” under Section 5.12 of the ABL Credit Agreement, hereby assumes and agrees to perform all of the obligations of a Co-Borrower thereunder and agrees that it shall comply with and be fully bound by the terms of the ABL Credit Agreement as if it had been a signatory thereto as of the date thereof as a Co-Borrower.

2. Unconditional Joinder. The undersigned acknowledges that the undersigned’s obligations as a party to this Joinder are unconditional and are not subject to the execution of one or more Joinders by other parties. The undersigned further agrees that it has joined and is fully obligated as a Co-Borrower under the ABL Credit Agreement.

3. Incorporation by Reference. All terms and conditions of the ABL Credit Agreement are hereby incorporated by reference in this Joinder as if set forth in full.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

[ ]

By: 
Name: 
Title: 
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of October 25, 2013 by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto from time to time, the Lenders party thereto from time to time and Deutsche Bank AG New York Branch, as the Administrative Agent (as the same may be modified, extended, renewed, amended or restated from time to time, the “Credit Agreement”).

Pursuant to the provisions of Section 2.17(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Term Loan(s) (as well as any Note(s) evidencing such Term Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By:

Name:

Title:

Date: , 20[ ]
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of October 25, 2013 by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto from time to time, the Lenders party thereto from time to time and Deutsche Bank AG New York Branch, as the Administrative Agent (as the same may be modified, extended, renewed, amended or restated from time to time, the “Credit Agreement”).

Pursuant to the provisions of Section 2.17(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: ____________________________________________

Name: 

Title: 

Date: , 20[ ]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of October 25, 2013 by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto from time to time, the Lenders party thereto from time to time and Deutsche Bank AG New York Branch, as the Administrative Agent (as the same may be modified, amended or restated from time to time, the “Credit Agreement”).

Pursuant to the provisions of Section 2.17(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By:

Name:
Title:

Date: , 20[ ]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Credit Agreement dated as of October 25, 2013 by and among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, as the Borrower, the Co-Borrowers party thereto from time to time, the Lenders party thereto from time to time and Deutsche Bank AG New York Branch, as the Administrative Agent (as the same may be modified, amended or restated from time to time, the “Credit Agreement”).

Pursuant to the provisions of Section 2.17(5)(b) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Term Loan(s) (as well as any Note(s) evidencing such Term Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Term Loan(s) (as well as any Note(s) evidencing such Term Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.
FORM OF ABL JUNIOR LIEN INTERCREDITOR AGREEMENT

[attached]
JUNIOR LIEN INTERCREDITOR AGREEMENT

Dated as of [   ], 20[   ]

among

DEUTSCHE BANK AG NEW YORK BRANCH,
as the Initial First Lien Representative and Initial First Lien Collateral Agent for the Initial First Lien Secured Parties,

[            ],
as the Initial Second Lien Representative,

[            ],
as the Initial Second Lien Collateral Agent

and

each additional Representative and Collateral Agent from time to time party hereto

and acknowledged and agreed to by

NEIMAN MARCUS GROUP LTD LLC,
as the Company and the other
Grantors referred to herein
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EXHIBITS

Exhibit I - Joinder Agreement (Additional Second Lien Debt)
Exhibit II - Joinder Agreement (Additional First Lien Debt)
Exhibit III - Additional Debt Designation
SECOND LIEN INTERCREDITOR AGREEMENT dated as of [ ], 20[] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), among DEUTSCHE BANK AG NEW YORK BRANCH, as administrative agent for the Initial First Lien Secured Parties (in such capacity and together with its successors in such capacity, and together with any Replacement First Lien Representative, the “Initial First Lien Representative”) and collateral agent for the Initial First Lien Secured Parties (in such capacity and together with its successors and in such capacity, and together with any Replacement First Lien Collateral Agent, the “Initial First Lien Collateral Agent”), [INSERT NAME], as [INSERT CAPACITY] for the Initial Second Lien Secured Parties (in such capacity and together with its successors in such capacity, the “Initial Second Lien Representative”), [INSERT NAME], as collateral agent for the Initial Second Lien Secured Parties (in such capacity and together with its successors in such capacity, the “Initial Second Lien Collateral Agent”) and each additional First Lien Representative, First Lien Collateral Agent, Second Lien Representative and Second Lien Collateral Agent that from time to time becomes a party hereto pursuant to Section 8.7, and acknowledged and agreed to by NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Company”), and the other Grantors referred to below. Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below.

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Initial First Lien Representative (for itself and on behalf of the Initial First Lien Secured Parties), the Initial First Lien Collateral Agent (for itself and on behalf of the Initial First Lien Secured Parties), the Initial Second Lien Representative (for itself and on behalf of the Initial Second Lien Secured Parties), the Initial Second Lien Collateral Agent (for itself and on behalf of the Initial Second Lien Secured Parties), each additional First Lien Representative (for itself and on behalf of the Additional First Lien Secured Parties represented by it), each additional First Lien Collateral Agent (for itself and on behalf of the Additional First Lien Secured Parties represented by it), each additional Second Lien Representative (for itself and on behalf of the Additional Second Lien Secured Parties represented by it) and each additional Second Lien Collateral Agent (for itself and on behalf of the Additional Second Lien Secured Parties represented by it), intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“ABL/Term Loan/Notes Intercreditor Agreement” means that certain Intercreditor Agreement, dated as of June 7, 2019, by and among the Initial First Lien Collateral Agent, the Initial First Lien Representative, Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent for the Initial Term Loan Credit Agreement (as described therein), the Company and the other Grantors parties thereto.
“Additional Collateral Agent” means an Additional First Lien Collateral Agent and/or an Additional Second Lien Collateral Agent, as the context may require.

“Additional Debt” has the meaning set forth in Section 8.7.

“Additional First Lien Collateral Agent” has the meaning set forth in the definition of “First Lien Collateral Agent”.

“Additional First Lien Debt” means any Indebtedness and guarantees thereof that is incurred, issued or guaranteed by the Company and/or any other Grantor (other than the Initial First Lien Debt) which Indebtedness and guarantees are secured by the First Lien Collateral on a basis senior to the Second Lien Obligations; provided, however, that with respect to any such Indebtedness incurred after the date hereof (i) such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each First Lien Document and Second Lien Document, (ii) unless already a party with respect to that Series of Additional First Lien Debt, each of the First Lien Representative and the First Lien Collateral Agent for the holders of such Indebtedness shall have become party to (A) this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.7 and (B) the First Lien Pari Passu Intercreditor Agreement pursuant to, and by satisfying, the conditions set forth therein; provided, further, that, if such Indebtedness will be the initial Additional First Lien Debt incurred by the Company or any other Grantor after the date hereof, then the Grantors, the Initial First Lien Representative, the Initial First Lien Collateral Agent, the First Lien Representative for such Indebtedness and the First Lien Collateral Agent for such Indebtedness shall have executed and delivered the First Lien Pari Passu Intercreditor Agreement and (iii) each of the other requirements of Section 8.7 shall have been complied with. The requirements of clause (i) of Section 8.7(e) shall be tested only as of (x) the date of execution of such Joinder Agreement, if pursuant to a commitment entered into at the time of such Joinder Agreement, and (y) with respect to any later commitment or amendment to those terms to permit such Indebtedness, as of the date of such commitment and/or amendment. Additional First Lien Debt shall include any Registered Equivalent Notes and guarantees thereof by the Grantors issued in exchange therefor. For avoidance of doubt, Indebtedness under a Replacement First Lien Credit Agreement shall not constitute Additional First Lien Debt.

“Additional First Lien Documents” means, with respect to any Series of Additional First Lien Debt, the loan agreements, promissory notes, indentures and other operative agreements evidencing or governing such Indebtedness, any document governing reimbursement obligations in respect of letters of credit issued pursuant to any Additional First Lien Documents and the First Lien Collateral Documents securing such Series of Additional First Lien Debt.

“Additional First Lien Obligations” means, with respect to any Series of Additional First Lien Debt, (a) principal, interest (including any Post-Petition Interest), premium (if any), penalties, fees, expenses (including fees, expenses and disbursements of agents, professional advisors and legal counsel), indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts, in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding, payable with respect to such Additional First Lien Debt, (b) all other amounts payable to the related Additional First Lien Secured Parties
under the related Additional First Lien Documents (other than in respect of any Indebtedness not constituting Additional First Lien Debt), (c) any Hedging Obligations and Bank Product Obligations secured under the First Lien Collateral Documents securing such Series of Additional First Lien Debt and (d) any renewals or extensions of the foregoing.

“Additional First Lien Representative” has the meaning set forth in the definition of “First Lien Representative”.

“Additional First Lien Secured Parties” means, with respect to any Series of Additional First Lien Debt, the holders of such Indebtedness, the First Lien Representative with respect thereto, the First Lien Collateral Agent with respect thereto, any trustee or agent therefor under any related Additional First Lien Documents and the beneficiaries of each indemnification obligation undertaken by the Company or any other Grantor under any related Additional First Lien Documents and the holders of any other Additional First Lien Obligations secured by the First Lien Collateral Documents for such Series of Additional First Lien Debt.

“Additional Obligations” means the Additional First Lien Obligations and the Additional Second Lien Obligations.

“Additional Representative” means an Additional First Lien Representative and/or an Additional Second Lien Representative, as the context may require.

“Additional Second Lien Collateral Agent” has the meaning set forth in the definition of “Second Lien Collateral Agent.”

“Additional Second Lien Debt” means any Indebtedness and guarantees thereof that is incurred, issued or guaranteed by the Company and/or any Grantor (other than the Initial Second Lien Debt) which Indebtedness and guarantees are secured by the Second Lien Collateral (or a portion thereof) on a basis junior to the First Lien Obligations; provided, however, that with respect to any such Indebtedness incurred after the date hereof (i) such Indebtedness is permitted to be incurred, secured and guaranteed on such basis by each First Lien Document and Second Lien Document; (ii) unless already a party with respect to that Series of Additional Second Lien Debt, each of the Second Lien Representative and the Second Lien Collateral Agent for the holders of such Indebtedness shall have become party to (A) this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.7 and (B) the Second Lien Pari Passu Intercreditor Agreement pursuant to, and by satisfying, the conditions set forth therein; provided, further, that, if such Indebtedness will be the initial Additional Second Lien Debt incurred by the Company or any other Grantor after the date hereof, then the Grantors, the Initial Second Lien Representative, the Initial Second Lien Collateral Agent, the Second Lien Representative for such Indebtedness and the Second Lien Collateral Agent for such Indebtedness shall have executed and delivered the Second Lien Pari Passu Intercreditor Agreement and (iii) each of the other requirements of Section 8.7 shall have been complied with. The requirements of clause (i) shall be tested only as of (x) the date of execution of such Joinder Agreement, if pursuant to a commitment entered into at the time of such Joinder Agreement, if pursuant to a commitment entered into at the time of such Joinder Agreement, if (y) with respect to any later commitment or amendment to those terms to permit such Indebtedness, as of the date of such commitment and/or amendment. Additional Second Lien Debt shall include anyRegistered Equivalent Notes and guarantees thereof by the Grantors issued in exchange therefor.
“Additional Second Lien Documents” means, with respect to any Series of Additional Second Lien Debt, the loan agreements, promissory notes, indentures and other operative agreements evidencing or governing such Indebtedness, any document governing reimbursement obligations in respect of letters of credit issued pursuant to any Additional Second Lien Documents and the Second Lien Collateral Documents securing such Series of Additional Second Lien Debt.

“Additional Second Lien Obligations” means, with respect to any Series of Additional Second Lien Debt, (a) principal, interest (including any Post-Petition Interest), premium (if any), penalties, fees, expenses (including fees, expenses and disbursements of agents, professional advisors and legal counsel), indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts, in each case whether or not allowed or allowable in an Insolvency or Liquidation Proceeding, payable with respect to such Additional Second Lien Debt, (b) all other amounts payable to the related Additional Second Lien Secured Parties under the related Additional Second Lien Documents (other than in respect of any Indebtedness not constituting Additional Second Lien Debt), (c) subject to Section 5.7, any Hedging Obligations and Bank Product Obligations secured under the Second Lien Collateral Documents securing such Series of Additional Second Lien Debt and (d) any renewals or extensions of the foregoing.

“Additional Second Lien Representative” has the meaning set forth in the definition of “Second Lien Representative”.

“Additional Second Lien Secured Parties” means, with respect to any Series of Additional Second Lien Debt, the holders of such Indebtedness, the Second Lien Representative with respect thereto, the Second Lien Collateral Agent with respect thereto, any trustee or agent therefor under any related Additional Second Lien Documents and the beneficiaries of each indemnification obligation undertaken by the Company or any other Grantor under any related Additional Second Lien Documents and the holders of any other Additional Second Lien Obligations secured by the Second Lien Collateral Documents for such Series of Additional Second Lien Debt.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person or is a director or officer of such Person.

“Bank Product Obligations” means, all obligations and liabilities (whether direct or indirect, absolute or contingent, due or to become due or now existing or hereafter incurred) of the Company or any other Grantor, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, which may arise under, out of, or in connection with any treasury, investment, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, clearing house, wire transfer, cash management or automated clearing house transfers of funds services or any related services, to any Person permitted to be a secured party in respect of such obligations under the applicable First Lien Documents or Second Lien Documents.
“Bankruptcy Case” means a case under the Bankruptcy Code or any other Bankruptcy Law.


“Bankruptcy Law” means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“Collateral” means, at any time, all assets and property of any Grantor in which the holders of First Lien Obligations under at least one Series of First Lien Obligations and the holders of Second Lien Obligations under at least one Series of Second Lien Obligations (or their Collateral Agents or Representatives) hold, or purport to hold, a security interest at such time (or, in the case of the First Lien Obligations, are deemed pursuant to Article 2 to hold a security interest). If, at any time, any portion of the First Lien Collateral under one or more Series of First Lien Obligations does not constitute Second Lien Collateral under one or more Series of Second Lien Obligations, then such portion of such First Lien Collateral shall constitute Collateral only with respect to the Second Lien Obligations for which it constitutes Second Lien Collateral and shall not constitute Collateral for any Second Lien Obligations which do not have a security interest in such Collateral at such time.

“Collateral Agent” means any First Lien Collateral Agent and/or any Second Lien Collateral Agent, as the context may require.

“Collateral Documents” means the First Lien Collateral Documents and the Second Lien Collateral Documents.

“Company” has the meaning set forth in the Preamble to this Agreement.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Declined Liens” has the meaning set forth in Section 2.3.

“Designated First Lien Collateral Agent” means (i) if at any time there is only one Series of First Lien Obligations with respect to which the Discharge of First Lien Obligations has not occurred, the First Lien Collateral Agent for the First Lien Secured Parties in such Series and (ii) at any time when clause (i) does not apply, the “Applicable Collateral Agent” (as defined in the First Lien Pari Passu Intercreditor Agreement) at such time.

“Designated First Lien Representative” means (i) if at any time there is only one Series of First Lien Obligations with respect to which the Discharge of First Lien
Obligations has not occurred, the First Lien Representative for the First Lien Secured Parties in such Series and (ii) at any time when clause (i) does not apply, the “Applicable Representative” (as defined in the Second Lien Pari Passu Intercreditor Agreement) at such time.

“Designated Second Lien Collateral Agent” means (i) if at any time there is only one Series of Second Lien Obligations with respect to which the Discharge of Second Lien Obligations has not occurred, the Second Lien Collateral Agent for the Second Lien Secured Parties in such Series and (ii) at any time when clause (i) does not apply, the “Applicable Collateral Agent” (as defined in the Second Lien Pari Passu Intercreditor Agreement) at such time.

“Designated Second Lien Representative” means (i) if at any time there is only one Series of Second Lien Obligations with respect to which the Discharge of Second Lien Obligations has not occurred, the Second Lien Representative for the Second Lien Secured Parties in such Series and (ii) at any time when clause (i) does not apply, the “Applicable Representative” (as defined in the Second Lien Pari Passu Intercreditor Agreement) at such time.

“Designation” means a designation of Additional First Lien Debt, Additional Second Lien Debt or Indebtedness under a Replacement First Lien Credit Agreement in substantially the form of Exhibit III attached hereto.

“DIP Financing” has the meaning set forth in Section 6.1.

“Discharge” means, with respect to any Series of First Lien Obligations or Series of Second Lien Obligations, the date on which such Series of First Lien Obligations or Series of Second Lien Obligations, as the case may be, are no longer secured by, and no longer required to be secured by, the Collateral pursuant to the terms of the applicable First Lien Documents or Second Lien Documents. The term “Discharged” shall have a corresponding meaning.

“Discharge of First Lien Obligations” means, except to the extent otherwise provided in Section 5.5, the date on which the Discharge of Initial First Lien Obligations and the Discharge of each additional Series of First Lien Obligations has occurred; provided, that the Discharge of Initial First Lien Obligations shall be deemed not to have occurred if a Replacement First Lien Credit Agreement is entered into.

“Discharge of Initial First Lien Obligations” means, except to the extent otherwise provided in Section 5.5, the Discharge of all Initial First Lien Obligations.

“Discharge of Second Lien Obligations” means the date on which the Discharge of each Series of Second Lien Obligations has occurred.

“Disposition” has the meaning set forth in Section 5.1(b).

“Enforcement Action” means any action to:

(a) foreclose, execute, levy, or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of
Collateral, or otherwise exercise or enforce remedial rights with respect to Collateral under the First Lien Documents or the Second Lien Documents, as applicable (including by way of setoff, recoupment, notification of a public or private sale or other disposition pursuant to the UCC or other applicable law, notification to account debtors, notification to depositary banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable);

(b) solicit bids from third Persons, approve bid procedures for any proposed disposition of Collateral, conduct the liquidation or disposition of Collateral or engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers or other third Persons for the purposes of valuing, marketing, promoting or selling Collateral;

(c) receive a transfer of Collateral in satisfaction of Indebtedness or any other Obligation secured thereby;

(d) the taking of any action or the exercise of any right or remedy in respect of the collection on, set off against, marshaling of, injunction respecting or foreclosure on the Collateral or the proceeds thereof;

(e) the appointment of a receiver, receiver and manager or interim receiver of all or part of the Collateral; or

(f) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity, or pursuant to the First Lien Documents or Second Lien Documents, as applicable (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of equity interests comprising Collateral).

An “Enforcement Action” will also include the Disposition of Collateral by any Grantor after the occurrence and during the continuation of an event of default under any of the First Lien Documents or the Second Lien Documents, as applicable, with the consent of the applicable First Lien Collateral Agent (or First Lien Secured Parties) or Second Lien Collateral Agent (or Second Lien Secured Parties).

For the avoidance of doubt, none of the following shall be deemed to constitute an Enforcement Action: (i) the exercise of rights pursuant to Section 5.11 of the Initial First Lien Credit Agreement (or any substantially similar provision in any Additional First Lien Document or Second Lien Document) by the Initial First Lien Representative or any other Secured Party during the continuance of a Cash Dominion Period (as defined in the Initial First Lien Credit Agreement, or any substantially similar definition in any Additional First Lien Document or Second Lien Document), including the notification of account debtors, depository institutions or any other Person to deliver proceeds of any Collateral to the applicable Secured Party in accordance with Section 5.11 of the Initial First Lien Credit Agreement (or any substantially similar provision in any Additional First Lien Document or Second Lien Document), (ii) the consent by the Initial First Lien Representative or any other Secured Party to a store closing sale, going out of business sale or other disposition by any Grantor of any of the Collateral, (iii) the
reduction of advance rates or sub-limits by the Initial First Lien Representative or any other Secured Party, or (iv) the imposition of Reserves (as defined in the Initial First Lien Credit Agreement, or any substantially similar definition in any Additional First Lien Document or Second Lien Document) by the Initial First Lien Representative or any other Secured Party.

“First Lien Collateral” means any “Collateral” as defined in any First Lien Document or any other assets of the Company or any other Grantor with respect to which a Lien is granted or purported to be granted or required to be granted pursuant to a First Lien Document as security for any First Lien Obligations and shall include any property or assets subject to replacement Liens or adequate protection Liens in favor of any First Lien Secured Party.

“First Lien Collateral Agent” means (i) in the case of any Initial First Lien Obligations or the Initial First Lien Secured Parties, the Initial First Lien Collateral Agent and (ii) in the case of any Additional First Lien Obligations and the Additional First Lien Secured Parties in respect thereof, the Person serving as collateral agent (or the equivalent) for such Additional First Lien Obligations and that is named as the First Lien Collateral Agent in respect of such Additional First Lien Obligations in the applicable Joinder Agreement (each, in the case of this clause (ii), an “Additional First Lien Collateral Agent”).

“First Lien Collateral Documents” means the “Security Documents” or “Collateral Documents” (as defined in the applicable First Lien Documents) and any other agreement, document or instrument pursuant to which a Lien is granted securing any First Lien Obligations or pursuant to which any such Lien is perfected.

“First Lien Debt” means the Initial First Lien Debt and any Additional First Lien Debt.

“First Lien Declined Liens” has the meaning set forth in Section 2.3(b).

“First Lien Documents” means the Initial First Lien Documents and any Additional First Lien Documents.

“First Lien Obligations” means the Initial First Lien Obligations and any Additional First Lien Obligations.

“First Lien Pari Passu Intercreditor Agreement” means an agreement among each First Lien Representative and each First Lien Collateral Agent allocating rights among the various Series of First Lien Obligations, in form and substance reasonably acceptable to the Initial First Lien Collateral Agent and the Borrower.

“First Lien Representative” means (i) in the case of any Initial First Lien Obligations or the Initial First Lien Secured Parties, the Initial First Lien Representative and (ii) in the case of any Additional First Lien Obligations and the Additional First Lien Secured Parties thereunder each trustee, administrative agent, collateral agent, security agent and similar agent that is named as the First Lien Representative in respect of such Additional First Lien Obligations in the applicable Joinder Agreement (each, in the case of this clause (ii), an “Additional First Lien Representative”).

“Governmental Authority” means any federal, state local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Grantors” means the Company and each Subsidiary which has granted a security interest pursuant to any Collateral Document to secure any Secured Obligations.

“Hedge Agreements” means a Swap Contract entered into by the Company or a Restricted Subsidiary with a counterparty as permitted under the First Lien Documents or the Second Lien Documents, as the case may be.

“Hedging Obligations” of any Person means any obligation of such Person pursuant to any Hedge Agreement.

“Indebtedness” means indebtedness in respect of borrowed money and indebtedness evidenced by bonds, debentures, notes or similar instruments, as well as reimbursement and other obligations in respect of letters of credit; for avoidance of doubt, “Indebtedness” shall not include Hedging Obligations or Bank Product Obligations.

“Initial First Lien Collateral Agent” has the meaning set forth in the introductory paragraph to this Agreement.

“Initial First Lien Credit Agreement” means that certain REVOLVING CREDIT AGREEMENT, dated as of October 25, 2013, among MARIPOSA INTERMEDIATE HOLDINGS LLC, as Holdings, MARIPOSA MERGER SUB LLC, as the Borrower, the Lenders party thereto and DEUTSCHE BANK AG NEW YORK BRANCH, as administrative agent and collateral agent, as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time and shall also include any Replacement First Lien Credit Agreement.

“Initial First Lien Debt” means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Initial First Lien Documents.

“Initial First Lien Documents” means the Initial First Lien Credit Agreement and the other “Loan Documents” as defined in the Initial First Lien Credit Agreement and any other document or agreement entered into for the purpose of evidencing, governing, securing or perfecting the Initial First Lien Obligations.

“Initial First Lien Obligations” means the “Obligations” as defined in the Initial First Lien Credit Agreement.

“Initial First Lien Representative” has the meaning set forth in the introductory paragraph to this Agreement.
“Initial First Lien Secured Parties” means the “Secured Parties” as defined in the Initial First Lien Credit Agreement.

“Initial Second Lien Agreement” means that certain [ ], dated as of [ ], among [ ].

“Initial Second Lien Debt” means the Indebtedness and guarantees thereof now or hereafter incurred pursuant to the Initial Second Lien Documents. Initial Second Lien Debt shall include any Registered Equivalent Notes and Guarantees thereof by the Grantor issued in exchange thereof.

“Initial Second Lien Documents” means that certain Initial Second Lien Agreement and the other Loan Documents as defined in the Initial Second Lien Agreement and any other document or agreement entered into for the purpose of evidencing, governing, securing or perfecting the Initial Second Lien Obligations.

“Initial Second Lien Obligations” means the “Obligations” as defined in the Initial Second Lien Documents.

“Initial Second Lien Representative” has the meaning set forth in the introductory paragraph to this Agreement.

“Initial Second Lien Secured Parties” means the “Secured Parties” as defined in the Initial Second Lien Documents.

“Insolvency or Liquidation Proceeding” means:

(a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;

(b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets;

(c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

“Joinder Agreement” means a supplement to this Agreement in the form of Exhibit I or Exhibit II hereto, as applicable, required to be delivered by a Representative and a Collateral Agent to each other then-existing Representative and Collateral Agent pursuant to Section 8.7 hereof in order to include Additional First Lien Debt or Additional Second Lien Debt hereunder and to become the Representative or Collateral Agent, as the case may be, hereunder in respect thereof for the applicable Additional First Lien Secured Parties or applicable
Additional Second Lien Secured Parties, as the case may be, under such Additional First Lien Debt or Additional Second Lien Debt.

“Lien” means any lien (including, judgment liens and liens arising by operation of law), mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, call, trust (whether contractual, statutory, deemed, equitable, constructive, resulting or otherwise), UCC financing statement or other preferential arrangement having the practical effect of any of the foregoing, including any right of set-off or recoupment.

“Obligations” means all obligations of every nature of the Company and each other Grantor from time to time owed to any agent or trustee, the First Lien Secured Parties, the Second Lien Secured Parties or any of them or their respective Affiliates under the First Lien Documents or the Second Lien Documents whether for principal, interest, payments for early termination of hedge agreements, fees, expenses, indemnification or otherwise and all guarantees of any of the foregoing and including any interest and fees that accrue after the commencement by or against any Person of any proceeding under any Bankruptcy Law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Pay-Over Amount” has the meaning set forth in Section 6.3(b).

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Pledged Collateral” has the meaning set forth in Section 5.4(a).

“Post-Petition Interest” means interest, fees, expenses and other charges that pursuant to the First Lien Documents or the Second Lien Documents, as applicable, continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

“Purchase Price” has the meaning set forth in Section 5.6(b).

“Recovery” has the meaning set forth in Section 6.5.

“Refinance” means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, refund, replace or repay, or to issue other Indebtedness whether of the same principal amount or greater or lesser principal amount in exchange or replacement for such Indebtedness, in whole or in part. “Refinanced” and “Refinancing” shall have correlative meanings.

“Registered Equivalent Notes” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act of 1933,
substantially identical notes (having the same guarantees and collateral provisions) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“Replacement First Lien Collateral Agent” means, in respect of any Replacement First Lien Credit Agreement, the collateral agent or person serving in similar capacity under the Replacement First Lien Credit Agreement.

“Replacement First Lien Credit Agreement” means any loan agreement, indenture or other agreement that (i) Refinances the Initial First Lien Credit Agreement in accordance with the terms of the First Lien Pari Passu Intercreditor Agreement so long as, after giving effect to such Refinancing, the agreement that was the Initial First Lien Credit Agreement immediately prior to such Refinancing is no longer secured, or required to be secured, by any of the First Lien Collateral and (ii) becomes the Initial First Lien Credit Agreement hereunder by designation as such pursuant to Section 8.7.

“Replacement First Lien Representative” means, in respect of any Replacement First Lien Credit Agreement, the administrative agent, trustee or person serving in similar capacity under the Replacement First Lien Credit Agreement.

“Representative” means any First Lien Representative and/or any Second Lien Representative, as the context may require.

“Responsible Officer” means the chief executive officer, president, chief financial officer or treasurer of the Company or the applicable Grantor.

“Restricted Subsidiaries” has the meaning set forth in the Initial First Lien Credit Agreement and, after the Discharge of Initial First Lien Obligations, such term shall have the meaning set forth in any First Lien Documents then in effect.

“SEC” means the United States Securities and Exchange Commission and any successor agency thereto.

“Second Lien Adequate Protection Payments” has the meaning set forth in Section 6.3(b).

“Second Lien Collateral” means any “Collateral” as defined in any Second Lien Document or any other assets of the Company or any other Grantor with respect to which a Lien is granted or purported to be granted or required to be granted pursuant to a Second Lien Document as security for any Second Lien Obligation and shall include any property or assets subject to replacement Liens or adequate protection Liens in favor of any Second Lien Secured Party.

“Second Lien Collateral Agent” means (i) in the case of any Initial Second Lien Obligations or the Initial Second Lien Secured Parties, the Initial Second Lien Collateral Agent and (ii) in the case of any Additional Second Lien Obligations and the Additional Second Lien Secured Parties thereunder, the Person serving as collateral agent (or the equivalent) for such Additional Second Lien Obligations and that is named as the Second Lien Collateral Agent in
respect of such Additional Second Lien Obligations in the applicable Joinder Agreement (each, in the case of this clause (ii), an “Additional Second Lien Collateral Agent”).

“Second Lien Collateral Documents” means the “Security Documents” or “Collateral Documents” (as defined in the applicable Second Lien Documents) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Second Lien Obligations or pursuant to which any such Lien is perfected.


“Second Lien Declined Liens” has the meaning set forth in Section 2.3(b).


“Second Lien Mortgage” means each mortgage, deed of trust and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Second Lien Obligations or under which rights or remedies with respect to any such Liens are governed.


“Second Lien Pari Passu Intercreditor Agreement” means an agreement among each Second Lien Representative and each Second Lien Collateral Agent allocating rights among the various Series of Second lien Obligations, in form and substance reasonably satisfactory to the Initial Second Lien Representative and the Borrower.

“Second Lien Representative” means (i) in the case of the Initial Second Lien Obligations or the Initial Second Lien Secured Parties, the Initial Second Lien Representative and (ii) in the case of any Additional Second Lien Obligations and the Additional Second Lien Secured Parties in respect thereof, each trustee, administrative agent, collateral agent, security agent and similar agent that is named as the Second Lien Representative in respect of such Additional Second Lien Obligations in the applicable Joinder Agreement (each, in the case of this clause (ii), an “Additional Second Lien Representative”).


“Secured Obligations” means the First Lien Obligations and/or the Second Lien Obligations, as the context may require.

“Secured Parties” means the First Lien Secured Parties and/or the Second Lien Secured Parties, as the context may require.
“Series” means, (x) with respect to First Lien Debt or Second Lien Debt, all First Lien Debt or Second Lien Debt, as applicable, represented by the same Representative acting in the same capacity and (y) with respect to First Lien Obligations or Second Lien Obligations, all such obligations secured by same First Lien Collateral Documents or same Second Lien Collateral Documents, as the case may be. Notwithstanding the foregoing, the Initial First Lien Obligations shall constitute a single Series for purposes of this Agreement.

“Short Fall” has the meaning set forth in Section 6.3(b).

“Standstill Period” has the meaning set forth in Section 3.1(a).

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person.

“Swap Contract” means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options for forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including such obligations or liabilities under any Master Agreement.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

1.2 Terms Generally. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise:

(a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, modified,
renewed or extended and any reference herein to any statute or regulations shall include any amendment, renewal, extension or replacement thereof;

(b) any reference herein to any Person shall be construed to include such Person’s successors and assigns;

(c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(d) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 2. Lien Priorities.

2.1 Relative Priorities. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the Second Lien Obligations granted on the Collateral or of any Liens securing the First Lien Obligations granted on the Collateral and notwithstanding any provision of the UCC, or any other applicable law or the Second Lien Documents or any defect or deficiencies in, or failure to perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, the Liens securing the First Lien Obligations, the subordination of such Liens to any other Liens, or any other circumstance whatsoever, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, each Second Lien Representative and each Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, hereby agrees that:

(a) any Lien on the Collateral securing any First Lien Obligations now or hereafter held by or on behalf of any First Lien Representative, any First Lien Collateral Agent or any First Lien Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any Second Lien Obligations; and

(b) any Lien on the Collateral securing any Second Lien Obligations now or hereafter held by or on behalf of any Second Lien Representative, any Second Lien Collateral Agent, any Second Lien Secured Parties or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any First Lien Obligations. All Liens on the Collateral securing any First Lien Obligations shall be and remain senior in all respects and prior to all Liens on the Collateral securing any Second Lien Obligations for all purposes, whether or not such
Liens securing any First Lien Obligations are subordinated to any Lien securing any other obligation of the Company, any other Grantor or any other Person.

2.2 Prohibition on Contesting Liens; No Marshalling. Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of each Second Lien Secured Party represented by it, and each First Lien Representative and each First Lien Collateral Agent, for itself and on behalf of each First Lien Secured Party represented by it, agrees that it will not (and hereby waives any right to) directly or indirectly contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection, extent or enforceability of a Lien held, or purport to be held, by or on behalf of any of the First Lien Secured Parties in the First Lien Collateral or by or on behalf of any of the Second Lien Secured Parties in the Second Lien Collateral, as the case may be, or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any First Lien Representative, any First Lien Collateral Agent or any First Lien Secured Party to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the First Lien Obligations as provided in Sections 2.1 and 3.1. Until the Discharge of First Lien Obligations, no Second Lien Representative, Second Lien Collateral Agent or Second Lien Secured Party will assert any marshaling, appraisal, valuation or other similar right that may otherwise be available to a junior secured creditor.

2.3 No New Liens. So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the parties hereto agree that the Company shall not, and shall not permit any other Grantor to:

(a) grant or permit any additional Liens on any asset or property to secure any Second Lien Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure the First Lien Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.1 hereof; provided that this provision will not be violated with respect to any particular Series of First Lien Obligations if the First Lien Documents in respect thereof prohibit the applicable First Lien Collateral Agent from accepting a Lien on such asset or property or such First Lien Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined Liens with respect to a particular Series of First Lien Obligations (so long as the same remains prohibited or declined), a “First Lien Declined Lien”); or

(b) grant or permit any additional Liens on any asset or property to secure any First Lien Obligations unless it has granted or concurrently grants a Lien on such asset or property to secure the Second Lien Obligations; provided that this provision will not be violated with respect to any particular Series of Second Lien Obligations if the Second Lien Documents in respect thereof prohibit the applicable Second Lien Collateral Agent from accepting a Lien on such asset or property or such Second Lien Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined Liens with respect to a particular Series of Second Lien
Obligations (so long as the same remains prohibited or declined), a “Second Lien Declined Lien” and, together with the First Lien Declined Liens, the “Declined Liens”.

If any Second Lien Representative, any Second Lien Collateral Agent or any Second Lien Secured Party shall hold any Lien (other than a First Lien Declined Lien) on any assets or property of any Grantor securing any Second Lien Obligations that are not also subject to a first-priority Lien, other than any Declined Lien, securing all First Lien Obligations under the First Lien Collateral Documents, then such Second Lien Representative, Second Lien Collateral Agent or Second Lien Secured Party shall notify the Designated First Lien Representative promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien, other than any such Lien that would constitute a Declined Lien, on such assets or property to each First Lien Collateral Agent as security for the First Lien Obligations represented by it, such Second Lien Representative, Second Lien Collateral Agent and Second Lien Secured Parties shall be deemed to hold and have held such Lien for the benefit of each First Lien Representative, First Lien Collateral Agent and the other First Lien Secured Parties, other than any First Lien Secured Parties whose First Lien Documents prohibit them from taking such Liens, as security for the First Lien Obligations. To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to any First Lien Representative, First Lien Collateral Agent and/or the First Lien Secured Parties, each Second Lien Representative and each Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties represented by it, agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

Notwithstanding anything in this Agreement to the contrary, cash and cash equivalents may be pledged to secure reimbursement obligations in respect of letters of credit without granting a Lien thereon to secure any other First Lien Obligations or any other Second Lien Obligations.

2.4 Similar Liens and Agreements. Except as provided in Section 2.3, the parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral be identical. In furtherance of the foregoing and of Section 8.11, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by any First Lien Collateral Agent or any Second Lien Collateral Agent, to cooperate in good faith (and to direct their respective counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the First Lien Documents and the Second Lien Documents; and

(b) that the documents and agreements creating or evidencing the First Lien Collateral and the Second Lien Collateral and guarantees for the First Lien Obligations and the Second Lien Obligations, subject to Section 2.3, shall be in all material respects the same forms of documents other than with respect to the first lien and the second lien nature of the Obligations thereunder.
2.5 Perfection of Liens. Except for the arrangements contemplated by Section 5.4, none of the First Lien Representatives, First Lien Collateral Agents or the First Lien Secured Parties shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Collateral for the benefit of the Second Lien Representatives, the Second Lien Collateral Agents or the Second Lien Secured Parties. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the First Lien Secured Parties on the one hand and the Second Lien Secured Parties on the other hand and such provisions shall not impose on the First Lien Representatives, First Lien Collateral Agents, the First Lien Secured Parties, the Second Lien Representatives, the Second Lien Collateral Agents, the Second Lien Secured Parties or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Collateral which would conflict with prior-perfected claims therein in favor of any other Person or any order or decree of any court or Governmental Authority or any applicable law.

SECTION 3. Enforcement.

3.1 Exercise of Remedies.

(a) Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the Second Lien Representatives, the Second Lien Collateral Agents and the Second Lien Secured Parties:

(1) will not commence or maintain, or seek to commence or maintain, any Enforcement Action or otherwise exercise any rights or remedies with respect to the Collateral; provided that the Designated Second Lien Representative and/or the Designated Second Lien Collateral Agent may commence an Enforcement Action or otherwise exercise any or all such rights or remedies after the passage of a period of at least 180 days has elapsed since the later of (i) the date on which a Second Lien Representative declared the existence of any Event of Default under (and as defined in) any Second Lien Document and demanded the repayment of all the principal amount of any Second Lien Obligations thereunder; and (ii) the date on which the First Lien Representatives received notice from such Second Lien Representative of such declarations of such Event of Default and demand for payment (the “Standstill Period”); provided further, that notwithstanding anything herein to the contrary, in no event shall any Second Lien Representative, any Second Lien Collateral Agent or any Second Lien Secured Party exercise any rights or remedies with respect to the Collateral if, notwithstanding the expiration of the Standstill Period, any First Lien Representative, any First Lien Collateral Agent or the applicable First Lien Secured Parties shall have commenced and be diligently pursuing an Enforcement Action or other exercise of their rights or remedies in each case with respect to all or any material portion of the Collateral (prompt notice of such exercise to be given to the Designated Second Lien Representative);

(2) will not contest, protest or object to any foreclosure proceeding or action brought by any First Lien Representative, any First Lien

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Collateral Agent or any First Lien Secured Party or any other exercise by any First Lien Representative, any First Lien Collateral Agent or any First Lien Secured Party of any rights and remedies relating to the Collateral under the First Lien Documents or otherwise (including any Enforcement Action initiated by or supported by any First Lien Representative, any First Lien Collateral Agent or any First Lien Secured Party); and

(3) subject to their rights under clause (a)(1) above will not object to the forbearance by any First Lien Representative, any First Lien Collateral Agent or the First Lien Secured Parties from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral,

in each case so long as any proceeds received by any First Lien Representative in excess of those necessary to achieve a Discharge of First Lien Obligations are distributed in accordance with Section 4.1.

(b) Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 3.1(a)(1), the First Lien Representatives, the First Lien Collateral Agents and the First Lien Secured Parties shall have the exclusive right to commence and maintain an Enforcement Action or otherwise enforce rights, exercise remedies (including set-off, recoupment and the right to credit bid their debt, except that Second Lien Representatives shall have the credit bid rights set forth in Section 3.1(c)(6)), and subject to Section 5.1, make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party; provided that any proceeds received by any First Lien Representative in excess of those necessary to achieve a Discharge of any First Lien Obligations are distributed in accordance with Section 4.1 hereof. In commencing or maintaining any Enforcement Action or otherwise exercising rights and remedies with respect to the Collateral, the First Lien Representatives, First Lien Collateral Agents and the First Lien Secured Parties may enforce the provisions of the First Lien Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion in compliance with any applicable law and without consultation with any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party and regardless of whether any such exercise is adverse to the interest of any Second Lien Secured Party. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(c) Notwithstanding the foregoing, any Second Lien Representative, any Second Lien Collateral Agent and any Second Lien Secured Party may:
(1) file a claim or statement of interest with respect to the Second Lien Obligations; provided that an Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor;

(2) take any action (not adverse to the priority status of the Liens on the Collateral securing the First Lien Obligations, or the rights of any First Lien Representative, any First Lien Collateral Agent or the First Lien Secured Parties to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on the Collateral;

(3) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Second Lien Secured Parties, including any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(4) vote on any plan of reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Second Lien Obligations and the Collateral; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a disclosure statement, plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party may be inconsistent with the provisions of this Agreement;

(5) exercise any of its rights or remedies with respect to the Collateral after the termination of the Standstill Period to the extent permitted by Section 3.1(a)(1); and

(6) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by any First Lien Representative, any First Lien Collateral Agent or any other First Lien Secured Party, or any sale of Collateral during an Insolvency or Liquidation Proceeding; provided that such bid may not include a “credit bid” in respect of any Second Lien Obligations unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of First Lien Obligations.

Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any Collateral in its capacity as a creditor, unless and until the Discharge of First Lien Obligations has occurred, except in connection with any foreclosure expressly permitted by Section 3.1(a)(1) to the extent such Second Lien Representative or such Second Lien Collateral Agent and Second Lien Secured Parties represented by it are permitted to retain the proceeds thereof in accordance with
Section 4.2 of this Agreement. Without limiting the generality of the foregoing, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in Sections 3.1(a), 6.3(b) and this Section 3.1(c), the sole right of the Second Lien Representatives, the Second Lien Collateral Agents and the other Second Lien Secured Parties with respect to the Collateral is to hold a Lien on the Collateral pursuant to the Second Lien Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of First Lien Obligations has occurred.

(d) Subject to Sections 3.1(a) and (c) and Section 6.3(b):

(1) Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, agrees that such Second Lien Representative or such Second Lien Collateral Agent and such Second Lien Secured Parties represented by it will not take any action that would hinder any exercise of remedies under the First Lien Documents or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise;

(2) Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, hereby waives any and all rights such Second Lien Representative or such Second Lien Collateral Agent or such Second Lien Secured Parties represented by it may have as a junior lien creditor or otherwise to object to the manner in which any First Lien Representative, any First Lien Collateral Agent or other First Lien Secured Party seeks to enforce or collect the First Lien Obligations or Liens securing the First Lien Obligations granted in any of the First Lien Collateral undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of any First Lien Representative, any First Lien Collateral Agent or other First Lien Secured Party is adverse to the interest of any Second Lien Secured Party; and

(3) Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, hereby acknowledges and agrees that no covenant, agreement or restriction contained in any Second Lien Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of any First Lien Representative, any First Lien Collateral Agent or any other First Lien Secured Party with respect to the Collateral as set forth in this Agreement and the First Lien Documents.

(e) Except as specifically set forth in this Agreement, the Second Lien Representatives, the Second Lien Collateral Agents and the other Second Lien Secured Parties may exercise rights and remedies as unsecured creditors against the Company or any other Grantor that has guaranteed or granted Liens to secure the Second Lien Obligations in accordance with the terms of the Second Lien Documents and applicable law (other than initiating or joining in an involuntary case or proceeding under any
Insolvency or Liquidation Proceeding with respect to any Grantor or otherwise taking any action that is inconsistent with the terms of this Agreement); provided that in the event that any Second Lien Secured Party becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Second Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the First Lien Obligations) in the same manner as the other Liens securing the Second Lien Obligations are subject to this Agreement.

(f) Except as specifically set forth in Sections 3.1(a) and (d), nothing in this Agreement shall prohibit the receipt by any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party of the required payments of interest, principal and other amounts owed in respect of the Second Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party of rights or remedies as a secured creditor (including set-off and recoupment) or enforcement in contravention of this Agreement of any Lien held by any of them or as a result of any other violation by any Second Lien Secured Party of the express terms of this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies any First Lien Representative, any First Lien Collateral Agent or other First Lien Secured Party may have with respect to the First Lien Collateral.

3.2 Actions Upon Breach; Specific Performance. If any Second Lien Secured Party, in contravention of the terms of this Agreement, in any way takes, or attempts to or threatens to take, any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or fails to take any action required by this Agreement, this Agreement shall create an irrebuttable presumption and admission by such Second Lien Secured Party that relief against such Second Lien Secured Party by injunction, specific performance and/or other appropriate equitable relief is necessary to prevent irreparable harm to the First Lien Secured Parties, it being understood and agreed by each Second Lien Representative and each Second Lien Collateral Agent, on behalf of each Second Lien Secured Party represented by it, that (i) the First Lien Secured Parties' damages from actions of any Second Lien Secured Party may at that time be difficult to ascertain and may be irreparable and (ii) each Second Lien Secured Party waives any defense that the Grantors and/or the First Lien Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages. Each of the First Lien Representatives and/or First Lien Collateral Agents may demand specific performance of this Agreement. Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any First Lien Representative, any First Lien Collateral Agent or any other First Lien Secured Party. No provision of this Agreement shall constitute or be deemed to constitute a waiver by any First Lien Representative or any First Lien Collateral Agent on behalf of itself and the First Lien Secured Parties represented by it of any right to seek damages from any Person in connection with any breach or alleged breach of this Agreement.
SECTION 4.  Payments.

4.1 Application of Proceeds. So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received in connection with any Enforcement Action or other exercise of remedies by any First Lien Representative, any First Lien Collateral Agent or any First Lien Secured Party shall be applied by the First Lien Collateral Agents or the First Lien Representatives, as applicable, to the First Lien Obligations in such order as specified in the relevant First Lien Documents (including the ABL/Term Loan/Notes Intercreditor Agreement, to the extent then in effect) and, if then in effect, the First Lien Pari Passu Intercreditor Agreement; provided, that any non-cash Collateral or non-cash proceeds will be held by the applicable First Lien Collateral Agent as Collateral unless the failure to apply such amounts would be commercially unreasonable. Upon the Discharge of First Lien Obligations, each First Lien Collateral Agent shall (x) unless a Discharge of Second Lien Obligations has already occurred, deliver any proceeds of Collateral held by it to the Designated Second Lien Collateral Agent, to be applied by the Designated Second Lien Collateral Agent and the other Second Lien Collateral Agents or Second Lien Representatives, as applicable, to the applicable Second Lien Obligations in such order as specified in the applicable Second Lien Collateral Documents and, if then in effect, the Second Lien Pari Passu Intercreditor Agreement and (y) if a Discharge of Second Lien Obligations has already occurred, deliver such proceeds of Collateral to the Grantors, their successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

4.2 Payments Over.

(a) So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or any proceeds thereof received by any Second Lien Representative, Second Lien Collateral Agent or any other Second Lien Secured Party in connection with any Enforcement Action or other exercise of any right or remedy relating to the Collateral in contravention of this Agreement in all cases shall be segregated and held in trust and forthwith paid over to the Designated First Lien Collateral Agent for the benefit of the First Lien Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Designated First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Representatives, Second Lien Collateral Agents or any such other Second Lien Secured Party. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

(b) So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, any Collateral or proceeds thereof received by any Second Lien Representative, any Second Lien Collateral Agent or any Second Lien Secured Party in connection with any Enforcement Action or other exercise of any right or remedy relating to the Collateral not in contravention of this Agreement shall be segregated and held in trust and forthwith paid over to the Designated First Lien
Collateral Agent for the benefit of the First Lien Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided that with respect to Collateral this Section 4.2(b) shall only be applicable if the exercise of such right or remedy by any Second Lien Representative, any Second Lien Collateral Agent or any Second Lien Secured Party has the effect of discharging the Lien of any First Lien Representative or First Lien Collateral Agent on such Collateral. The Designated First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Representatives, the Second Lien Collateral Agents or any such other Second Lien Secured Party. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

(c) So long as the Discharge of First Lien Obligations has not occurred, if in any Insolvency or Liquidation Proceeding any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party shall receive any distribution of money or other property in respect of the Collateral (including any assets or proceeds subject to Liens that have been avoided or otherwise invalidated) such money or other property shall be segregated and held in trust and forthwith paid over to the Designated First Lien Collateral Agent for the benefit of the First Lien Secured Parties in the same form as received, with any necessary endorsements. Any Lien received by any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party in respect of any of the Second Lien Obligations in any Insolvency or Liquidation Proceeding shall be subject to the terms of this Agreement.

(d) Each Second Lien Representative and Second Lien Collateral Agent, for and on behalf of itself and each applicable Second Lien Secured Party, expressly acknowledges and agrees that (i) as of the date hereof, the Initial First Lien Credit Agreement includes a revolving commitment, that in the ordinary course of business the Initial First Lien Representative under the Initial First Lien Credit Agreement and the Initial First Lien Secured Parties will apply payments and make advances thereunder, and that no application of any Payment Collateral or Cash Collateral (each such term as defined in the ABL/Term Loan/Notes Intercreditor Agreement, as in effect on the date hereof, and whether or not subsequently in effect) or the release of any Lien by the Initial First Lien Collateral Agent upon any portion of the Collateral in connection with a permitted disposition under the Initial First Lien Credit Agreement shall constitute an exercise of remedies prohibited under this Agreement; (ii) subject to the limitations set forth herein, the amount of the Initial First Lien Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that the terms of the Initial First Lien Obligations may be modified, extended or amended from time to time, and that the aggregate amount of the Initial First Lien Obligations may be increased and, subject to Section 8.7, replaced or Refinanced, in each event, without notice to or consent by the Second Lien Secured Parties and without affecting the provisions hereof; and (iii) all Payment Collateral or Cash Collateral (each such term as defined in the ABL/Term Loan/Notes Intercreditor Agreement, as in effect on the date hereof, and whether or not subsequently in effect) received by any Initial First Lien Representative or Initial First Lien Collateral Agent
SECTION 5. Other Agreements.

5.1 Releases.

(a) If in connection with any Enforcement Action by any First Lien Representative or any First Lien Collateral Agent or any other exercise of any First Lien Representative’s or any First Lien Collateral Agent’s remedies in respect of the Collateral, in each case prior to the Discharge of First Lien Obligations, such First Lien Collateral Agent, for itself or on behalf of any of the First Lien Secured Parties, releases any of its Liens on any part of the Collateral or such First Lien Representative, for itself or on behalf of any of the First Lien Secured Parties, releases any Grantor from its obligations under its guaranty of the First Lien Obligations, then the Liens, if any, of each Second Lien Collateral Agent, for itself or for the benefit of the Second Lien Secured Parties, on such Collateral, and the obligations of such Grantor under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released. If in connection with any Enforcement Action or other exercise of rights and remedies by any First Lien Representative or any First Lien Collateral Agent, in each case prior to the Discharge of First Lien Obligations, the equity interests of any Person are foreclosed upon or otherwise disposed of and such First Lien Collateral Agent releases its Lien on the property or assets of such Person, then the Liens of each Second Lien Collateral Agent with respect to the property or assets of such Person will be automatically released to the same extent as the Liens of such First Lien Collateral Agent. Each Second Lien Representative and each Second Lien Collateral Agent, for itself or on behalf of any Second Lien Secured Parties represented by it, shall promptly execute and deliver to the First Lien Representatives, First Lien Collateral Agents or such Grantor such termination statements, releases and other documents as any First Lien Representative, First Lien Collateral Agent or such Grantor may request to effectively confirm the foregoing releases.

(b) If in connection with any sale, lease, exchange, transfer or other disposition of any Collateral by any Grantor (collectively, a “Disposition”) permitted under the terms of the First Lien Documents and not expressly prohibited under the terms of the Second Lien Documents (other than in connection with an Enforcement Action or other exercise of any First Lien Representative’s and/or First Lien Collateral Agent’s remedies in respect of the Collateral, which shall be governed by Section 5.1(a) above), any First Lien Collateral Agent, for itself or on behalf of any of the First Lien Secured Parties represented by it, releases any of its Liens on any part of the Collateral, or any First Lien Representative, for itself or on behalf of any of the First Lien Secured Parties represented by it, releases any Grantor from its obligations under its guaranty of the First Lien Obligations, in each case other than in connection with, or following, the Discharge of First Lien Obligations, then the Liens, if any, of each Second Lien Collateral Agent, for itself or for the benefit of the Second Lien Secured Parties represented by it, on such
Collateral, and the obligations of such Grantor under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released. Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of each Second Lien Secured Party represented by it, shall promptly execute and deliver to the First Lien Representatives, the First Lien Collateral Agents or such Grantor such termination statements, releases and other documents as any First Lien Representative, First Lien Collateral Agent or such Grantor may request to effectively confirm such release.

(c) Until the Discharge of First Lien Obligations occurs, each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, hereby irrevocably constitutes and appoints the Designated First Lien Collateral Agent and any officer or agent of the Designated First Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Second Lien Representative, such Second Lien Collateral Agent and such Second Lien Secured Parties or in the Designated First Lien Collateral Agent’s own name, from time to time in the Designated First Lien Collateral Agent’s discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release. This power is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

(d) Until the Discharge of First Lien Obligations occurs, to the extent that any First Lien Collateral Agent, any First Lien Representative or First Lien Secured Parties (i) have released any Lien on Collateral or any Grantor from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtain any new Liens or additional guarantees from any Grantor, then each Second Lien Collateral Agent, for itself and for the Second Lien Secured Parties represented by it, shall be granted a Lien on any such Collateral (except to the extent such Lien represents a Second Lien Declined Lien with respect to the Second Lien Debt represented by such Second Lien Collateral Agent), subject to the lien subordination provisions of this Agreement, and each Second Lien Representative, for itself and for the Second Lien Secured Parties represented by it, shall be granted an additional guaranty, as the case may be.

5.2 Insurance and Condemnation Awards. Unless and until the Discharge of First Lien Obligations has occurred, the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Secured Parties shall have the sole and exclusive right, subject to the rights of the Grantors under the First Lien Documents, to adjust settlement for any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. Unless and until the Discharge of First Lien Obligations has occurred, and subject to the rights of the Grantors under the First Lien Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of the Collateral shall be paid to the Designated First Lien Collateral Agent for the
benefit of the First Lien Secured Parties pursuant to the terms of the First Lien Documents (including for purposes of cash collateralization of letters of credit) and, thereafter, if a Discharge of First Lien Obligations has occurred, and subject to the rights of the Grantors under the Second Lien Documents, to the Designated Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties to the extent required under the Second Lien Documents and then, and if a Discharge of Second Lien Obligations has occurred, to the owner of the subject property, such other Person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. Until the Discharge of First Lien Obligations has occurred, if any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, then it shall segregate and hold in trust and forthwith pay such proceeds over to the Designated First Lien Collateral Agent in accordance with the terms of Section 4.2.

5.3 Confirmation of Subordination in Second Lien Collateral Documents. The Company agrees that each Second Lien Collateral Document shall include the following language (or language to similar effect approved by the Designated First Lien Collateral Agent):

“Notwithstanding anything herein to the contrary, the lien and security interest granted to the collateral agent pursuant to this Agreement and the exercise of any right or remedy by the collateral agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of [ ] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), among DEUTSCHE BANK AG NEW YORK BRANCH, as Initial First Lien Representative, DEUTSCHE BANK AG NEW YORK BRANCH, as Initial First Lien Collateral Agent, [ ], as Initial Second Lien Representative, [ ], as Initial Second Lien Collateral Agent and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Second Lien Intercreditor Agreement and this Agreement, the terms of the Second Lien Intercreditor Agreement shall govern and control.”

In addition, the Company agrees that each Second Lien Mortgage covering any Collateral shall contain such other language as the Designated First Lien Collateral Agent may reasonably request to reflect the subordination of such Second Lien Mortgage to the First Lien Collateral Documents covering such Collateral.

5.4 Gratuitous Bailee/Agent for Perfection.

(a) Each First Lien Collateral Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC (such Collateral being the “Pledged Collateral”) as gratuitous bailee for the Second Lien Collateral Agents (such bailment being intended, among other
things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) and any assignee thereof solely for the purpose of
perfecting the security interest granted under the First Lien Documents and the Second Lien Documents, respectively, subject to the terms and
conditions of this Section 5.4. Solely with respect to any deposit accounts under the control (within the meaning of Section 9-104 of the UCC) of
any First Lien Collateral Agent, such First Lien Collateral Agent agrees to also hold control over such deposit accounts as gratuitous agent for the
Second Lien Collateral Agents, subject to the terms and conditions of this Section 5.4.

(b) No First Lien Collateral Agent shall have any obligation whatsoever to the other First Lien Secured Parties, the Second
Lien Representatives, the Second Lien Collateral Agents or the Second Lien Secured Parties to ensure that the Pledged Collateral is genuine or
owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.4. The duties or
responsibilities of any First Lien Collateral Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee (and with
respect to deposit accounts, agent) in accordance with this Section 5.4 and delivering the Pledged Collateral upon a Discharge of First Lien
Obligations as provided in paragraph (d) below.

(c) No First Lien Collateral Agent or any other First Lien Secured Party shall have by reason of the First Lien Collateral
Documents, the Second Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of any Second Lien
Representative or any other Second Lien Secured Party and the Second Lien Representatives, the Second Lien Collateral Agents and the Second
Lien Secured Parties hereby waive and release the First Lien Collateral Agents and from all claims and liabilities
arising pursuant to any First Lien Collateral Agent’s role under this Section 5.4 as gratuitous bailee and gratuitous agent with respect to the Pledged
Collateral. It is understood and agreed that the interests of the First Lien Collateral Agents and the other First Lien Secured Parties, on the one hand,
and the Second Lien Representatives, the Second Lien Collateral Agents and the other Second Lien Secured Parties on the other hand, may differ
and the First Lien Collateral Agents and the other First Lien Secured Parties shall be fully entitled to act in their own interest without taking into
account the interests of the Second Lien Representatives, the Second Lien Collateral Agents or other Second Lien Secured Parties.

(d) Upon the Discharge of First Lien Obligations, each First Lien Collateral Agent shall deliver the remaining Pledged
Collateral in its possession (if any) together with any necessary endorsements (which endorsement shall be without recourse and without any
representation or warranty), (x) unless a Discharge of Second Lien Obligations has not already occurred, to the Designated Second Lien Collateral
Agent and (y) if a Discharge of Second Lien Obligations has already occurred, to the Company or to whomever may be lawfully entitled to receive
the same. Following the Discharge of First Lien Obligations, each First Lien Collateral Agent further agrees to take all other action reasonably
requested by any Second Lien Collateral Agent at the expense of the Company in connection with the Second Lien Collateral Agents obtaining a
first-priority security interest in the Collateral. After the Discharge of First Lien Obligations has
occurred, upon the Discharge of Second Lien Obligations, each Second Lien Collateral Agent shall deliver the remaining Pledged Collateral in its possession (if any) together with any necessary endorsements (which endorsement shall be without recourse and without any representation or warranty), to the Company or to whomever may be lawfully entitled to receive the same.

5.5 When Discharge of Obligations Deemed to Not Have Occurred

(a) If, at any time after the Discharge of First Lien Obligations has occurred or contemporaneously therewith, the Company enters into any Refinancing of any First Lien Document evidencing a First Lien Obligation which Refinancing is permitted by the Second Lien Documents, then such Discharge of First Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of First Lien Obligations), and, from and after the date on which the Additional First Lien Representative and Additional First Lien Collateral Agent in respect of such Refinancing each becomes a party to this Agreement in accordance with Section 8.7(b), the obligations under such Refinancing of the applicable First Lien Document shall automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the Additional First Lien Representative and the Additional First Lien Collateral Agent under such new First Lien Documents shall be a First Lien Representative and First Lien Collateral Agent, respectively, for all purposes of this Agreement. Upon receipt of a designation from the Company in accordance with Section 8.7(b)(2) of this Agreement, each Second Lien Representative and Second Lien Collateral Agent shall promptly (x) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such Additional First Lien Representative and/or such Additional First Lien Collateral Agent shall reasonably request in order to provide to such Additional First Lien Representative and such Additional First Lien Collateral Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement and (y) deliver to such Additional First Lien Collateral Agent any Pledged Collateral held by it together with any necessary endorsements (or otherwise allow such Additional First Lien Collateral Agent to obtain control of such Pledged Collateral). If the Additional First Lien Obligations under the Additional First Lien Documents in respect of such Refinancing are secured by assets of the Grantors constituting Collateral that do not also secure the Second Lien Obligations, then the Second Lien Obligations shall be secured at such time by a second priority Lien on such assets to the same extent provided in the Second Lien Collateral Documents and this Agreement except to the extent, with respect to any Series of Second Lien Obligations, such Lien on such assets constitutes a Second Lien Declined Lien.

(b) If, at any time after the Discharge of Second Lien Obligations has occurred or contemporaneously therewith, the Company enters into any Refinancing of any Second Lien Document evidencing a Second Lien Obligation which Refinancing is permitted by the First Lien Documents, then such Discharge of Second Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement.
5.6 **Purchase Right.**

(a) Without prejudice to the enforcement of any of the First Lien Secured Parties’ remedies under the First Lien Documents, this Agreement, at law or in equity or otherwise, the First Lien Secured Parties agree that, if there is (i) an acceleration of any of the First Lien Obligations in accordance with the terms of the applicable First Lien Documents, (ii) a payment default under any First Lien Document that has not been cured or waived by the applicable First Lien Secured Parties within 60 days of the occurrence thereof or (iii) the commencement of any Insolvency or Liquidation Proceeding with respect to any Grantor (each, a “Purchase Event”), then the Second Lien Secured Parties (on a pro rata basis based on their outstanding Second Lien Obligations, unless otherwise agreed among such Second Lien Secured Parties) may purchase, by submitting a notice (a “Purchase Notice”) within fifteen Business Days of any such Purchase Event, the entire aggregate amount (but not less than the entirety) of outstanding First Lien Obligations (including unfunded commitments under any Initial First Lien Document) at the Purchase Price.

(b) The “Purchase Price” will equal the sum of (1) the full amount of all First Lien Obligations then outstanding and unpaid at par (including principal, accrued but unpaid interest and fees and any other unpaid amounts, including breakage costs and,
in the case of any secured hedging obligations, the amount that would be payable by the relevant Grantor thereunder if such Grantor were to terminate the hedge agreement in respect thereof on the date of the purchase or, if not terminated, an amount determined by the relevant First Lien Secured Party to be necessary to collateralize its credit risk arising out of such agreement, but excluding any prepayment penalties or premiums, (2) the cash collateral (the “LC Cash Collateral”) to be furnished to the First Lien Secured Parties providing letters of credit under the First Lien Documents in such amounts (not to exceed 103% thereof) as such First Lien Secured Parties determine is reasonably necessary to secure such First Lien Secured Parties in connection with any such outstanding and undrawn letters of credit and (3) all accrued and unpaid fees, expenses and other amounts (including attorneys’ fees and expenses) owed to the First Lien Secured Parties under or pursuant to the First Lien Documents on the date of purchase.

(c) The Second Lien Secured Parties desiring to purchase all the First Lien Obligations (the “Purchasing Creditors”) will deliver a Purchase Notice to the Designated First Lien Representative that (i) is signed by the Purchasing Creditors; (ii) states that it is a Purchase Notice under this Section 5.6; (iii) states that each Purchasing Creditor is irrevocably electing to purchase, in accordance with this Section 5.6, the percentage of all of the Purchase Obligations stated in the Purchase Notice for that Purchasing Creditor, which percentages must aggregate exactly 100% for all Purchasing Creditors; (iv) represents and warrants that the Purchase Notice is in conformity with the Second Lien Documents and any other binding agreement among Second Lien Secured Parties; and (v) designates a date on which the purchase will occur (the “Purchase Date”), that is (x) at least five but not more than ten Business Days after the Designated First Lien Representative’s receipt of the Purchase Notice, and (y) not more than twenty-five Business Days after the Purchase Event. Upon the Designated First Lien Representative’s receipt of an effective Purchase Notice conforming to this Section 5.6, the Purchasing Creditors will be irrevocably obligated to purchase, and the First Lien Secured Parties will be irrevocably obligated to sell, the First Lien Obligations in accordance with and subject to this Section 5.6.

(d) On the Purchase Date, (i) the Purchasing Creditors and the Designated First Lien Representative will execute and deliver an assignment agreement in form and substance satisfactory to the Designated First Lien Representative, (ii) the Purchasing Creditors will pay the Purchase Price to the Designated First Lien Representative by wire transfer of immediately available funds, (iii) the Purchasing Creditors will deposit with the Designated First Lien Representative or its designee by wire transfer of immediately available funds, the LC Cash Collateral and (iv) each of the Purchasing Creditors will execute and deliver to the Designated First Lien Representative a waiver and release of all claims arising out of this Agreement, the relationship between the First Lien Secured Parties and the Second Lien Secured Parties in connection with the First Lien Documents and the Second Lien Documents, and the transactions contemplated hereby as a result of exercising the purchase option contemplated by this Section 5.6.
5.6 Promptly after the closing of the purchase of all First Lien Obligations pursuant to this Section 5.6, the Designated First Lien Representative will distribute the Purchase Price to the First Lien Secured Parties in accordance with the terms of the First Lien Documents. The Designated First Lien Representative will apply the LC Cash Collateral to reimburse the First Lien Secured Parties providing letters of credit for drawings under such letters of credit, any customary fees charged by the issuer in connection with such draws, and facing or similar fees. When all such letters of credit have been cancelled with the consent of the beneficiary thereof, expired, or been fully drawn, and after all payments from the account described above have been made, any remaining cash collateral will be returned to the Purchasing Creditors, as their interests appear. If for any reason the LC Cash Collateral is less than the amount owing with respect to such letters of credit, then the Purchasing Creditors will, in proportion to their interests determined as of the time of demand for such reimbursement, promptly reimburse the Designated First Lien Representative (who will then pay the applicable First Lien Secured Parties) the amount of the deficiency.

(f) Each First Lien Secured party will retain all rights to indemnification provided in the relevant First Lien Documents for all claims and other amounts relating to periods prior to the purchase of the First Lien Obligations pursuant to this Section 5.6.

(g) The purchase and sale of the First Lien Obligations under this Section 5.6 will be without recourse and without representation or warranty of any kind by the First Lien Secured Parties, except that the First Lien Secured Parties shall severally and not jointly represent and warrant to the Second Lien Secured Parties that on the date of such purchase, immediately before giving effect to the purchase;

1. the principal of and accrued and unpaid interest on the First Lien Obligations, and the fees and expenses thereof owed to the respective First Lien Secured Parties, are as stated in any assignment agreement prepared in connection with the purchase and sale of the First Lien Obligations; and

2. each First Lien Secured Party owns the First Lien Obligations purported to be owned by it free and clear of any Liens (other than participation interests not prohibited by the First Lien Documents, in which case the Purchase Price will be appropriately adjusted so that the Second Lien Secured Parties do not pay amounts represented by participation interests to the extent that the Second Lien Secured Parties expressly assume the obligations under such participation interests).

5.7 **Designation of Hedging/Bank Product Obligations.** With respect to any Hedging Obligations and Bank Product Obligations that would otherwise constitute both First Lien Obligations and Second Lien Obligations hereunder, such Hedging Obligations and Bank Product Obligations shall solely constitute First Lien Obligations for all purposes of this Agreement unless at the time that the Company or any of its Restricted Subsidiaries enters into the related Hedge Agreement or agreement giving rise to Bank Product Obligations, the Company shall designate the related Hedging Obligations and/or Bank Product Obligations.
under such Hedge Agreement or agreement giving rise to Bank Product Obligations as Second Lien Obligations in a written designation to the related Hedge Bank or provider of Bank Product Obligation with a copy to each Representative in which case such Hedging Obligations and Bank Product Obligations shall solely constitute Second Lien Obligations for all purposes of this Agreement.

SECTION 6. **Insolvency or Liquidation Proceedings**

6.1 **Finance and Sale Issues.** Until the Discharge of First Lien Obligations has occurred, if the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and any First Lien Representative shall desire to permit the use of “Cash Collateral” (as such term is defined in Section 363(a) of the Bankruptcy Code), on which such First Lien Representative, such First Lien Collateral Agent or any other creditor has a Lien or to permit the Company or any other Grantor to obtain financing, whether from the First Lien Secured Parties or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (“DIP Financing”), then each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, will not object to such Cash Collateral use or DIP Financing, including any proposed orders for such Cash Collateral use and/or DIP Financing which are acceptable to any First Lien Representative and to the extent the Liens securing the First Lien Obligations are subordinated to or pari passu with such DIP Financing, each Second Lien Collateral Agent will subordinate its Liens in the Collateral to the Liens securing such DIP Financing (and all Obligations relating thereto) and each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, will not request adequate protection or any other relief in connection therewith (except as expressly agreed by the Designated First Lien Representative or to the extent permitted by Section 6.3). No Second Lien Secured Party may provide DIP Financing to the Company or any other Grantor secured by Liens equal or senior in priority to the Liens securing any First Lien Obligations; provided that if no First Lien Secured Party offers to provide DIP Financing to the extent permitted under this Section 6.1 on or before the date of the hearing to approve DIP Financing, then a Second Lien Secured Party may seek to provide DIP Financing (which DIP Financing shall consist solely of additional financing and shall not include any rollup of the Second Lien Obligations) secured by Liens equal or senior in priority to the Liens securing any First Lien Obligations; and the First Lien Secured Parties may object thereto. Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, if the requisite First Lien Secured Parties have consented to such sale, liquidation or disposition. Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, further agrees that it will not directly or indirectly oppose or impede entry of any order in connection with such sale, liquidation or other disposition, including orders to retain professionals or set bid procedures in connection with such sale, liquidation or disposition, if the requisite First Lien Secured Parties have consented to (i) such retention of professionals and bid procedures in connection with such sale, liquidation or disposition of such assets and (ii) the sale, liquidation or disposition of such assets, in which event the Second Lien Secured Parties will be deemed to have consented to the sale or
disposition of Collateral pursuant to Section 363(f) of the Bankruptcy Code and such motion does not impair the rights of the Second Lien Secured Parties under Section 363(k) of the Bankruptcy Code.

6.2 Relief from the Automatic Stay. Until the Discharge of First Lien Obligations has occurred, each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, agrees that none of them shall: (i) seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the First Lien Representatives or (ii) oppose (or support any other Person in opposing) any request by any First Lien Representative or First Lien Collateral Agent for relief from such stay.

6.3 Adequate Protection.

(a) Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, agrees that none of them shall contest (or support any other Person contesting):

(1) any request by any First Lien Representative, any First Lien Collateral Agent or other First Lien Secured Party for adequate protection under any Bankruptcy Law; or

(2) any objection by any First Lien Representative, any First Lien Collateral Agent or other First Lien Secured Party to any motion, relief, action or proceeding based on such First Lien Representative, First Lien Collateral Agent or First Lien Secured Party claiming a lack of adequate protection.

(b) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency or Liquidation Proceeding:

(1) if the First Lien Secured Parties (or any subset thereof) are granted adequate protection in the form of additional collateral in connection with any Cash Collateral use or DIP Financing, then each Second Lien Collateral Agent, for itself or on behalf of any of the Second Lien Secured Parties represented by it, may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the First Lien Obligations and such Cash Collateral use or DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the First Lien Obligations under this Agreement; and

(2) the Second Lien Representatives, the Second Lien Collateral Agents and Second Lien Secured Parties shall only be permitted to seek adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding in the form of (A) additional collateral; provided that
as adequate protection for the First Lien Obligations, each First Lien Collateral Agent, on behalf of the First Lien Secured Parties represented by it, is granted a Lien on such additional collateral, which Lien shall be senior to the Lien of the applicable Second Lien Representatives, Second Lien Collateral Agents and Second Lien Secured Parties on the same basis as the other Liens of the Second Lien Secured Parties on the Collateral; (B) replacement Liens on the Collateral; provided that as adequate protection for the First Lien Obligations, each First Lien Collateral Agent, on behalf of the First Lien Secured Parties represented by it, is granted replacement Liens on the Collateral, which Liens shall be senior to the Lien of the applicable Second Lien Representatives, Second Lien Collateral Agents and Second Lien Secured Parties on the same basis as the other Liens of the Second Lien Secured Parties on the Collateral; (C) an administrative expense claim; provided that as adequate protection for the First Lien Obligations, each First Lien Representative, on behalf of the First Lien Secured Parties represented by it, is granted an administrative expense claim which is senior and prior to the administrative expense claim of the Second Lien Representatives and the other Second Lien Secured Parties; and (D) cash payments with respect to interest on the Second Lien Obligations; provided that (1) as adequate protection for the First Lien Obligations, each First Lien Representative, on behalf of the First Lien Secured Parties represented by it, is granted cash payments with respect to interest on the First Lien Obligation represented by it and (2) such cash payments do not exceed an amount equal to the interest accruing on the principal amount of Second Lien Obligations outstanding on the date such relief is granted at the interest rate under the applicable Second Lien Documents and accruing from the date the applicable Second Lien Representative is granted such relief. If any Second Lien Secured Party receives Post-Petition Interest and/or adequate protection payments in an Insolvency or Liquidation Proceeding (“Second Lien Adequate Protection Payments”) and the First Lien Secured Parties do not receive payment in full in cash of all First Lien Obligations upon the effectiveness of the plan of reorganization for, or conclusion of, that Insolvency or Liquidation Proceeding, then each Second Lien Secured Party shall pay over to the First Lien Secured Parties an amount (the “Pay-Over Amount”) equal to the lesser of (i) the Second Lien Adequate Protection Payments received by such Second Lien Secured Party and (ii) the amount of the short-fall (the “Short Fall”) in payment in full of the First Lien Obligations; provided that to the extent any portion of the Short Fall represents payments received by the First Lien Secured Parties in the form of promissory notes, equity or other property equal in value to the cash paid in respect of the Pay-Over Amount, the First Lien Secured Parties shall, upon receipt of the Pay-Over Amount, transfer those promissory notes, equity or other property, equal in value to the cash paid in respect of the Pay-Over Amount, to the applicable Second Lien Secured Parties pro rata in exchange for the Pay-Over Amount. Notwithstanding anything herein to the contrary, the First Lien Secured Parties shall not be deemed to have consented to, and expressly retain their rights to object to, the grant of adequate protection in the form of cash payments to the Second Lien Secured Parties made pursuant to this Section 6.3(b).
Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the other Second Lien Secured Parties represented by it, agrees that notice of a hearing to approve DIP Financing or use of Cash Collateral on an interim basis shall be adequate if delivered to such Second Lien Representative and Second Lien Collateral Agent at least two (2) Business Days in advance of such hearing and that notice of a hearing to approve DIP Financing or use of Cash Collateral on a final basis shall be adequate if delivered to such Second Lien Representative and Second Lien Collateral Agent at least fifteen (15) days in advance of such hearing.

6.4 No Waiver. Subject to Section 6.7(b), nothing contained herein shall prohibit or in any way limit any First Lien Representative or any other First Lien Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by any Second Lien Representative or any other Second Lien Secured Party, including the seeking by any Second Lien Representative or any other Second Lien Secured Party of adequate protection or the asserting by any Second Lien Representative or any other Second Lien Secured Party of any of its rights and remedies under the Second Lien Documents or otherwise.

6.5 Avoidance Issues. If any First Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor any amount paid in respect of First Lien Obligations (a “Recovery”), then such First Lien Secured Party shall be entitled to a reinstatement of its First Lien Obligations with respect to all such recovered amounts on the date of such Recovery, and from and after the date of such reinstatement the Discharge of First Lien Obligations shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.6 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, arrangement, compromise or liquidation or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

6.7 Post-Petition Interest.

(a) None of any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party shall oppose or seek to challenge any claim by any First Lien Representative, any First Lien Collateral Agent or any other First Lien Secured Party for allowance in any Insolvency or Liquidation Proceeding of First Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the First Lien Collateral Agents on behalf of the First Lien Secured Parties on the Collateral or any other First Lien Secured Party’s Lien, without
regard to the existence of the Liens of the Second Lien Collateral Agents on behalf of the Second Lien Secured Parties on the Collateral.

(b) None of any First Lien Representative, First Lien Collateral Agent or any other First Lien Secured Party shall oppose or seek to challenge any claim by any Second Lien Representative, Second Lien Collateral Agent or any other Second Lien Secured Party for allowance in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of Post-Petition Interest to the extent of the value of the Lien of the Second Lien Collateral Agents on behalf of the Second Lien Secured Parties on the Collateral (after taking into account the amount of all First Lien Obligations (including as described in Section 6.9)).

6.8 Waiver. Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, waives any claim it may hereafter have against any First Lien Secured Party arising out of the election of any First Lien Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding so long as such actions are not in express contravention of the terms of this Agreement.

6.9 Separate Grants of Security and Separate Classification. Each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, and each First Lien Representative and each First Lien Collateral Agent, for itself and on behalf of the First Lien Secured Parties represented by it, acknowledges and agrees that:

(a) the grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants of Liens; and

(b) because of, among other things, their differing rights in the Collateral, the Second Lien Obligations are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Lien Secured Parties and the Second Lien Secured Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Second Lien Secured Parties), the First Lien Secured Parties shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of Post-Petition Interest,
including any additional interest payable pursuant to the First Lien Documents, arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding) before any distribution is made in respect of the claims held by the Second Lien Secured Parties with respect to the Collateral, with each Second Lien Representative and each Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties represented by it, hereby acknowledging and agreeing to turn over to the Designated First Lien Collateral Agent, for itself and on behalf of the First Lien Secured Parties, Collateral or proceeds of Collateral otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Lien Secured Parties.

6.10 Effectiveness in Insolvency or Liquidation Proceedings. The Parties acknowledge that this Agreement is a “subordination agreement” under section 510(a) of the Bankruptcy Code, which will be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor will include such Person as a debtor-in-possession and any receiver or trustee for such Person in an Insolvency or Liquidation Proceeding.

SECTION 7. Reliance; Waivers; Etc.

7.1 Reliance. Other than any reliance on the terms of this Agreement, each First Lien Representative and each First Lien Collateral Agent, on behalf of itself and the First Lien Secured Parties represented by it, acknowledges that it and such First Lien Secured Parties have, independently and without reliance on any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the First Lien Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the First Lien Documents or this Agreement. Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, acknowledges that it and such Second Lien Secured Parties have, independently and without reliance on any First Lien Representative, any First Lien Collateral Agent or any other First Lien Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Second Lien Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Second Lien Documents or this Agreement.

7.2 No Warranties or Liability. Each First Lien Representative and each First Lien Collateral Agent, on behalf of itself and the First Lien Secured Parties represented by it, acknowledges and agrees that no Second Lien Representative or other Second Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Second Lien Secured Parties will be entitled to manage and supervise their respective extensions of credit under the Second Lien Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate.
Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, acknowledges and agrees that no First Lien Representative or other First Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the First Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the First Lien Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the First Lien Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Second Lien Representatives, the Second Lien Collateral Agents and the other Second Lien Secured Parties shall have no duty to the First Lien Representatives, the First Lien Collateral Agents or any of the other First Lien Secured Parties, and the First Lien Representatives and the other First Lien Secured Parties shall have no duty to the Second Lien Representatives or any of the other Second Lien Secured Parties, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any other Grantor (including the First Lien Documents and the Second Lien Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3 **No Waiver of Lien Priorities**

(a) No right of the First Lien Secured Parties, the First Lien Representatives, the First Lien Collateral Agents or any of them to enforce any provision of this Agreement or any First Lien Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Grantor or by any act or failure to act by any First Lien Secured Party, First Lien Representative or First Lien Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the First Lien Documents or any of the Second Lien Documents, regardless of any knowledge thereof which any other First Lien Representative, First Lien Collateral Agent or any First Lien Secured Party, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Company and the other Grantors under the First Lien Documents and subject to the provisions of Section 8.7), the First Lien Secured Parties, the First Lien Representatives, the First Lien Collateral Agents and any of them may, at any time and from time to time in accordance with the First Lien Documents and/or applicable law, without the consent of, or notice to, any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party, without incurring any liabilities to any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any Second Lien Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party is affected, impaired or extinguished thereby) do any one or more of the following:

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(1) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the First Lien Obligations or any Lien on any First Lien Collateral or guaranty of any of the First Lien Obligations or any liability of the Company or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by any First Lien Representative, any First Lien Collateral Agent or any of the other First Lien Secured Parties, the First Lien Obligations or any of the First Lien Documents;

(2) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the First Lien Collateral or any liability of the Company or any other Grantor to any of the First Lien Secured Parties, the First Lien Representatives or the First Lien Collateral Agents, or any liability incurred directly or indirectly in respect thereof;

(3) settle or compromise any First Lien Obligation or any other liability of the Company or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Obligations) in any manner or order; and

(4) exercise or delay in or refrain from exercising any right or remedy against the Company or any other Grantor or any other Person or any security, and elect any remedy and otherwise deal freely with the Company, any other Grantor or any First Lien Collateral and any security and any guarantor or any liability of the Company or any other Grantor to the First Lien Secured Parties or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise expressly provided herein, each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, also agrees that the First Lien Secured Parties, the First Lien Representatives and the First Lien Collateral Agents shall have no liability to such Second Lien Representative, such Second Lien Collateral Agent or any such Second Lien Secured Parties, and such Second Lien Representative and such Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, hereby waives any claim against any First Lien Secured Party, any First Lien Representative or any First Lien Collateral Agent arising out of any and all actions which the First Lien Secured Parties, any First Lien Representative or any First Lien Collateral Agent may take or permit or omit to take with respect to:

(1) the First Lien Documents (other than this Agreement);

(2) the collection of the First Lien Obligations; or
Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, agrees that the First Lien Secured Parties, the First Lien Representatives and the First Lien Collateral Agents have no duty to them in respect of the maintenance or preservation of the First Lien Collateral, the First Lien Obligations or otherwise.

(d) Until the Discharge of First Lien Obligations, each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to any First Lien Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Secured Parties and the Second Lien Representatives, the Second Lien Collateral Agents and the other Second Lien Secured Parties, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Lien Documents or any Second Lien Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Lien Obligations or Second Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any First Lien Document or any Second Lien Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Obligations or Second Lien Obligations or any guaranty thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of any First Lien Representative, any First Lien Collateral Agent, the First Lien Obligations, any First Lien Secured Party, any Second Lien Representative, any Second Lien
SECTION 8. Miscellaneous.

8.1 Integration/Conflicts. This Agreement, the First Lien Documents and the Second Lien Documents represent the entire agreement of the Grantors, the First Lien Secured Parties and the Second Lien Secured Parties with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the First Lien Secured Parties or the Second Lien Secured Parties relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein. In the event of any conflict between the provisions of this Agreement and the provisions of the First Lien Documents or the Second Lien Documents, the provisions of this Agreement shall govern and control.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the First Lien Secured Parties may continue, at any time and without notice to any Second Lien Representative or any other Second Lien Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any Grantor constituting First Lien Obligations in reliance hereon. Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor-in-possession and any receiver, trustee or similar person for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to any First Lien Representative and any First Lien Collateral Agent, the First Lien Secured Parties represented by it and their First Lien Obligations, on the date on which the First Lien Obligations of such First Lien Secured Parties are Discharged, subject to the rights of the First Lien Secured Parties under Section 6.5; and

(b) with respect to any Second Lien Representative and any Second Lien Collateral Agent, the Second Lien Secured Parties represented by it and their
provided, however, that in each case, such termination shall not relieve any such party of its obligations incurred hereunder prior to the date of such termination.

8.3 Amendments; Waivers.

(a) No amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, the Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent their rights are directly and adversely affected.

(b) Notwithstanding the foregoing, without the consent of any First Lien Secured Party or Second Lien Secured Party, any Representative and Collateral Agent may become a party hereto by execution and delivery of a Joinder Agreement in accordance with Section 8.7 of this Agreement and upon such execution and delivery, such Representative and Collateral Agent and the Additional First Lien Secured Parties and Additional First Lien Obligations or Additional Second Lien Secured Parties or Additional Second Lien Obligations of the Series for which such Representative and Collateral Agent is acting shall be subject to the terms hereof.

(c) Notwithstanding the foregoing, without the consent of any other Representative, Collateral Agent or First Lien Secured Party, the Designated First Lien Representative may effect amendments and modifications to this Agreement to the extent necessary to reflect any incurrence of any Additional First Lien Obligations or Additional Second Lien Obligations in compliance with this Agreement.

8.4 Information Concerning Financial Condition of the Grantors and their Subsidiaries. The First Lien Representatives, the First Lien Collateral Agents and the other First Lien Secured Parties, on the one hand, and the Second Lien Representatives, the Second Lien Collateral Agents and the Second Lien Secured Parties, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of the Grantors and their Subsidiaries and all endorsers and/or guarantors of the First Lien Obligations or the Second Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations. The First Lien Representatives, the First Lien Collateral Agents and the other First Lien Secured Parties shall have no duty to advise the Second Lien Representatives, the Second Lien Collateral Agents or any other Second Lien Secured Party of information known to it or them regarding such condition or any such circumstances or otherwise. In the event the First Lien Representatives, the First Lien Collateral Agents or any of the other First Lien Secured Parties, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any Second Lien
Representative, any Second Lien Collateral Agent or any other Second Lien Secured Party, it or they shall be under no obligation:

(a) to make, and the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Secured Parties shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

8.5 **Subrogation.** With respect to the value of any payments or distributions in cash, property or other assets that any of the Second Lien Representatives, the Second Lien Collateral Agents or the other Second Lien Secured Parties pays over to any of the First Lien Representatives, the First Lien Collateral Agents or the other First Lien Secured Parties under the terms of this Agreement, such Second Lien Secured Parties, Second Lien Representatives and Second Lien Collateral Agents shall be subrogated to the rights of such First Lien Representatives, First Lien Collateral Agents and First Lien Secured Parties; provided that each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, hereby agrees not to assert or enforce any such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of First Lien Obligations has occurred. The Company and the other Grantors each acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by any Second Lien Representative, Second Lien Collateral Agent or other Second Lien Secured Party that are paid over to any First Lien Representative, First Lien Collateral Agent or other First Lien Secured Party pursuant to this Agreement shall not reduce any of the Second Lien Obligations.

8.6 **Application of Payments.** All payments received by any First Lien Representative, First Lien Collateral Agent or other First Lien Secured Party may be applied, reversed and reapplied, in whole or in part, to such part of the First Lien Obligations provided for in the First Lien Documents (subject to the First Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement, in each case if then in effect). Each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, agrees to any extension or postponement of the time of payment of the First Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security which may at any time secure any part of the First Lien Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.
Additional Debt Facilities.

(a) To the extent, but only to the extent, permitted by the provisions of the First Lien Documents and the Second Lien Documents, the Company may (x) incur or issue and sell one or more series or classes of Indebtedness that the Company designates as Additional First Lien Debt and/or one or more series or classes of Indebtedness that the Company designates as Additional Second Lien Debt (each, “Additional Debt”) or (y) incur Indebtedness under any Replacement First Lien Credit Agreement that is secured on an equal and ratable basis with the Liens (other than any First Lien Declined Liens) securing the Additional First Lien Obligations.

Any such series or class of Additional First Lien Debt may be secured by a first-priority, senior Lien on the Collateral, in each case under and pursuant to the First Lien Collateral Documents for such Series of Additional First Lien Debt, if and subject to the condition that, unless such Indebtedness is part of an existing Series of Additional First Lien Debt represented by a First Lien Representative and First Lien Collateral Agent already party to this Agreement, the First Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect), the Additional First Lien Representative and the Additional First Lien Collateral Agent of any such Additional First Lien Debt each becomes a party to this Agreement, the First Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) by satisfying the conditions set forth in clauses (1) through (3) of paragraph (b) of this Section 8.7. Any Indebtedness and other Initial First Lien Obligations under any Replacement First Lien Credit Agreement may be secured by Liens on an equal and ratable basis, in each case under and pursuant to the Initial First Lien Documents, if and subject to the condition that the Replacement First Lien Representative and Replacement First Lien Collateral Agent, acting on behalf of the holders of such Initial First Lien Obligations, each becomes a party to this Agreement, the First Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) by satisfying the conditions set forth in clauses (1) through (3) of paragraph (b) of this Section 8.7. Upon any Additional First Lien Representative and Additional First Lien Collateral Agent, or Replacement First Lien Representative and Replacement First Lien Collateral Agent, as the case may be, so becoming a party hereto and becoming a party to the First Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) in accordance with the terms thereof, all Additional First Lien Obligations of such Series or all Initial First Lien Obligations under any Replacement First Lien Credit Agreement, as applicable, shall also be entitled to be so secured by a senior Lien on the Collateral in accordance with the terms hereof and thereof.

Any such series or class of Additional Second Lien Debt may be secured by a second-priority, subordinated Lien on the Collateral, in each case under and pursuant to the relevant Second Lien Collateral Documents for such Series of Additional Second Lien Debt, if and subject to the condition, unless such Indebtedness is part of an existing Series of Additional Second Lien Debt represented by a Second Lien Representative and Second Lien Collateral Agent already party to this Agreement, the Second Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect), the Additional Second Lien Representative and Additional Second
Lien Collateral Agent of any such Additional Second Lien Debt each becomes a party to this Agreement, the Second Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) by satisfying the conditions set forth in clauses (1) through (3) of paragraph (b) of this Section 8.7. Upon any Additional Second Lien Representative so becoming a party hereto and becoming a party to the Second Lien Pari Passu Intercreditor Agreement and the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) in accordance with the terms thereof, all Additional Second Lien Obligations of such Series shall also be entitled to be so secured by a subordinated Lien on the Collateral in accordance with the terms hereof and thereof.

(b) In order for an Additional Representative and an Additional Collateral Agent, or, in the case of a Replacement First Lien Credit Agreement, the Replacement First Lien Representative and the Replacement First Lien Collateral Agent in respect thereof, to become a party to this Agreement:

1. such Additional Representative and such Additional Collateral Agent or such Replacement First Lien Representative and such Replacement First Lien Collateral Agent shall have executed and delivered to each other then-existing Representative (A) a Joinder Agreement substantially in the form of Exhibit I hereto (if such Representative is an Additional Second Lien Representative and such Collateral Agent is an Additional Second Lien Collateral Agent) or Exhibit II hereto (if such Representative is an Additional First Lien Representative and such Collateral Agent is an Additional First Lien Collateral Agent or in the case of a Replacement First Lien Credit Agreement) (with such changes as may be reasonably approved by the Designated First Lien Representative and such Representative and such Collateral Agent) pursuant to which (x) such Additional Representative becomes a Representative hereunder, such Additional Collateral Agent becomes a Collateral Agent hereunder and the related First Lien Secured Parties or Second Lien Secured Parties, as applicable, become subject hereto and bound hereby or (y) such Replacement First Lien Representative becomes the Initial First Lien Representative hereunder and such Replacement First Lien Collateral Agent becomes the Initial First Lien Collateral Agent hereunder, such Replacement First Lien Credit Agreement becomes the Initial First Lien Credit Agreement hereunder and such Initial First Lien Obligations and holders of such Initial First Lien Obligations become subject hereto and bound hereby and (B) a joinder agreement to the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) in the form required thereby or such other form as may be acceptable to the parties thereto;

2. the Company shall have delivered a Designation to each other then-existing Collateral Agent substantially in the form of Exhibit III hereto, pursuant to which a Responsible Officer of the Company shall (A) identify the Indebtedness to be designated as Additional First Lien Obligations, Additional Second Lien Obligations, or Initial First Lien Obligations, as applicable, and the initial aggregate principal amount of such Indebtedness, (B) specify the name and address of the applicable Additional Representative and Additional Collateral

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Agent or the Replacement First Lien Representative and Replacement First Lien Collateral Agent, (C) certify that such Additional Debt or Initial First Lien Obligations is permitted to be incurred, secured and guaranteed by each First Lien Document and Second Lien Document and that the conditions set forth in this Section 8.7 are satisfied with respect to such Additional Debt or Initial First Lien Obligations, as applicable and (D) in the case of a Replacement First Lien Credit Agreement, expressly state that such agreement giving rise to the new Indebtedness satisfies the requirements of a Replacement First Lien Credit Agreement and is designated as a Replacement First Lien Credit Agreement; and

(3) the Company shall have delivered to each other Collateral Agent true and complete copies of each of the First Lien Documents or Second Lien Documents, as applicable, relating to such Additional First Lien Debt, Additional Second Lien Debt, or the Replacement First Lien Credit Agreement, as applicable, certified as being true and correct by a Responsible Officer of the Company.

(c) The Additional Second Lien Documents or Additional First Lien Documents, as applicable, relating to such Additional Obligations shall provide that each of the applicable Secured Parties with respect to such Additional Obligations will be subject to and bound by the provisions of this Agreement in its capacity as a holder of such Additional Obligations.

(d) Upon the execution and delivery of a Joinder Agreement by an Additional First Lien Representative and an Additional First Lien Collateral Agent or an Additional Second Lien Representative and an Additional Second Lien Collateral Agent or the Replacement First Lien Representative and the Replacement First Lien Collateral Agent, in each case, in accordance with this Section 8.7, each other Representative and Collateral Agent shall acknowledge receipt thereof by countersigning a copy thereof and returning the same to such Additional First Lien Representative and such Additional First Lien Collateral Agent or such Additional Second Lien Representative and such Additional Second Lien Collateral Agent or the Replacement First Lien Representative and the Replacement First Lien Collateral Agent, as the case may be; provided that the failure of any Representative or Collateral Agent to so acknowledge or return the same shall not affect the status of such Additional Obligations as Additional First Lien Obligations or Additional Second Lien Obligations, or a Replacement First Lien Credit Agreement, as the case may be, if the other requirements of this Section 8.7 are complied with.

(e) With respect to any incurrence, issuance or sale of Indebtedness after the date hereof under the Additional First Lien Documents or Additional Second Lien Documents of a Series of Additional First Lien Debt or Series of Additional Second Lien Debt whose Representative and Collateral Agent is already each a party to this Agreement, the ABL/Term Loan/Notes Intercreditor Agreement (if then in effect) and the First Lien Pari Passu Intercreditor Agreement or Second Lien Pari Passu Intercreditor Agreement, as applicable, the requirements of Section 8.7(b) shall not be applicable and
such Indebtedness shall automatically constitute Additional First Lien Debt or Additional Second Lien Debt so long as (i) such Indebtedness is permitted to be incurred, secured and guaranteed by each First Lien Document and Second Lien Document and (ii) the provisions of paragraph (c) above have been complied with; provided, further, however that with respect to any such Indebtedness incurred, issued or sold pursuant to the terms of any Additional First Lien Documents or Additional Second Lien Documents of such existing Series of Additional First Lien Debt or Additional Second Lien Debt as such terms existed on the date the Representative and Collateral Agent for such Series of Additional First Lien Debt or Additional Second Lien Debt executed the Joinder Agreement, the requirements of clause (i) of this paragraph (e) shall be tested only as of (x) the date of execution of such Joinder Agreement, if pursuant to a commitment entered into at the time of such Joinder Agreement and (y) with respect to any later commitment or amendment to those terms to permit such Indebtedness, as of the date of such commitment and/or amendment.

8.8 Submission to Jurisdiction; Certain Waivers. Each of the Company, each other Grantor, and each Representative and each Collateral Agent, on behalf of itself and the applicable Secured Parties for whom it is acting, hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Collateral Documents (whether arising in contract, tort or otherwise) to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law and that nothing in this Agreement or any other First Lien Document shall affect any right that any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other First Lien Document or Second Lien Document against such Grantor or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Collateral Document in any court referred to in paragraph (a) of this Section 8.8 (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);
(e) consents to service of process in any such proceeding in any such court by registered or certified mail, return receipt requested, to the applicable party at its address provided in accordance with Section 8.10 (and agrees that nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law); and

(f) agrees that service as provided in paragraph (e) above is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect.

8.9 **WAIVER OF JURY TRIAL.**

EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FIRST LIEN DOCUMENT OR SECOND LIEN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER FIRST LIEN DOCUMENTS AND SECOND LIEN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO AND THE COMPANY AND THE OTHER GRANTORS FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

8.10 **Notices.** All notices to the Second Lien Secured Parties and the First Lien Secured Parties permitted or required under this Agreement shall be sent to the applicable Second Lien Representative and the applicable First Lien Representative, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by facsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party’s name on the signature pages hereto or in the Joinder Agreement pursuant to which it becomes a party hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.
8.11 Further Assurances. Each First Lien Representative and each First Lien Collateral Agent, on behalf of itself and the First Lien Secured Parties represented by it, each Second Lien Representative and each Second Lien Collateral Agent, on behalf of itself and the Second Lien Secured Parties represented by it, and the Company and each other Grantor, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any First Lien Representative and First Lien Collateral Agent or any Second Lien Representative and Second Lien Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.12 Agency Capacities. Except as expressly provided herein, Deutsche Bank AG New York Branch, is acting in the capacity of Initial First Lien Representative and Initial First Lien Collateral Agent solely for the Initial First Lien Secured Parties. Except as expressly provided herein, each other Representative and Collateral Agent is acting in the capacity of Representative and Collateral Agent, respectively, solely for the Secured Parties under the First Lien Documents or Second Lien Documents for which it is the named Representative or Collateral Agent, as the case may be, in the applicable Joinder Agreement.

8.13 GOVERNING LAW. THIS AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

8.14 Binding on Successors and Assigns. This Agreement shall be binding upon the First Lien Representatives, the First Lien Secured Parties, the other First Lien Secured Parties, the Second Lien Representatives, the Second Lien Secured Parties, the other Second Lien Secured Parties, the Company and the other Grantors, and their respective successors and assigns. If any of the First Lien Representatives, the First Lien Collateral Agents, the Second Lien Representatives or the Second Lien Collateral Agents resigns or is replaced pursuant to the First Lien Documents or the Second Lien Documents, as applicable, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement. No provision of this Agreement will inure to the benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of any Grantor, including where any such trustee, debtor-in-possession, creditor trust or other representative of an estate is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency or Liquidation Proceeding.

8.15 Section Headings. Section headings and the Table of Contents used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.16 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this
Agreement by facsimile or other electronic transmission (e.g. “pdf” or “tif” format) shall be effective as delivery of a manually executed counterpart hereof.

8.17 **Authorization.** By its signature, each Person executing this Agreement, on behalf of such party or Grantor but not in his or her personal capacity as a signatory, represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.18 **No Third Party Beneficiaries/Provisions Solely to Define Relative Rights.** This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the First Lien Secured Parties and the Second Lien Secured Parties. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Representatives, the First Lien Collateral Agents and the other First Lien Secured Parties on the one hand and the Second Lien Representatives, the Second Lien Collateral Agents and the other Second Lien Secured Parties on the other hand. Nothing herein shall be construed to limit the relative rights and obligations as among the First Lien Secured Parties or as among the Second Lien Secured Parties; as among the First Lien Secured Parties, such rights and obligations are governed by, and any provisions herein regarding them are therefore subject to, the provisions of the First Lien Pari Passu Intercreditor Agreement and as among the Second Lien Secured Parties, such rights and obligations are governed by, and any provisions herein regarding them are therefore subject to, the provisions of the Second Lien Pari Passu Intercreditor Agreement (provided that, solely as among any Initial Second Lien Secured Parties party to the Initial First Lien Credit Agreement, the Initial Second Lien Documents shall define the relative rights and priorities of such Second Lien Secured Parties (as among each other) with respect to the Collateral (including, without limitation, as to waterfalls, voting rights and intercreditor provisions contained therein as applicable among such First Lien Secured Parties)). Nothing herein shall be construed to limit the relative rights and obligations as among the parties to the ABL/Term Loan/Notes Intercreditor Agreement; as among such Persons, such rights and obligations are governed by, and any provisions herein regarding them are therefore subject to, the provisions of the ABL/Term Loan/Notes Intercreditor Agreement. Other than as set forth in Section 8.3, none of the Company, any other Grantor or any other creditor thereof shall have any rights hereunder and neither the Company nor any Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the First Lien Obligations and the Second Lien Obligations as and when the same shall become due and payable in accordance with their terms.

8.19 **No Indirect Actions.** Unless otherwise expressly stated, if a party may not take an action under this Agreement, then it may not take that action indirectly, or support any other Person in taking that action directly or indirectly. “Taking an action indirectly” means taking an action that is not expressly prohibited for the party but is intended to have substantially the same effects as the prohibited action.

8.20 **Additional Grantors.** In the event any Subsidiary shall have granted a Lien on any of its assets to secure any Secured Obligations, the Company shall cause such Subsidiary, if not already a party hereto, to become a party hereto as a “Grantor”. Upon the
execution and delivery by any Subsidiary of a joinder here to in form and substance satisfactory to each Collateral Agent, any such Subsidiary shall become a party here to and a Grantor hereunder with the same force and effect as if originally named as such herein. The execution and delivery of any such joinder shall not require the consent of any other party here to. The rights and obligations of each party here to shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

[Remainder of this page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have executed this [Second] Lien Intercreditor Agreement as of the date first written above.

DEUTSCHE BANK AG NEW YORK BRANCH,
as Initial First Lien Representative and as Initial First Lien Collateral Agent

By:

Name:
Title:

By:

Name:
Title:

[NOTICE ADDRESS]

[ ]
as Initial Second Lien Representative

By:

Name:
Title:

[NOTICE ADDRESS]
Acknowledged and Agreed to by:

NEIMAN MARCUS GROUP LTD LLC

By: ________________________________
   Name: 
   Title: 

[NOTICE ADDRESS]

GRANTORS:
[INSERT NAME OF OTHER GRANTORS]

By: ________________________________
   Name: 
   Title: 

[NOTICE ADDRESS]
Exhibit I to the
Second Lien Intercreditor Agreement

[FORM OF] SECOND LIEN JOINDER AGREEMENT NO. [ ] dated as of [ ], 20[ ] to the SECOND LIEN INTERCREDITOR AGREEMENT dated as of [ ], 20[ ] (the “Second Lien Intercreditor Agreement”), among DEUTSCHE BANK AG NEW YORK BRANCH, as Initial First Lien Representative and Initial First Lien Collateral Agent, [INSERT NAME], as Initial Second Lien Representative, [INSERT NAME], as Initial Second Lien Collateral Agent and the additional Representatives from time to time a party thereto, and acknowledged and agreed to by NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Company”), certain subsidiaries of the Company (each a “Grantor”).

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Second Lien Intercreditor Agreement.

As a condition to the ability of the Company to incur Additional Second Lien Debt and to secure such Additional Second Lien Debt and related Additional Second Lien Obligations with a lien on the Collateral and to have such Additional Second Lien Debt guaranteed by the Grantors, in each case under and pursuant to the applicable Additional Second Lien Documents, each of the Additional Second Lien Representative and the Additional Second Lien Collateral Agent in respect of such Additional Second Lien Debt is required to become a Representative and Collateral Agent, respectively, under, and the Additional Second Lien Secured Parties in respect thereof are required to become subject to and bound by, the Second Lien Intercreditor Agreement.

Section 8.7 of the Second Lien Intercreditor Agreement provides that such Additional Second Lien Representative and Additional Second Lien Collateral Agent may become a Representative and Collateral Agent, respectively, under, and, and such Additional Second Lien Secured Parties may become subject to and bound by, the Second Lien Intercreditor Agreement pursuant to the execution and delivery by the Additional Second Lien Representative and Additional Second Lien Collateral Agent of an instrument in the form of this Joinder Agreement and the satisfaction of the other conditions set forth in Section 8.7 of the Second Lien Intercreditor Agreement. The undersigned Additional Second Lien Representative (the “New Representative”) and Additional Second Lien Collateral Agent (the “New Collateral Agent”) are executing this Joinder Agreement in accordance with the requirements of the Second Lien Intercreditor Agreement.

Accordingly, the New Representative and the New Collateral Agent agree as follows:

In accordance with Section 8.7 of the Second Lien Intercreditor Agreement, the New Representative and the New Collateral Agent by their signatures below become a Second Lien Representative and a Second Lien Collateral Agent, respectively, under, and the related Additional Second Lien Secured Parties represented by it become subject to and bound by, the Second Lien Intercreditor Agreement with the same force and effect as if the New Representative and the New Collateral Agent had originally been named therein as a Second Lien Representative and a Second Lien Collateral Agent, respectively, and each of the New Representative and the New Collateral Agent, on behalf of itself and the Additional Second Lien Secured Parties represented by it, hereby agrees to all the terms and provisions of the Second Lien Intercreditor Agreement applicable to it as a Second Lien Representative and a Second Lien

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Collateral Agent, respectively, and to the Additional Second Lien Secured Parties represented by it as Second Lien Secured Parties. Each reference to a “Representative” or “Second Lien Representative” in the Second Lien Intercreditor Agreement shall be deemed to include the New Representative, each reference to a “Collateral Agent” or “Second Lien Collateral Agent” in the Second Lien Intercreditor Agreement shall be deemed to include the New Collateral Agent and each reference to “Second Lien Secured Parties” shall include the Additional Second Lien Secured Parties represented by such New Representative and New Collateral Agent. The Second Lien Intercreditor Agreement is incorporated herein by reference.

Each of the New Representative and New Collateral Agent represents and warrants to the other Representatives, Collateral Agents and the other Secured Parties that (i) it has full power and authority to enter into this Joinder Agreement, in its capacity as [agent] [trustee], (ii) this Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms and the terms of the Second Lien Intercreditor Agreement and (iii) the Second Lien Documents relating to such Additional Second Lien Debt provide that, upon the New Representative’s and New Collateral Agent’s entry into this Agreement, the Additional Second Lien Secured Parties in respect of such Additional Second Lien Debt will be subject to and bound by the provisions of the Second Lien Intercreditor Agreement as Second Lien Secured Parties.

This Joinder Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Joinder Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Joinder Agreement.

Except as expressly supplemented hereby, the Second Lien Intercreditor Agreement shall remain in full force and effect.

THIS JOINDER AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS JOINDER AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Any provision of this Joinder Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and in the Second Lien Intercreditor Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions.

All communications and notices hereunder shall be in writing and given as provided in Section 8.10 of the Second Lien Intercreditor Agreement. All communications and
notices hereunder to the New Representative and the New Collateral Agent shall be given to it at the address set forth below its signature hereto.
IN WITNESS WHEREOF, the New Representative and New Collateral Agent have duly executed this Joinder Agreement to the Second Lien Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE],
as [   ] for the holders of [   ]

By: 
Name: 
Title: 

Address for notices:


attention of: 
Telecopy: 

[NAME OF NEW COLLATERAL AGENT],
as [   ] for the holders of [   ]

By: 
Name: 
Title: 

Address for notices:


attention of: 
Telecopy: 

Receipt of the foregoing acknowledged:

[NAME OF APPLICABLE REPRESENTATIVE],
as [Insert title of Representative]
Receipt of the foregoing acknowledged:
[NAME OF APPLICABLE COLLATERAL AGENT],
as [Insert title of Collateral Agent]

By:
Name:
Title:
[FORM OF] FIRST LIEN JOINDER AGREEMENT NO. [ ] dated as of [ ], 20[ ] to the SECOND LIEN INTERCREDITOR AGREEMENT dated as of [ ], 20[ ] (the “Second Lien Intercreditor Agreement”), among DEUTSCHE BANK AG NEW YORK BRANCH, as Initial First Lien Representative and Initial First Lien Collateral Agent, [INSERT NAME], as Initial Second Lien Representative, [INSERT NAME], as Initial Second Lien Collateral Agent and the additional Representatives and Collateral Agents from time to time a party thereto, and acknowledged and agreed to by NEIMAN MARCUS GROUP LTD LLC, a [ ] (the “Company”), certain subsidiaries and parent entities of the Company (each a “Grantor”).

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Second Lien Intercreditor Agreement.

As a condition to the ability of the Company to incur [Additional First Lien Debt][Initial First Lien Obligations under the Replacement First Lien Credit Agreement] after the date of the Second Lien Intercreditor Agreement and to secure such [Additional First Lien Debt and related Additional First Lien Obligations][Initial First Lien Obligations under the Replacement First Lien Credit Agreement] with a lien on the Collateral and to have such [Additional First Lien Debt and related Additional First Lien Obligations][Initial First Lien Documents] guaranteed by the Grantors, in each case under and pursuant to the [applicable Additional First Lien Documents][Additional First Lien Documents] each of the [Additional First Lien Representative and the Additional First Lien Collateral Agent in respect of such Additional First Lien Debt and related Additional First Lien Obligations][Replacement First Lien Representative and Replacement First Lien Collateral Agent] is required to become [a Representative and Collateral Agent][the Initial First lien Representative and the Initial First Lien Collateral Agent], respectively, under, and the [Additional First Lien Secured Parties][Initial First Lien Secured Parties] in respect thereof are required to become subject to and bound by, the Second Lien Intercreditor Agreement. Section 8.7 of the Second Lien Intercreditor Agreement provides that such [Additional First Lien Representative and Additional First Lien Collateral Agent may become a Representative and Collateral Agent][Replacement First Lien Representative and Replacement First Lien Collateral Agent] is required to become [a Representative and Collateral Agent][the Initial First lien Representative and the Initial First Lien Collateral Agent], respectively, under, and the [Additional First Lien Secured Parties][Initial First Lien Secured Parties] in respect thereof are required to become subject to and bound by, the Second Lien Intercreditor Agreement. Section 8.7 of the Second Lien Intercreditor Agreement provides that such [Additional First Lien Representative and Additional First Lien Collateral Agent may become a Representative and Collateral Agent][Replacement First Lien Representative and Replacement First Lien Collateral Agent] is required to become [a Representative and Collateral Agent][the Initial First lien Representative and the Initial First Lien Collateral Agent], respectively, under, and the [Additional First Lien Secured Parties][Initial First Lien Secured Parties] in respect thereof are required to become subject to and bound by, the Second Lien Intercreditor Agreement. Section 8.7 of the Second Lien Intercreditor Agreement provides that such [Additional First Lien Representative and Additional First Lien Collateral Agent may become a Representative and Collateral Agent][Replacement First Lien Representative and Replacement First Lien Collateral Agent] is required to become [a Representative and Collateral Agent][the Initial First lien Representative and the Initial First Lien Collateral Agent], respectively, under, and the [Additional First Lien Secured Parties][Initial First Lien Secured Parties] in respect thereof are required to become subject to and bound by, the Second Lien Intercreditor Agreement. As a condition to the ability of the Company to incur [Additional First Lien Debt][Initial First Lien Obligations under the Replacement First Lien Credit Agreement] after the date of the Second Lien Intercreditor Agreement and to secure such [Additional First Lien Debt and related Additional First Lien Obligations][Initial First Lien Obligations under the Replacement First Lien Credit Agreement] with a lien on the Collateral and to have such [Additional First Lien Debt and related Additional First Lien Obligations][Initial First Lien Documents] guaranteed by the Grantors, in each case under and pursuant to the [applicable Additional First Lien Documents][Additional First Lien Documents] each of the [Additional First Lien Representative and the Additional First Lien Collateral Agent in respect of such Additional First Lien Debt and related Additional First Lien Obligations][Replacement First Lien Representative and Replacement First Lien Collateral Agent] is required to become [a Representative and Collateral Agent][the Initial First lien Representative and the Initial First Lien Collateral Agent], respectively, under, and the [Additional First Lien Secured Parties][Initial First Lien Secured Parties] in respect thereof are required to become subject to and bound by, the Second Lien Intercreditor Agreement. Section 8.7 of the Second Lien Intercreditor Agreement provides that such [Additional First Lien Representative and Additional First Lien Collateral Agent may become a Representative and Collateral Agent][Replacement First Lien Representative and Replacement First Lien Collateral Agent] may become subject to and bound by the Second Lien Intercreditor Agreement, pursuant to the execution and delivery by the [Additional First Lien Representative and Additional First Lien Collateral Agent][Replacement First Lien Representative and Replacement First Lien Collateral Agent] of an instrument in the form of this Joinder Agreement and the satisfaction of the other conditions set forth in Section 8.7 of the Second Lien Intercreditor Agreement. The undersigned [Additional First Lien Representative][Replacement First Lien Representative] (the “New Representative”) and [Additional First Lien Collateral Agent][Replacement First Lien Collateral Agent] (the “New Collateral Agent”) are executing this Joinder Agreement in accordance with the requirements of the Second Lien Intercreditor Agreement.

Accordingly, the New Representative and the New Collateral Agent agree as follows:

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In accordance with Section 8.7 of the Second Lien Intercreditor Agreement, the New Representative and the New Collateral Agent by their signatures below become a [First Lien Representative and a First Lien Collateral Agent] the Initial First Lien Representative and the Initial First Lien Collateral Agent, respectively, under, and the related [Additional First Lien][Initial First Lien] Secured Parties represented by it become subject to and bound by, the Second Lien Intercreditor Agreement with the same force and effect as if the New Representative and the New Collateral Agent had originally been named therein [a First Lien Representative and a First Lien Collateral Agent][the Initial First Lien Representative and the Initial First Lien Collateral Agent], respectively, and each of the New Representative and the New Collateral Agent, on behalf of itself and the [Additional First Lien][Initial First Lien] Secured Parties represented by it, hereby agrees to all the terms and provisions of the Second Lien Intercreditor Agreement applicable to it as [a First Lien Representative and a First Lien Collateral Agent][the Initial First Lien Representative and the Initial First Lien Collateral Agent], respectively, and to the [Additional First Lien][Initial First Lien] Secured Parties represented by it as [First Lien Secured Parties][Initial First Lien Secured Parties].  Each reference to a [“Representative” or “First Lien Representative”][“Initial First Lien Representative”] in the Second Lien Intercreditor Agreement shall be deemed to [include][refer] the New Representative, each reference to a [“Collateral Agent” or “First Lien Collateral Agent”][“Initial First Lien Collateral Agent”] in the Second Lien Intercreditor Agreement shall be deemed to [include][refer] the New Collateral Agent and each reference to [“First Lien Secured Parties”][“Initial First Lien Secured Parties”] shall include the [Additional First Lien Secured Parties][Initial First Lien Secured Parties] represented by such New Representative and New Collateral Agent.  The Second Lien Intercreditor Agreement is hereby incorporated herein by reference.

Each of the New Representative and New Collateral Agent represents and warrants to the other Representatives, Collateral Agents and the other Secured Parties that (i) it has full power and authority to enter into this Joinder Agreement, in its capacity as [agent] [trustee], (ii) this Joinder Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of the Second Lien Intercreditor Agreement and (iii) the [First Lien Documents relating to such Additional First Lien Debt provide][Replacement First Lien Credit Agreement provides] that, upon the New Representative’s and New Collateral Agent’s entry into this Agreement, the [Additional First Lien][Initial First Lien] Secured Parties in respect of such [Additional First Lien Debt][Initial First Lien Obligations] will be subject to and bound by the provisions of the Second Lien Intercreditor Agreement as [First Lien Secured Parties][Initial First Lien Secured Parties].

This Joinder Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Joinder Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Joinder Agreement.
Except as expressly supplemented hereby, the Second Lien Intercreditor Agreement shall remain in full force and effect.

**THIS JOINDER AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS JOINDER AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

Any provision of this Joinder Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and in the Second Lien Intercreditor Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to those of the invalid, illegal or unenforceable provisions.

All communications and notices hereunder shall be in writing and given as provided in Section 8.10 of the Second Lien Intercreditor Agreement. All communications and notices hereunder to the New Representative and the New Collateral Agent shall be given to it at the address set forth below its signature hereto.

[Remainder of this page intentionally left blank]
IN WITNESS WHEREOF, the New Representative and the New Collateral Agent have duly executed this Joinder Agreement to the Second Lien Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW REPRESENTATIVE],
as [ ] for the holders of [ ]

By: 

Name: 
Title: 

Address for notices:


attention of: 
Telecopy: 

[NAME OF NEW COLLATERAL AGENT],
as [ ] for the holders of [ ]

By: 

Name: 
Title: 

Address for notices:


attention of: 
Telecopy: 

Receipt of the foregoing acknowledged: 

[NAME OF APPLICABLE REPRESENTATIVE],
as [Insert title of Representative]

By: 

Name: 
Title: 

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Receipt of the foregoing acknowledged:
[NAME OF APPLICABLE COLLATERAL AGENT],
as [Insert title of Collateral Agent]

By: __________________________________________
    Name: __________________________
    Title: ____________________________
[FORM OF] DEBT DESIGNATION NO. [ ] (this “Designation”) dated as of [ ], 20[ ] with respect to the SECOND LIEN INTERCREDITOR AGREEMENT dated as of [ ], 20[ ] (the “Second Lien Intercreditor Agreement”), among DEUTSCHE BANK AG NEW YORK BRANCH, as Initial First Lien Representative and Initial First Lien Collateral Agent for the Initial First Lien Secured Parties, [ ], as Initial Second Lien Representative, [ ], as Initial Second Lien Collateral Agent and the additional Representatives and Collateral Agent from time to time a party thereto, and acknowledged and agreed to by NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Company”), and certain subsidiaries and parent entities of the Company (each a “Grantor”).

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Second Lien Intercreditor Agreement.

This Designation is being executed and delivered in order to designate [additional][replacement] secured Obligations of the Company and the Grantors as [Additional First Lien Debt][Additional Second Lien Debt][Initial First Lien Obligations under the Replacement First Lien Credit Agreement] entitled to the benefit of and subject to the terms of the Second Lien Intercreditor Agreement.

The undersigned, the duly appointed [specify title of Responsible Officer] of the Company hereby certifies on behalf of the Company that:

1. [Insert name of the Company or other Grantor] intends to incur Indebtedness (the “Designated Obligations”) in the initial aggregate principal amount of [ ] pursuant to the following agreement: [describe credit/loan agreement indenture or other agreement giving rise to Additional First Lien Debt or Additional Second Lien Debt, as the case may be][Replacement Credit Agreement] (the “Designated Agreement”) which will be [Additional First Lien Obligations][Additional Second Lien Obligations][Initial First Lien Obligations] for purposes of the Second Lien Intercreditor Agreement.

2. The incurrence of the Designated Obligations is permitted by each applicable First Lien Document and Second Lien Document.

3. Conform the following as applicable; Pursuant to and for the purposes of Section 8.7 of the Second Lien Intercreditor Agreement, (i) the Designated Agreement is hereby designated as [an “Additional First Lien Document”][an “Additional Second Lien Document”][the “Replacement First Lien Credit Agreement”] [and][,] (ii) the Designated Obligations are hereby designated as [“Additional First Lien Obligations”][“Additional Second Lien Obligations”][“Initial First Lien Obligations”][insert for Replacement Credit Agreements only: and (iii) the Designated Agreement satisfies the requirements of a Replacement Credit Agreement].

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4. a. The name and address of the [Representative][Replacement First Lien Representative] for such Designated Obligations is:
[Insert name and all capacities; Address]
Telephone:
Fax:
Email:
b. The name and address of the [Collateral Agent][Replacement First Lien Collateral Agent] for such Designated Obligations is:
[Insert name and all capacities; Address]
Telephone:
Fax:
Email:

[Remainder of this page intentionally left blank]
IN WITNESS WHEREOF, the Company has caused this Designation to be duly executed by the undersigned Responsible Officer as of the day and year first above written.

NEIMAN MARCUS GROUP LTD LLC

By: ________________________________

Name: ______________________________

Title: ______________________________
EXHIBIT I

FILO INTERCREDITOR PROVISIONS

Section 1  Definitions.

In this Exhibit I (the “FILO Intercreditor Provisions”), capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement to which this Exhibit is attached. In addition, the following terms shall have the following meanings:

“ABL Term Loan Obligations” means all present or future loans, advances, debts, liabilities and obligations (whether or not performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Loan Party to any Term Loan Claimholder in respect of any ABL Term Loan, whether or not evidenced by a Note, arising under the Agreement or any of the other Loan Documents, including all principal, interest, fees, expenses, charges, indemnities and other amounts (including interest, fees, expenses and other amounts accrued or incurred on and after the filing of a petition initiating any Insolvency or Liquidation Proceeding, whether or not such interest or fees are deemed to accrue, or such expenses or other amounts are incurred, after the filing of such petition and whether or not allowed or allowable as a claim in such proceeding).

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto.

“Bankruptcy Law” means the Bankruptcy Code and any similar Federal, state or foreign law for the relief of debtors as now or hereafter in effect.

“Collateral Proceeds” means any proceeds, dividends, distributions or other payments (whether in cash, securities or other property) in respect of, or in substitution or exchange for, any Collateral or any Liens or claims on, based on or otherwise arising from or with respect to any Collateral (including claims in any Insolvency or Liquidation Proceeding), or from any sale or other disposition of any Collateral or any liquidation, foreclosure or similar transaction with respect to any Collateral.

“Insolvency or Liquidation Proceeding” means (a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Loan Party, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Loan Party or with respect to any of its assets, (c) any liquidation, dissolution, reorganization or winding up of any Loan Party whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Loan Party.

“Revolving Facility Claimholder” means, at any relevant time, the holders of Revolving Facility Claims at such time, including without limitation the Revolving Lenders and
the Administrative Agent to the extent it is owed any Revolving Facility Claims by any Loan Party.

“Term Loan Claimholder” means, at any relevant time, the holders of ABL Term Loan Obligations at such time, including without limitation the ABL Term Loan Lenders and the Administrative Agent to the extent it is owed any ABL Term Loan Obligations by any Loan Party.

Section 2 Agreements Among Claimholders.

(a) In any Insolvency or Liquidation Proceeding, the Revolving Facility Claimholder may seek adequate protection in the form of current post-petition interest payments, incurred fees and expenses, or other cash payments. If, in any Insolvency or Liquidation Proceeding, the Revolving Facility Claimholders and the Term Loan Claimholders as a group are granted adequate protection in the form of current post-petition interest payments, incurred fees and expenses, or other cash payments, then the Term Loan Claimholders agree that the Revolving Facility Claimholders shall be entitled to receive all such payments until they have actually received the full amount of post-petition interest, fees, and expenses owed or to be owed thereto as of the date of each such payment(s), before any distribution from, or in respect of, any such post-petition payments may be made to the Term Loan Claimholders, with the Term Loan Claimholders hereby acknowledging and agreeing to turn over to the Revolving Facility Claimholders any Collateral Proceeds (including proceeds of post-petition assets) otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Term Loan Claimholders.

(b) In any Insolvency or Liquidation Proceeding, the Term Loan Claimholders shall be entitled to vote on any proposed plan under Chapter 11 of the Bankruptcy Code, but agree they shall only do so in the manner as expressly instructed by the Required Lenders or their agent. The Term Loan Claimholders further agree that they will not raise any objection to, oppose, or otherwise take any action that could hinder, delay, interfere with, or impede the approval and confirmation of any plan under Chapter 11 of the Bankruptcy Code that is supported or proposed by the Required Lenders.

(c) The Term Loan Claimholders agree that in any Insolvency or Liquidation Proceeding, their claims in respect of the Collateral or otherwise would not be “substantially similar” to those of the Revolving Facility Claimholders, as such term is utilized in Section 1122(a) of the Bankruptcy Code, and, therefore, shall be placed into a separate class of creditors from those of the Revolving Facility Claimholders for voting and all other purposes under any proposed plan under Chapter 11 of the Bankruptcy Code and will in any case not raise any objection to, oppose or otherwise take action that could interfere with such treatment of their claims in such manner. The Term Loan Claimholders further agree that they will not vote to accept any proposed plan under Chapter 11 of the Bankruptcy Code that does not so separately classify their claims from those of the Revolving Facility Claimholders (except to the extent they are otherwise expressly instructed to do so by the Required Lenders or their agent).
If, notwithstanding the foregoing clause (c), in any Insolvency or Liquidation Proceeding, it is held that the claims of the Revolving Facility Claimholders and Term Loan Claimholders in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the Revolving Facility Claimholders shall be entitled to receive, in addition to Collateral Proceeds distributed to them from, or in respect of, principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs, premium and other charges, irrespective of whether all or any portion of the claim for such amounts is allowed or allowable in such Insolvency or Liquidation Proceeding pursuant to Section 506(b) of the Bankruptcy Code or otherwise, until the Discharge of ABL Revolving Claims, before any distribution of Collateral Proceeds is made in respect of the claims held by the Term Loan Claimholders, with the Term Loan Claimholders hereby acknowledging and agreeing to promptly turn over to the Administrative Agent for distribution to the Revolving Facility Claimholders in accordance with Section 2.18(3) of the Agreement any Collateral Proceeds otherwise received or receivable by them, without offset, defense, deduction or counterclaim of any kind, nature or description to the extent necessary to effectuate the intent of this sentence, until the Discharge of ABL Revolving Claims, even if such turnover has the effect of reducing the claim or recovery of the Term Loan Claimholders.

If (i) any Revolving Facility Claims are determined to be unsecured in part for purposes of Section 506(a) of the Bankruptcy Code, but would not have been deemed unsecured in part for such purposes, or would have been deemed to be unsecured in part by a lesser amount for such purposes, or (ii) any payments received in respect of any Revolving Facility Claims are voided, set aside or otherwise required to be returned, but would not have been voided, set aside or otherwise required to be returned, in either case if the ABL Term Loans had been subject to a separate junior lien on the Collateral, and any payment or distribution is made in respect of the Collateral to or for the benefit or account of the Term Loan Claimholders, such payment or distribution shall be held in trust for the benefit of Revolving Facility Claimholders up to an amount equal to the additional amount that would have been paid, payable or distributed in respect of the Revolving Facility Claims, or not voided, set aside or otherwise required to be returned, if such separate junior lien had existed, and shall be promptly transferred or delivered to the Administrative Agent for application to the Revolving Facility Claims in the manner provided in Section 2.18(3) of the Agreement.

Anything contained herein to the contrary notwithstanding, the Term Loan Claimholders shall not be entitled to share in or receive any Collateral Proceeds or any liens or claims on, based on or otherwise arising from or with respect to any Collateral (including claims in any Insolvency or Liquidation Proceeding), until the Discharge of ABL Revolving Claims or to the extent that the aggregate amount of the Revolving Facility Claims and ABL Term Loan Obligations then outstanding exceeds the aggregate value of the Collateral (net of prior liens and encumbrances) so that no portion of the claims of the Revolving Facility Claimholders in such Insolvency or Liquidation Proceeding shall be deemed an unsecured claim as a result of such excess.
Section 3  Exercise of Remedies.

(a) So long as the Discharge of ABL Revolving Claims has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Borrower or any other Loan Party:

(i) the Term Loan Claimholders:

(A) will not, independently without the express consent and, if requested by the Administrative Agent or the Required Lenders, a joinder by the Required Lenders (or the Administrative Agent on their behalf), exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Collateral (including the exercise of any right under any lockbox agreement, account control agreement, landlord waiver or bailee’s letter or similar agreement or arrangement to which the Term Loan Claimholders and/or the Administrative Agent is a party) or institute or commence (or join with any other Person, other than the Required Lenders, in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding (including any Insolvency or Liquidation Proceeding) with respect to any Lien held by it or for its benefit under the Security Documents or otherwise;

(B) will not contest, protest or object to any foreclosure proceeding or action brought by the Revolving Facility Claimholders or the Administrative Agent, on behalf of any or all of the Revolving Facility Claimholders, or any other exercise by the Revolving Facility Claimholders, or the Administrative Agent, on behalf of any or all of the Revolving Facility Claimholders, of any rights and remedies relating to the Collateral or otherwise under the Security Documents, applicable law or otherwise, provided that the respective interests of the Term Loan Claimholders attach to the proceeds thereof, subject to the relative priorities described in Section 2.18(3) of the Agreement;

(C) will not object to the forbearance by the Revolving Facility Claimholders, or the Administrative Agent, on behalf of the Revolving Facility Claimholders, or the refusal of the Revolving Facility Claimholders, or the Administrative Agent, on behalf of the Revolving Facility Claimholders, to consent to any requested act by the Term Loan Claimholders, or from the Revolving Facility Claimholders, or the Administrative Agent, on behalf of the Revolving Facility Claimholders, bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral; and

(D) will not, independently, without the express written consent and, if required by the Administrative Agent or the Required Lenders, a joinder by the Required Lenders, file, pursuant to Section 109 or 303 of the Bankruptcy Code or otherwise, a petition in order to commence an Insolvency or Liquidation Proceeding against any Borrower and/or any other Loan Party (an “Involuntary Insolvency Proceeding”). In the event that any Revolving Facility Claimholder
or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, files a petition with the bankruptcy court pursuant to Section 109 of the Bankruptcy Code in order to commence an Involuntary Insolvency Proceeding, the Term Loan Claimholders agree that they will not oppose such petition or support any Person opposing such petition.

(ii) Subject to Section 4 of these FILO Intercreditor Provisions, the Revolving Lenders and the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of the Term Loan Claimholders or the Administrative Agent, acting on behalf of the Term Loan Claimholders; except, however, that, if requested by the Administrative Agent, the Term Loan Claimholders shall join and shall otherwise support any such action taken by the Revolving Facility Claimholders; provided, that

(A) in any Insolvency or Liquidation Proceeding commenced by or against any Borrower or any other Loan Party, the Term Loan Claimholders may file a proof of claim or statement of interest with respect to the ABL Term Loan Obligations;

(B) the Term Loan Claimholders may join in any action undertaken by the Revolving Facility Claimholders in order to preserve or protect the Lien of the Administrative Agent on the Collateral; and

(C) the Term Loan Claimholders shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Term Loan Claimholders, including any claims secured by the Collateral, if any, in each case in accordance with the terms of these FILO Intercreditor Provisions.

In exercising rights and remedies with respect to the Collateral, the Revolving Lenders and the Administrative Agent, on behalf of the Revolving Facility Claimholders, may enforce the provisions of the Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. The Term Loan Claimholders agree that the Revolving Facility Claimholders are not acting as the agent of the Term Loan Claimholders and do not otherwise owe them any fiduciary duty, and may instead act for all purposes in a manner that maximizes the interests of the Revolving Facility Claimholders. Such exercise and enforcement shall include the rights of an agent appointed by the Required Lenders to sell or otherwise dispose of Collateral upon foreclosure, or to consent to the sale or other disposition of Collateral by or on behalf of any Loan Party, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.
The ABL Term Lenders agree that they will not take or receive any Collateral Proceeds in connection with the exercise of any right or remedy (including set-off or recoupment) with respect to any Collateral, and that any Collateral or Collateral Proceeds taken or received by the Administrative Agent, for the benefit of the Term Loan Claimholders, will be paid over to, or held by, the Administrative Agent for the benefit of the Revolving Facility Claimholders, unless and until the Discharge of ABL Revolving Claims occurs. Without limiting the generality of the foregoing, unless and until the Discharge of ABL Revolving Claims occurs, except as expressly provided in Section 3(a)(ii) of these FILO Intercreditor Provisions, the sole right of the Term Loan Claimholders with respect to the Collateral is for the Administrative Agent to hold a Lien on the Collateral to secure the ABL Term Loan Obligations owing to them pursuant to the Loan Documents for the period and to the extent granted therein.

Subject to the proviso in clause (ii) of Section 3(a) and Section 3(d) of these FILO Intercreditor Provisions, the ABL Term Lenders agree that (i) the Term Loan Claimholders will not take any action that would hinder, delay or impede or object to any exercise of remedies of the Revolving Facility Claimholders (or the Administrative Agent on behalf of any or all of the Revolving Facility Claimholders or in accordance with the directions of the Required Lenders) under the Loan Documents, including any sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise, and whether by the Administrative Agent on behalf of the Revolving Facility Claimholders or by any Loan Party with the consent of the Required Lenders, and (ii) the ABL Term Lenders hereby waive any and all rights they may have as a secured creditor or otherwise to object to the manner or order in which the Revolving Loan Claimholders (or the Administrative Agent on behalf of the Revolving Loan Claimholders) seek to enforce or collect the Revolving Facility Claims or the Liens granted in any of the Collateral.

The ABL Term Lenders hereby acknowledge and agree that no covenant, agreement or restriction contained in the Loan Documents shall be deemed to restrict in any way the rights and remedies of the Revolving Facility Claimholders with respect to the Collateral as set forth in the Agreement (including, without limitation, these FILO Intercreditor Provisions) and the other Loan Documents.

If any Term Loan Claimholder, contrary to the Agreement (including, without limitation, these FILO Intercreditor Provisions) commences or participates in any action or proceeding against any Loan Party or the Collateral, the Administrative Agent or the Revolving Lenders may interpose in the name of the Revolving Facility Claimholders the making of the Agreement (including, without limitation, these FILO Intercreditor Provisions) as a defense or dilatory plea.

Should any Term Loan Claimholder, contrary to the Agreement (including, without limitation, these FILO Intercreditor Provisions), in any way take, or attempt or threaten to take, any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to the Agreement (including, without limitation, these FILO Intercreditor Provisions), or fail to take any action required by these FILO Intercreditor Provisions, the Administrative Agent or the Revolving Lenders (in its own name or in the name of a Loan Party) may obtain relief against such Term Loan Claimholder by injunction, specific
performance and/or other appropriate equitable relief, it being understood and agreed by the Term Loan Claimholders that (i) the Revolving Facility Claimholders’ damages from such actions may be difficult to ascertain and may be irreparable, and (ii) the Term Loan Claimholders waive any defense that the Revolving Facility Claimholders cannot demonstrate damage or can be made whole by the awarding of damages and any requirement for the posting of a bond.

Section 4 Insolvency and Liquidation Proceedings.

(a) Use of Cash Collateral and Financing Issues. Until the Discharge of ABL Revolving Claims has occurred, if any Borrower or any other Loan Party shall be subject to any Insolvency or Liquidation Proceeding and the Required Lenders, or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, shall desire to permit the use of cash collateral on which the Revolving Loan Claimholders or any other creditor has a Lien or to permit any Borrower or any other Loan Party to obtain financing, from one or more of the Revolving Lenders (including under the Agreement) under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (each, a “DIP Financing”), then the Term Loan Claimholders and the Administrative Agent, acting on behalf of the Term Loan Claimholders, (A) agree that they will raise no objection to such use of cash collateral or DIP Financing, nor support any other Person objecting to, such use of cash collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except as agreed by the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, or to the extent expressly permitted by Section 4(d) of these FILO Intercreditor Provisions) and, to the extent the Liens securing the Revolving Facility Claims are subordinated to or pari passu with any such DIP Financing provided by the Revolving Lenders, the Term Loan Claimholders agree that the Administrative Agent may subordinate the Liens in the Collateral to the extent held for the benefit of the Term Loan Claimholders to (x) the Liens securing such DIP Financing (and all obligations relating thereto), (y) any adequate protection Liens provided to the Administrative Agent on behalf of the Revolving Facility Claimholders or any of them (or any other agent on their behalf) and (z) any "carveout" for professional or United States Trustee fees agreed to by the Revolving Lenders or the Administrative Agent (or any other agent, acting on behalf of the Revolving Facility Claimholders; and (B) agree that notice received two (2) calendar days prior to the entry of an order approving such usage of cash collateral or approving such DIP Financing shall be adequate notice. If any Loan Party shall be subject to any Insolvency or Liquidation Proceeding, the Term Loan Claimholders agree that (other than with respect to any DIP Financing provided by any or all of the Revolving Lenders in accordance with the immediately preceding sentence and except as otherwise may be instructed by the Required Lenders) they will not consent to provide or participate in, or otherwise support, any DIP Financing that, pursuant to Section 364(d) of the Bankruptcy Code or otherwise, would be secured by a lien on any portion of the Collateral that is senior or equal to the lien of the Administrative Agent for the benefit of the any or all of the Revolving Facility Claimholders (or any other agent acting on their behalf) on the Collateral. The Term Loan Claimholders further agree that, except as otherwise instructed by Required Facility Claimholders, they will join in or otherwise support any objection filed by the Revolving Lenders to any proposed DIP Financing by any Person that would be secured by a lien on any portion of the Collateral that is senior or
(b) **Sale Issues.** The Term Loan Claimholders agree that they will not raise any objection to or oppose a sale or other disposition of any Collateral (including any post-petition assets subject to liens in favor of the Lenders or the Administrative Agent on behalf of any Lenders or any other agent) free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if the Required Lenders under the Agreement have consented to such sale or disposition of such assets, so long as the interests of the Term Loan Claimholders in the Collateral (and any post-petition assets subject to liens in favor of the Lenders or the Administrative Agent on behalf of Lenders or any other agent) attach to the proceeds thereof, subject to the terms of the Agreement (including, without limitation, these FILO Intercreditor Provisions). If requested by the Required Lenders in connection therewith, the Term Loan Claimholders shall affirmatively consent to such a sale or disposition and take such other action as may be required in connection therewith.

(c) **Relief from the Automatic Stay.** Until the Discharge of ABL Revolving Claims has occurred, the Term Loan Claimholders agree that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of, and, if required by Agent or the Required Lenders, a joinder in any such action by, the Required Lenders, or (ii) oppose any request by any Revolving Facility Claimholder (or the Administrative Agent on behalf of any Revolving Facility Claimholder) to seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral.

(d) **Adequate Protection.**

(i) The Term Loan Claimholders agree that none of them shall contest (or support any other person contesting) (A) any request by the Revolving Facility Claimholders or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, for adequate protection or (B) any objection by the Revolving Facility Claimholders to any motion, relief, action or proceeding based on the Revolving Facility Claimholders claiming a lack of adequate protection. In any Insolvency or Liquidation Proceeding, the Term Loan Claimholders may not, without the express written consent of, or joinder by, the Required Lenders, independently seek adequate protection in respect of the ABL Term Loan Obligations. In the event the Revolving Facility Claimholders seek or request adequate protection in respect of Revolving Facility Claims and such adequate protection is granted in the form of additional collateral, then the Term Loan Claimholders agree that their rights in respect of any Lien on such additional collateral securing the ABL Term Loan Obligations shall be junior to the rights in respect of such Liens securing the Revolving Facility Claims and any DIP Financing (and all obligations relating thereto) and to any other Liens granted to the Revolving Facility Claimholders (or the Administrative Agent or any other agent for the benefit of any or all of Revolving Facility Claimholders) as adequate.
protection, in each case on the same basis as set forth in Section 2.18(3) of the Agreement.

(ii) Similarly, if the Revolving Facility Claimholders and the Term Loan Claimholders are granted adequate protection in the form of a superpriority claim, then the Term Loan Claimholders agree that their interest in any such superpriority claim will be junior in all respects to interests of the Revolving Facility Claimholders in such superpriority claim.

(e) **No Waiver.** Nothing contained herein shall prohibit or in any way limit the Revolving Facility Claimholders or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Term Loan Claimholders in violation of the Agreement (including, without limitation, these FILO Intercreditor Provisions), including the seeking by the Term Loan Claimholders or the Administrative Agent, acting on behalf of the Term Loan Claimholders, of adequate protection or the asserting by the Term Loan Claimholders or the Administrative Agent, acting on behalf of the Term Loan Claimholders, of any of its rights and remedies under the Loan Documents or otherwise without the express written consent of the Required Lenders; provided, however, that this Section 4(e) shall not limit the rights of the Term Loan Claimholders under the proviso in Section 3(a)(ii) or under Section 4(d) or Section 4(h), in each case of these FILO Intercreditor Provisions.

(f) **Avoidance Issues.** In addition to any other rights provided to the Revolving Facility Claimholders hereunder (including Section 2(e) of these FILO Intercreditor Provisions), if any Revolving Facility Claimholder is required in any Insolvency or Liquidation Proceeding, or otherwise, to turn over or otherwise pay to the estate of any Borrower or any other Loan Party any amount in respect of a Revolving Facility Claim (a “Recovery”), then such Revolving Facility Claimholders shall be entitled to a reinstatement of Revolving Facility Claims with respect to all such recovered amounts. If the Agreement (including, without limitation, these FILO Intercreditor Provisions) shall have been terminated prior to such Recovery, the Agreement (including, without limitation, these FILO Intercreditor Provisions), shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Collateral or Collateral Proceeds received by the Term Loan Claimholders or the Administrative Agent, acting on behalf of the Term Loan Claimholders, after the Discharge of ABL Revolving Claims and prior to the reinstatement of such Revolving Facility Claims shall be delivered to the Revolving Lenders upon such reinstatement.

(g) **Reorganization Securities.** If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of Revolving Facility Claims and on account of ABL Term Loan Obligations, then, to the extent the debt obligations distributed on account of the Revolving Facility Claims and on account of the ABL Term Loan Obligations are secured by Liens upon the same property, the provisions of the Agreement (including, without limitation, these FILO
Intercreditor Provisions) will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(b) Post-Petition Claims.

(i) Neither the Term Loan Claimholders nor the Administrative Agent, acting on behalf of the Term Loan Claimholders, shall oppose or seek to challenge any claim by the Revolving Facility Claimholders or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, for allowance in any Insolvency or Liquidation Proceeding of Revolving Facility Claims consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the Collateral subject to the Lien of the Administrative Agent to secure the Revolving Facility Claims, without regard to the existence of the Lien of the Administrative Agent to secure the ABL Term Loan Obligations.

(ii) Neither the Revolving Facility Claimholders nor the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, shall oppose or seek to challenge any claim by the Term Loan Claimholders or the Administrative Agent, acting on behalf of the Term Loan Claimholders, for allowance in any Insolvency or Liquidation Proceeding of ABL Term Loan Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the Term Loan Claimholders’ Lien on the Collateral (after taking into account the Revolving Facility Claims).

(i) Waiver. The Term Loan Claimholders waive any claim they may hereafter have against the Revolving Facility Claimholders arising out of the election of the Revolving Facility Claimholders or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, of the application of Section 1111(b)(2) of the Bankruptcy Code, or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding.

(j) Expense Claims. Neither the Term Loan Claimholders nor the Administrative Agent, acting on behalf of the Term Loan Claimholders, will (i) contest the payment of fees, expenses or other amounts to any Revolving Facility Claimholder or the Administrative Agent, acting on behalf of the Revolving Facility Claimholders, under Section 506(b) of the Bankruptcy Code or otherwise to the extent provided for in the Agreement (including, without limitation, these FILO Intercreditor Provisions) or (ii) assert or enforce, at any time prior to the Discharge of ABL Revolving Claims, any claim under Section 506(c) of the Bankruptcy Code senior to or on parity with the Revolving Facility Claims for costs or expenses of preserving or disposing of any Collateral.

(k) Other Matters. To the extent that any Term Loan Claimholder or the Administrative Agent, acting on behalf of the Term Loan Claimholders, has or acquires rights under Section 361, Section 363 or Section 364 of the Bankruptcy Code with respect to any of the Collateral, the Term Loan Claimholders agree not to assert any of such rights without the prior
written consent of the Required Lenders; provided that if requested by the Required Lenders, the ABL Term Lenders shall timely exercise such rights in the manner requested by the Required Lenders, including any rights to payments in respect of such rights.

Effectiveness in Insolvency or Liquidation Proceedings. Sections 1 through Section 4 of these FILO Intercreditor Provisions, which the parties hereto expressly acknowledge is a “subordination agreement” under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in such Sections to any Loan Party shall include such Person as a debtor-in-possession and any receiver or trustee for such Person in any Insolvency or Liquidation Proceeding.
THIS SUBLEASE (this “Sublease”) is made and entered into as of the day of , 2019, by and between [NMG NOTES PROPCO LLC] (1)[NMG TERM LOAN PROPCO LLC](2), a Delaware limited liability company (hereinafter called “Sublandlord”), and , a (hereinafter called “Subtenant”);

W I T N E S S E T H:

WHEREAS, Sublandlord is a wholly-owned subsidiary of Subtenant;

WHEREAS, Subtenant was party as tenant to that certain [lease, sublease or sub-sublease], dated [   ] with , a as landlord (“Landlord”), as more particularly described on Exhibit A annexed hereto and made a part hereof (hereinafter called the “Prime Lease”);

WHEREAS, Subtenant, as the prior tenant under the Prime Lease, leased the demised premises located at (the “Leased Premises”);

WHEREAS, Subtenant, as assignor, and Sublandlord, as assignee, entered into an Assignment and Assumption of Lease (the “Assignment”) pursuant to which Subtenant assigned to Sublandlord all of Subtenant’s right, title and interest in and to the leasehold interest in the Prime Lease; and

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant, the Leased Premises, of which Subtenant is currently in possession and on which Subtenant is currently operating a [Neiman Marcus] [Bergdorf Goodman] store (hereinafter, the “Store”), all upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. **Demise; Use.** Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord the Leased Premises for the term and rental and upon the other terms and conditions hereinafter set forth, to be used solely for the purposes permitted under the Prime Lease, including operating the Store in accordance with all operating covenants and requirements (including with respect to trade name) of the Prime Lease.

2. **Term.** The term (the “Term”) of this Sublease shall commence on , 2019 (the “Commencement Date”) and, unless sooner terminated pursuant to the provisions hereof, shall terminate on the earlier of the one-year anniversary of the Commencement Date (such date, and each applicable subsequent anniversary following an

(1) Use for PropCo Assets

(2) Use for New Term Loan Assets
extension pursuant to the proviso to this sentence, the “Scheduled Expiry Date”) and the prior termination of the term of the Prime Lease for any reason whatsoever, provided, the Term shall automatically be extended by an additional year after the Scheduled Expiry Date (subject to prior termination of the Prime Lease) if neither party has delivered to the other written notice of its intent to terminate this Sublease at least ten (10) business days prior to the Scheduled Expiry Date.

3. **Base Rent.**

   (a) Subtenant shall pay to Landlord directly on behalf of Sublandlord annual fixed rental (hereinafter called “Base Rent”) for the Leased Premises equal to the [Base Rent] (as defined in the Prime Lease) payable by Sublandlord to Landlord under the Prime Lease. Base Rent shall be due and payable pursuant to the terms and provisions of the Prime Lease.

   (b) All Base Rent and Additional Rent (as defined below) shall be paid directly to Landlord at the address designated under the Prime Lease or by notice from Landlord or at such other place as Sublandlord may designate by notice to Subtenant.

4. **Additional Rent; Payments; Interest.**

   (a) In addition to Base Rent, Subtenant shall also pay to Sublandlord all other charges, costs, expenses, fees and other amounts, including real property taxes and assessments, sewer rents, utilities, common area charges, and percentage or contingent rent, including late payments, interest, and costs and fees of collection, including attorney fees (collectively “Additional Rent”) payable by Sublandlord under the Prime Lease. Without limiting the foregoing, Subtenant shall maintain and provide to Landlord all reports and accountings with respect to rent, issues and profits and percentage rent of Subtenant with respect to the Leased Premises required under the Prime Lease.

   (b) Each amount due pursuant to Subsection 4(a) above and each other amount payable by Subtenant hereunder, unless a date for payment of such amount is provided for elsewhere in this Sublease, shall be due and payable no later than the date on which any such amount is due and payable under the Prime Lease.

   (c) All amounts other than Base Rent payable to, or on behalf of, Sublandlord under this Sublease shall be deemed to be additional rent due under this Sublease. All past due installments of Base Rent and additional rent shall bear interest from the date that is the earlier of the date provided in the Prime Lease for the applicable payment or five (5) business days following receipt of written notice thereof from Sublandlord until paid at the rate per annum equal to the greater of the rate provided in the Prime Lease or three percent (3%) in excess of the Prime Rate (as hereinafter defined) (the “Default Rate”) in effect from time to time, which rate shall change from time to time as of the effective date of each change in the Prime Rate, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged. For the purposes of this Sublease, the term “Prime Rate” shall mean the base rate on corporate loans at large U.S. money centers or commercial banks as published from time to time by the Wall Street Journal.
As and to the extent provided in the Prime Lease or as Landlord and Subtenant may otherwise agree, Subtenant shall pay Landlord on the due dates as provided in the Prime Lease or as otherwise agreed by the parties, for all services requested by Subtenant which are billed by Landlord directly to Subtenant rather than Sublandlord, all of which shall constitute Additional Rent.

5. **Condition of Leased Premises.** Subtenant, as the present occupant and operator of the Leased Premises, acknowledges and agrees that it takes the Leased Premises “as is”, “where is” and “with all faults”, and that Sublandlord does not make any warranties, representations or promises with respect to the Leased Premises or the Prime Lease of any kind whatsoever, express or implied, including without limitation with respect to state of title, physical condition or environmental condition, or fitness for any particular use. Subtenant’s taking possession of the Leased Premises pursuant to this Sublease shall be conclusive evidence as against Subtenant that the Leased Premises were in good order and satisfactory condition when Subtenant took possession. No promise of Sublandlord to alter, remodel or improve the Leased Premises, except as may be expressly provided herein, and no representation respecting the condition of the Leased Premises have been made by Sublandlord to Subtenant. Upon the expiration of the term hereof, or upon any earlier termination of the term hereof or of Subtenant’s right to possession (including any rejection of this Sublease in bankruptcy), Subtenant shall surrender the Leased Premises in the condition required pursuant to the Prime Lease (including environmental matters).

6. **The Prime Lease.**

(a) This Sublease and all rights, privileges and interests of Subtenant hereunder and with respect to the Leased Premises are subject to all of the terms, conditions, covenants, warranties, representations and provisions of the Prime Lease. Notwithstanding any provision to the contrary in the Assignment, as between Sublandlord and Subtenant, Subtenant hereby assumes and agrees to perform faithfully and be bound by, with respect to the Leased Premises, all of Sublandlord's obligations, warranties, representations, covenants, agreements, provisions and liabilities under the Prime Lease and all terms, conditions, provisions and restrictions contained in the Prime Lease. Without limitation of the foregoing:

(i) Subtenant shall not make any changes, alterations or additions in or to the Leased Premises except as otherwise expressly provided in the Prime Lease or herein;

(ii) If Subtenant desires to take any other action and the Prime Lease would require that Sublandlord obtain the consent of Landlord before undertaking any action of the same kind, Subtenant shall not undertake the same without the prior written consent of Landlord and Sublandlord. Sublandlord may condition its consent on the consent of Landlord being obtained and may require Subtenant to contact Landlord directly for such consent. All such consents shall be at the sole cost and expense of Subtenant;

(iii) Sublandlord shall have the right during all normal business hours upon reasonable prior notice to Subtenant to enter upon and inspect the Leased Premises.
Premises. Without limiting the foregoing, all rights given to Landlord and its agents and representatives by the Prime Lease to enter and/or inspect the Leased Premises shall inure to the benefit of Sublandlord and their respective agents and representatives with respect to the Leased Premises;

(iv) Sublandlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Landlord under the Prime Lease;

(v) Subtenant shall maintain insurance of the kinds and in the amounts required to be maintained by Sublandlord under the Prime Lease; and

(vi) Subtenant shall not do anything or suffer or permit anything to be done which could result in a default or breach under the Prime Lease or permit the Prime Lease, with the passage of time or the service of notice or both, to be cancelled or terminated (or which could limit or prohibit Sublandlord from exercising any option or right of renewal, first negotiation, first refusal or right of expansion under the Prime Lease).

(b) In addition to the other covenants and obligations under this Sublease and the Prime Lease as incorporated herein, and without limitation of the foregoing, Sublandlord agrees as follows, subject in each case to the due and punctual performance and observance of all covenants and obligations of Subtenant hereunder:

(i) Sublandlord shall not do anything which could reasonably be expected to result in a default under the Prime Lease; provided, however, that Sublandlord shall not be in default of this covenant to the extent the default under the Prime Lease is caused or attributable (in whole or in part) by Subtenant, its shareholders, partners, members, directors, officers, employees, agents, customers or invitees.

(ii) Sublandlord shall not amend, modify or terminate the Prime Lease, without the prior written consent of Subtenant, which may be withheld in its sole discretion to the extent the same could increase Subtenant’s liabilities or obligations under this Sublease.

(iii) If any action to be taken by Subtenant or any other matter would require the consent or approval of Sublandlord under this Sublease, but not Landlord under the Prime Lease, Sublandlord’s consent or approval shall not be unreasonably withheld, conditioned or delayed. If any action to be taken by Subtenant or any other matter would require the consent or approval of Landlord under the Prime Lease, (i) Sublandlord shall be deemed to have consented to or approved such request if Landlord consents to or approves the same, and (ii) Sublandlord shall be deemed not to have consented to or approved such request if Landlord does not consent to or approve the same.

(iv) Sublandlord shall not assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Sublease or any interest in this
Sublease, whether voluntarily, by operation of law or otherwise (including a merger or transfer of voting control in Sublandlord), in each case without the prior written consent of Subtenant, which may be withheld in its sole discretion.

(c) Notwithstanding anything contained herein or in the Prime Lease which may appear to be to the contrary, Sublandlord and Subtenant hereby agree as follows:

(i) Subtenant shall not assign, mortgage, pledge, hypothecate, or otherwise transfer or permit the transfer of this Sublease or any interest of Subtenant in this Sublease, directly or indirectly, by operation of law or otherwise, or permit the use of the Leased Premises or any part thereof by any persons other than Subtenant and Subtenant’s employees, or sublet the Leased Premises or any part thereof;

(ii) in the event of any condemnation or casualty damage or destruction of the Leased Premises, Sublandlord shall have no obligation to restore the Leased Premises, all such obligations (if any) of Sublandlord as the tenant under the Prime Lease (if any) to be performed by Subtenant; provided that neither rental nor additional rent or other payments hereunder shall abate or be suspended by reason of any condemnation, damage to or destruction of the Leased Premises or any part thereof, unless, and then only to the extent that, rental and additional rent and such other payments actually abate under the Prime Lease with respect to the Leased Premises on account of such event;

(iii) Subtenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Leased Premises;

(iv) Subtenant shall not have any right to exercise or have Sublandlord exercise any option under the Prime Lease, including, without limitation, any option or right of first refusal, first negotiation or first offer to extend the term of the Prime Lease or lease additional space; and

(v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of the Prime Lease shall, in all instances, govern and control.

(d) It is expressly understood and agreed that Sublandlord does not assume and shall not have any of the obligations or liabilities of Landlord under the Prime Lease and that Sublandlord is not making the representations or warranties, inducements, rent or other concessions or abatements, allowances, tenant improvements or landlord’s work, if any, made by Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Landlord under the Prime Lease, Sublandlord’s sole obligation with respect thereto shall be to request the same, upon written request from Subtenant, and to use reasonable efforts to obtain the same from Landlord. Sublandlord shall not be liable in any respect, in damages or otherwise, nor
shall rent abate hereunder, for or on account of any failure by Landlord to perform the obligations and duties imposed on it under the Prime Lease.

(e) Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Landlord, unless Subtenant attorns to Landlord by written instrument.

(f) Nothing contained in this Sublease shall be construed to release the Sublandlord of any of its obligations or liabilities owed to Landlord under the Prime Lease.

7. **Default by Subtenant.**

   (a) Upon the happening of any of the following:

      (i) Subtenant fails to pay any Base Rent or Additional Rent within five (5) days after the date it is due;

      (ii) Subtenant fails to pay any other amount due from Subtenant hereunder and such failure continues for five (5) business days after notice thereof from Sublandlord to Subtenant;

      (iii) Subtenant fails to perform or observe any other covenant, obligation or agreement set forth in this Sublease and such failure continues until the earlier of (1) ten (10) business days after notice thereof from Sublandlord to Subtenant or (2) any earlier date specified for default under the Prime Lease, any Superior Interest or any Ancillary Document, as the case may be; or

      (iv) any other event occurs which involves Subtenant or the Leased Premises or any part thereof and which would constitute a default under the Prime Lease if it involved Sublandlord (or any agent, representative, officer, director, manager or shareholder of Subtenant) or the Leased Premises, subject to any notice and cure periods thereunder;

Subtenant shall be deemed to be in default hereunder, and Sublandlord may exercise, without any further demand or notice, and without limitation of any other rights and remedies available to it hereunder or at law or in equity, all of which rights are hereby expressly reserved, any and all of the equivalent rights and remedies of Landlord set forth in the Prime Lease with respect to the Leased Premises in the event of a default by Sublandlord thereunder (including without limitation the right to terminate this Sublease and recover possession of the Leased Premises free of all rights and interests of Subtenant).

   (b) In the event Subtenant fails or refuses to make any payment or perform any covenant, obligation or agreement to be performed hereunder by Subtenant, Sublandlord may make such payment or undertake to perform such covenant, obligation or agreement (but shall not have any obligation to Subtenant to do so). In such event, all amounts so paid and all amounts expended in undertaking such performance, together with all costs, expenses and reasonable attorneys’ fees incurred by Sublandlord or Landlord in connection therewith, together with interest at the Default Rate, shall be additional rent hereunder.
8. **Nonwaiver.** Failure of Sublandlord to declare any default or delay in taking any action, or partial exercise of any rights or remedies, in connection therewith shall not waive such default. No receipt of moneys or performance of obligations by Sublandlord from Subtenant after the termination in any way of the term or of Subtenant’s right of possession hereunder or after the giving of any notice of termination or eviction shall reinstate, continue or extend the term or Subtenant’s right of occupancy or possession or affect any notice given to Subtenant or any suit commenced or judgment entered prior to receipt of such moneys or performance of obligations.

9. **Cumulative Rights and Remedies.** All rights and remedies of Sublandlord under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

10. **Waiver of Claims and Indemnity.**

   (a) Subtenant hereby releases and waives any and all claims against Landlord and Sublandlord and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Leased Premises by Subtenant other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under applicable law.

   (b) Subtenant agrees to indemnify, defend and hold harmless Landlord and its beneficiaries, Sublandlord and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, liabilities, costs and expenses of every kind and nature, including reasonable attorneys’ fees and litigation expenses, arising out of or with respect to or from Subtenant’s use, possession or occupancy (or rights thereto) of the Leased Premises (including such use, possession or occupancy by Subtenant prior to the commencement of the Term in its capacity as prior tenant under the Prime Lease), or any events or occurrences on, under, or about the Leased Premises, Subtenant’s construction or authorization of any work or leasehold improvements in the Leased Premises or from any breach or default on the part of Subtenant in the performance of any agreement, covenant, obligation, warranty or representation of Subtenant to be performed or performed under this Sublease or pursuant to the terms of this Sublease, or from any act or neglect of Subtenant or its agents, officers, employees, guests, servants, invitees or customers in or about the Leased Premises, other than by reason of gross negligence or willful misconduct on the part of any of the foregoing indemnitees. In case any action or proceeding is brought against any of said indemnified parties, Subtenant covenants, if requested by Sublandlord, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Sublandlord (and, if provided in the Prime Lease, by Landlord).

   (c) Subtenant acknowledges that prior to the assignment to, and assumption by, Sublandlord of the Prime Lease, Subtenant was the tenant under the Prime Lease, and agrees that all of Subtenant’s liabilities and obligations under this Sublease, including, without limitation, Subtenant’s indemnification obligations under Section 10(b), shall apply to the extent such liabilities or obligations arise from any matter first arising or accruing during Subtenant’s tenancy and occupancy of the Leased Premises under the
Prime Lease (the “Subtenant Occupancy Period”). Sublandlord acknowledges and agrees that such obligations of Subtenant shall not apply to any matter first arising or accruing during the period of time (i) prior to the Subtenant Occupancy Period, or (ii) after the expiration or earlier termination of the Term of this Sublease, except to the extent such liabilities or obligations expressly survive such expiration or termination.

11. **Waiver of Subrogation.** Anything in this Sublease to the contrary notwithstanding, Sublandlord and Subtenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Subtenant hereby waives any and all rights of recovery, claims, actions or causes of action against Landlord and its agents and employees for any loss or damage that may occur to the Leased Premises, or any improvements thereto, or any personal property of any person therein, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies.

12. **Successors and Assigns.** This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublandlord and shall be binding upon and inure to the benefit of the successors of Subtenant and, to the extent any such assignment may be approved, Subtenant’s assigns. The provisions of Subsection 6(e) and Sections 10 and 11 hereof shall inure to the benefit of the successors and assigns of Landlord.

13. **Entire Agreement.** This Sublease contains all the terms, covenants, conditions and agreements between Sublandlord and Subtenant relating in any manner to the rental, use and occupancy of the Leased Premises. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublandlord and Subtenant.

14. **Notices.**

(a) In the event any notice from the Landlord or otherwise relating to the Prime Lease is delivered to the Leased Premises or is otherwise received by Subtenant, Subtenant shall, as soon thereafter as possible deliver such notice to Sublandlord if such notice is written or advise Sublandlord thereof by telephone if such notice is oral.

(b) Notices and demands required or permitted to be given by either party to the other with respect hereto or to the Leased Premises shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided, however, that all notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:
Notice and demands shall be deemed to have been given two (2) days after mailing, if mailed, or, if made by personal delivery or by overnight air courier service, then upon such delivery. Either party may change its address for receipt of notices by giving notice to the other party.

15. **Electronic Transmission; Counterparts.** Sublandlord and Subtenant may deliver executed signature page(s) to this Sublease by electronic transmission to the other party, which electronic copy shall be deemed to be an original executed signature page. This Sublease may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

16. **Superior Interests; Ancillary Documents.** Except as expressly provided herein to the contrary, Subtenant acknowledges and agrees that this Sublease is expressly subject and subordinate to, and Subtenant shall observe and perform, Sublandlord’s obligations with respect to, (a) all superior fee, leasehold and mortgage or security interests affecting the Leased Premises (collectively, “Superior Interests”) existing as of the date hereof until such time as such Superior Interests are terminated or released, (b) all future Superior Interests to the extent expressly provided in Superior Interests existing as of the date hereof until such time such future Superior Interests are terminated or released, and (c) all ancillary agreements and documents (including, without limitation, reciprocal easement and/or operating agreements affecting the Lease Premises as of the date hereof (including any of the same identified on Exhibit A, collectively, the “Ancillary Documents”)), as all such Superior Interests and Ancillary Documents may hereinafter be amended or supplemented from time to time.

[Signature Pages Follow]
IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

SUBLANDLORD: [NMG NOTES PROPCO LLC] / [NMG TERM LOAN PROPCO LLC]

By: By:

Its: Its:
ANNEX D
Amended and Restated ABL Guarantee and Collateral Agreement
See Exhibit 10.4.
Exhibit 10.4

EXECUTION VERSION

AMENDED AND RESTATED ABL GUARANTEE AND COLLATERAL AGREEMENT, dated as of June 7, 2019,

among

MARIPOSA INTERMEDIATE HOLDINGS LLC, as Holdings,

NEIMAN MARCUS GROUP LTD LLC, as the Borrower,

each other Grantor and/or Guarantor party hereto

and

DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and Collateral Agent

Reference is made to the ABL/Term Loan/Notes Intercreditor Agreement, dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “ABL/Term Loan/Notes Intercreditor Agreement”), among Deutsche Bank AG New York Branch as ABL Agent (as defined therein), Credit Suisse, AG Cayman Islands Branch, as Term Loan Agent (as defined therein), Ankura Trust Company, LLC, as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings, the Borrower Parties and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement, the provisions of the ABL/Term Loan/Notes Intercreditor Agreement shall control.

Reference is made to that certain Subordination Agreement, dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Extended Term Loan PropCo Subordination Agreement”), by and among 2019 Extended Term Loan PropCo,
Credit Suisse AG, Cayman Islands Branch for itself and on behalf of the First Priority Holders (as defined therein), Ankura Trust Company, LLC, for itself and on behalf of the Second Priority Holders (as defined therein), Wilmington Trust, National Association, for itself and on behalf of the Third Priority Holders (as defined therein), Wilmington Savings Fund Society, FSB for itself and on behalf of the 2028 Notes Holders (as defined therein), Deutsche Bank AG New York Branch, for itself and on behalf of the ABL Holders (as defined therein), and each other Representative (as defined therein) party hereto from time to time. Notwithstanding anything herein to the contrary, the applicable guarantees hereunder and the exercise of any right or remedy by the Administrative Agent and the other parties hereunder are subject to the provisions of the Extended Term Loan PropCo Subordination Agreement. In the event of any conflict or inconsistency between the provisions of the Extended Term Loan PropCo Subordination Agreement and this Agreement, the provisions of the Extended Term Loan PropCo Subordination Agreement shall control.

Reference is made to that certain Subordination Agreement, dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Notes PropCo Subordination Agreement” and together with the Extended Term Loan PropCo Subordination Agreement, the “PropCo Subordination Agreements”), if applicable, by and among Notes PropCo, Credit Suisse AG, Cayman Islands Branch for itself and on behalf of the First Priority Holders (as defined therein), Ankura Trust Company, LLC, for itself and on behalf of the Second Priority Holders (as defined therein), Wilmington Trust, National Association, for itself and on behalf of the Third Priority Holders (as defined therein), Wilmington Savings Fund Society, FSB for itself and on behalf of the 2028 Notes Holders (as defined therein), Deutsche Bank AG New York Branch, for itself and on behalf of the ABL Holders (as defined therein), and each other Representative (as defined therein) party hereto from time to time. Notwithstanding anything herein to the contrary, the applicable guarantees hereunder and the exercise of any right or remedy by the Administrative Agent and the other parties hereunder are subject to the provisions of the Notes PropCo Subordination Agreement, if applicable. In the event of any conflict or inconsistency between the provisions of the Notes PropCo Subordination Agreement and this Agreement, the provisions of the Notes PropCo Subordination Agreement, if applicable, shall control.
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AMENDED AND RESTATED ABL GUARANTEE AND COLLATERAL AGREEMENT, dated as of June 7, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party thereto as a Grantor as provided herein, each a “Grantor” and, collectively, the “Grantors”), each party identified as a “Guarantor” on the signature pages hereto (together with any other entity that may become a party thereto as a Guarantor as provided herein, each a “Guarantor” and, collectively, the “Guarantors”), DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “Administrative Agent”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “Collateral Agent”).

RECITALS

(1) Reference is made to that certain REVOLVING CREDIT AGREEMENT, dated as of October 25, 2013 (as amended, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and as Collateral Agent.

(2) Pursuant to that certain Fourth Amendment to Credit Agreement, dated as of the date hereof (the “Fourth Amendment”), by and among the Borrower Parties and other Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the Lenders party thereto, the Administrative Agent and the Required Lenders have agreed, inter alia, to amend and restate the Existing Credit Agreement in its entirety (as amended by the Fourth Amendment and hereafter amended or otherwise modified from time to time, the “Credit Agreement”) as of the date hereof.

(3) In consideration of the extensions of credit and other accommodations of the Lenders as set forth in the Fourth Amendment and the Existing Credit Agreement, each Guarantor has agreed to guarantee the obligations of the Borrower Parties under the Credit Agreement and Grantor has agreed to secure such Grantor’s obligations under the Loan Documents as set forth herein.

AGREEMENT

Accordingly, the parties hereto agree as follows:
ARTICLE I
DEFINITIONS

Section 1.01. Credit Agreement.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings assigned to them in the Credit Agreement, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Account Debtor, Certificated Security, Chattel Paper, Deposit Account, Documents, Electronic Chattel Paper, Equipment, Instruments, Letter of Credit Rights, Money, Securities Account, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply, mutatis mutandis, to this Agreement.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Agreement” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Article 9 Collateral” has the meaning assigned to such term in Section 4.01(1).

“Borrower Parties” has the meaning assigned to such term in the Credit Agreement.

“Capital One Agreements” means the Second Amended and Restated Credit Card Program Agreement, dated as of July 15, 2013, among The Neiman Marcus Group LLC, a Delaware limited liability company, Bergdorf Goodman Inc., a New York Corporation, and Capital One, and all material agreements and instruments entered into in connection therewith, in each case, as amended prior to the date hereof and as may be further amended from time to time in accordance with the terms of the ABL Credit Agreement.

“Capital One Arrangements” means the private label credit card program among The Neiman Marcus Group LLC, a Delaware limited liability company, Bergdorf Goodman Inc., a New York Corporation, and Capital One pursuant to the terms of the Capital One Agreements.

“Capital One Credit Card Receivables Accounts” means any Deposit Accounts containing proceeds of Specified Credit Card Payments or Specified In-Store Credit Card Payments.

“Collateral” means the collective reference to Article 9 Collateral and Pledged Collateral.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.
“Consignment Inventory” means any Inventory held by a Grantor on a consignment basis, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the Borrower identifies such proceeds as such through a method of tracing reasonably satisfactory to the Collateral Agent.

“Control” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts, in form and substance reasonably satisfactory to the Collateral Agent.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“Copyrights” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

1. all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;
2. all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;
3. all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
4. all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Credit Agreement” has the meaning assigned to such term in the recitals to this Agreement.

“Discharge of Term Loan Claims” has the meaning assigned to such term in the ABL/Term Loan/Notes Intercreditor Agreement.

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“Excluded Assets” means all of the following, whether now owned or hereafter acquired:

(1) all Excluded Equity Interests;

(2) all leasehold Real Property interests that do not constitute any Grantor’s interests in (a) full line stores, (b) Bergdorf Goodman store Real Properties or (c) warehouse or distributions centers;

(3) all fee simple Real Property interests acquired after the Fourth Amendment Effective Date with a fair market value (as determined by a Responsible Officer of the Borrower) (reasonably and in good faith) and the Collateral Agent of less than or equal $2.5 million on a per property basis;

(4) assets of any Foreign Subsidiary that is existing as of the Fourth Amendment Effective Date to the extent such Foreign Subsidiary is not required to become a Subsidiary Loan Party pursuant to Section 5.10 of the Credit Agreement;

(5) assets of any Foreign Subsidiary or FSHCO, in each case, that is created or acquired after the Fourth Amendment Effective Date (“Exempted Future Foreign Assets”) to the extent the grant of Liens thereon securing Secured Obligations would result in materially adverse tax consequences or materially adverse regulatory consequences (in each case, “Material Adverse Consequences”), in each case, as reasonably determined by a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent (it being understood for purposes of the foregoing that any asset may be deemed an Exempted Future Foreign Asset due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Fourth Amendment Effective Date, including, for the avoidance of doubt, a change to Section 956 of the Code and the Treasury Regulations promulgated thereunder (including the final Treasury Regulations under Section 956 of the Code, published on May 23, 2019));

(6) any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;

(7) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;

(8) any Excluded Account (other than any DDA referenced in clause (4) of the definition of “Excluded Account” set forth in the Credit Agreement as in effect on the Fourth Amendment Effective Date);

(9) vehicles and any other assets subject to certificates of title;
(10) any Letter of Credit Rights to the extent not perfected as Supporting Obligations by the filing of a UCC financing statement on the primary Collateral;

(11) any Grantor’s right, title or interest in any lease, license, contract or agreement to which such Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than Holdings, any Borrower or any Subsidiary), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity);

(12) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained), after giving effect to the relevant anti-assignment provisions of the Uniform Commercial Code;

(13) any Commercial Tort Claim with an asserted or nominal value not in excess of $5.0 million;

(14) any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as determined by a Responsible Officer of the Borrower reasonably and in good faith and the Administrative Agent;

(15) (a) any assets and proceeds thereof subject to a Lien permitted under Section 6.02(3) of the Credit Agreement to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent or (b) any assets subject to a Lien permitted by Section 6.02(6) of the Credit Agreement so long as the documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent;

(16) the Specified Credit Card Receivables, any Specified Credit Card Payments and any Specified In-Store Credit Card Payments;

(17) the Capital One Credit Card Receivables Accounts;

(18) any Consignment Inventory and any Consignment Proceeds; or

(19) any Leased-Department Inventory and any Leased-Department Proceeds.

In the event any asset described above (a) is an asset described in clauses (1) through (7) or clauses (9) through (14) above and is pledged for the benefit of creditors under any Indebtedness (other than the Secured Obligations) or (b) is an asset described in clause (8) or
clauses (16) through (19) above and is pledged for the benefit of any Indebtedness listed in the Required Collateral Lien Priority table set forth in the Credit Agreement (other than the Secured Obligations), in each case of clause (a) and (b), such asset shall cease to be an Excluded Asset; provided, however, in the case of clause (a), any such asset pledged for the benefit of a third-party creditor under any Indebtedness (other than Indebtedness listed in the Required Collateral Lien Priority table set forth in the Credit Agreement) may be pledged on a first-priority basis to such third-party creditor, followed by subordinated Liens in favor of the Secured Obligations otherwise in accordance with the Required Collateral Lien Priority, but reducing the priority of each Lien described in such Required Collateral Lien Priority table set forth in the Credit Agreement by one level of Lien priority and giving effect to the first-priority Liens of such third-party creditor on such subject asset.

A Responsible Officer of the Borrower shall evaluate whether the Material Adverse Consequences still apply to any Exempted Future Foreign Assets pursuant to clause (5) above on no less than a quarterly basis. An Exempted Future Foreign Asset shall no longer be an Excluded Asset under clause (5) above upon the earlier to occur of (A) the tenth Business Day after a Responsible Officer determines that the Material Adverse Consequences no longer apply to such Exempted Future Foreign Asset and (B) the date a Lien on such Exempted Future Foreign Asset is granted to secure any other obligations of any Loan Party.

"Excluded Equity Interests" means any and all of the following Equity Interests, whether now owned or hereafter acquired:

1. interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such Person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of the Credit Agreement);

2. Equity Interests in not-for-profit subsidiaries;

3. to the extent applicable law requires that a Subsidiary of such Grantor issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by Persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by Persons other than Grantors;

4. any Equity Interests (including, without limitation, Equity Interests in captive insurance subsidiaries) if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); provided that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or

5. any Equity Interests of Foreign Subsidiaries or FSHCOs ("Excluded Foreign Equity Interests") in each case to the extent the grant of Liens thereon securing the Obligations
(as defined in the Junior Lien Term/Note Intercreditor Agreement) would result in Material Adverse Consequences, in each case, as reasonably determined by a Responsible Officer of the Borrower (reasonably and in good faith) and the Collateral Agent (it being understood and agreed for purposes of the foregoing that (x) any Equity Interests may be deemed to be Excluded Foreign Equity Interests due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Fourth Amendment Effective Date, including, for the avoidance of doubt, a change to the final Treasury Regulations under Section 956 of the Code, published on May 22, 2019 and (y) in the event any Equity Interest of a Foreign Subsidiary or FSHCO would become an Excluded Foreign Equity Interest pursuant to clause (x) such Equity Interest of any Foreign Subsidiary or FSHCO will only be an Excluded Foreign Equity Interest with respect to voting Equity Interests of such Foreign Subsidiary or FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary or FSHCO).

A Responsible Officer of the Borrower shall re-evaluate whether the Material Adverse Consequences still apply to any Excluded Foreign Equity Interests pursuant to clause (5) above on no less than a quarterly basis. An Excluded Foreign Equity Interest shall no longer be an Excluded Foreign Equity Interest under clause (5) above upon the earlier to occur of (A) the tenth Business Day after a Responsible Officer determines that the Material Adverse Consequences no longer apply to such Excluded Foreign Equity Interest and (B) the date a Lien on such Excluded Foreign Equity Interest is granted to secure any other obligations of any Loan Party.

“Excluded Swap Obligation” means, with respect to any Guarantor, (a) as it relates to all or a portion of the guarantee of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor becomes effective with respect to such Swap Obligation or (b) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Existing Credit Agreement” has the meaning assigned to such term in the recitals to this Agreement.
“Federal Securities Laws” has the meaning assigned to such term in Section 5.03.

“FSHCO” means any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of the equity or indebtedness of one or more direct or indirect Foreign Subsidiaries.

“Grantor” and “Grantors” have the meanings assigned to such terms in the introductory paragraph to this Agreement. For the avoidance of doubt, “Grantors” shall not include any PropCo Guarantor.

“Guarantor” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Intellectual Property” means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

“Intellectual Property Collateral” has the meaning assigned to such term in Section 4.02(8).

“Intellectual Property Security Agreement” means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.

“Intercreditor Agreement” means each of the ABL/Term Loan/Notes Intercreditor Agreement, any ABL Junior Lien Intercreditor Agreement, the Extended Term Loan PropCo Subordination Agreement and the Notes PropCo Subordination Agreement, if applicable.

“IP Agreements” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including, without limitation, the agreements set forth on Schedule II hereto.

“Leased-Department Inventory” means any Inventory relating to a leased department within one of the Grantors’ retail stores, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of Borrower and its Subsidiaries prepared in accordance with GAAP).

“Leased-Department Proceeds” means any proceeds from the sale of any Leased-Department Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Leased-Department Inventory and that the Borrower identifies such proceeds as such through a method of tracing reasonably satisfactory to the Collateral Agent.

“Original Closing Date” means October 25, 2013.
“Original Guarantee and Collateral Agreement” has the meaning assigned to such term in Section 7.17.

“Original Guarantors” means all Guarantors that were party to the Original Guarantee and Collateral Agreement immediately prior to the Fourth Amendment Effective Date, including those identified as such on Schedule V hereto.

“Patent License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.

“Patents” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

(1) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;

(2) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Pledged Collateral” has the meaning assigned to such term in Section 3.01(5).

“Pledged Debt Securities” has the meaning assigned to such term in Section 3.01.

“Pledged Securities” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Pledged Stock” has the meaning assigned to such term in Section 3.01.

“PropCo Guarantor” means 2019 Extended Term Loan PropCo and, if applicable, Notes PropCo (as defined in the Credit Agreement).

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the
relevant security interest becomes or would become effective with respect to such Swap Obligation and each other Loan Party that constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by guaranteeing or entering into a keepwell in respect of obligations of such other person under Section 1a(18)(A)(v)(H) of the Commodity Exchange Act.

“Secured Obligations” means the Obligations; provided that the Secured Obligations shall not include any Excluded Swap Obligations.

“Secured Parties” means (a) the Lenders, (b) the Administrative Agent and Collateral Agent, (c) each Issuing Bank, (d) the Cash Management Banks, (e) the Qualified Counterparties, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the successors and permitted assigns of each of the foregoing.

“Security Interest” has the meaning assigned to such term in Section 4.01(1).

“Specified Credit Card Payments” means any payments by the holder of a private label credit card subject to the Capital One Arrangements or any Permitted Replacement Credit Card Program to the issuer of such credit card that are (i) in the case of the Capital One Arrangements, made to a Capital One Credit Card Receivables Account or (ii) in the case of any Permitted Replacement Credit Card Program, made to any account of a Grantor prior to the transition of ownership of such account to the applicable third party in connection with the establishment of the applicable Permitted Replacement Credit Card Program.

“Specified Credit Card Receivables” means the Accounts, Documents and other rights or claims to receive money which are General Intangibles and that have been or from time to time are sold or otherwise transferred to (a) Capital One pursuant to the Capital One Arrangements or (b) any third party pursuant to any Permitted Replacement Credit Card Program.

“Specified In-Store Credit Card Payments” means any payments made in-person by customers in respect of private label credit cards subject to the Capital One Arrangements or any Permitted Replacement Credit Card Program in one of the Grantors’ retail stores, solely to the extent that such payments are identifiable payments from the holders of such private label credit cards and that the Borrower identifies such payments as such through a method of tracing reasonably satisfactory to the Collateral Agent.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Term Loan Collateral Agent” means Credit Suisse AG Cayman Islands Branch, as Collateral Agent under the Term Loan Credit Agreement, and any duly appointed successor in such capacity.
“Term Loan Priority Collateral” has the meaning assigned to such term in the Intercreditor Agreement as in effect on the date hereof.

“Trademark License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

“Trademarks” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

(1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;

(2) all goodwill associated therewith or symbolized thereby;

(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“UFCA” has the meaning assigned to such term in Section 2.05(a).

“UFTA” has the meaning assigned to such term in Section 2.05(a).

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.
ARTICLE II
GUARANTEE

Section 2.01. Guarantee

1. Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, to the Collateral Agent for the benefit of the Secured Parties as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Secured Obligations. Each Guarantor further agrees that the Secured Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Secured Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Secured Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. For the avoidance of doubt, the guarantee by each Co-Borrower pursuant to this Article II shall be in addition to, and not in lieu of, such Co-Borrower’s joint and several liability in respect of the Secured Obligations pursuant to the Credit Agreement.

2. Notwithstanding anything to the contrary herein or in any other Loan Document, the guarantee provided by the PropCo Guarantors shall not be secured.

Section 2.02. Guarantee of Payment

Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Secured Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other Secured Party in favor of any Loan Party or any other Person.

Section 2.03. No Limitations, Etc.

1. Except for termination of a Guarantor’s obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Secured Obligations or otherwise (other than defense of payment or performance). Without limiting the generality of the foregoing, except for termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:
(a) the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;

(c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Secured Obligations;

(d) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations;

(e) any illegality, lack of validity or enforceability of any Secured Obligation;

(f) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy or reorganization of any Loan Party;

(g) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Borrower, the Collateral Agent, any other Secured Party or any other Person, whether in connection herewith, the other Loan Documents or any unrelated transactions; provided that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(h) any action permitted or authorized hereunder; or

(i) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Borrower or any Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the Secured Obligations).

(2) Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Secured Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Secured Obligations, all without affecting the obligations of any Guarantor hereunder.

(3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof, each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Secured Obligations or any part thereof from
any cause, or the cessation from any cause of the liability of any other Loan Party, other than, after all Commitments have been terminated, the return of all Letters of Credit (or cash collateralization thereof on terms satisfactory to the Issuing Bank), the payment in full in cash or immediately available funds of all the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted). The Collateral Agent and the other Secured Parties may exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto all Secured Obligations have been terminated and paid in full (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted). To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, as the case may be, or any security.

Section 2.04. Reinstatement. Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated, if, at any time payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise.

Section 2.05. Agreement To Pay; Contribution; Subrogation.

(1) In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Secured Obligation when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Secured Obligation.

(2) Subject to the foregoing clause (1), to the extent that any Guarantor, under this Agreement or the Credit Agreement as a joint and several obligor, repays any of the Secured Obligations constituting Loans or other advances made to or reimbursement obligations owed by another Loan Party under the Credit Agreement (an “Accommodation Payment”), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; provided that such rights of contribution and indemnification shall be subordinated to the
discharge of Secured Obligations. As of any date of determination, the “Allocable Amount” of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Credit Agreement without:

- rendering such Guarantor “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA");

- leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA; or

- leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA. Upon payment by any Guarantor of any sums to the Collateral Agent as provided above, all rights of such Guarantor against the Borrower, any other Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article VI.

Section 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Administrative Agent, Collateral Agent or any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 2.07. Maximum Liability. Each Guarantor, and by its acceptance of this guarantee, each Agent and each other Secured Party hereby confirms that it is the intention of all such Persons that this guarantee and the Secured Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S. Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the UFCA, the UFTA or any similar foreign, federal or state law to the extent applicable to this guarantee and the Secured Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the Secured Obligations of the Guarantors under this guarantee at any time are limited to the maximum amount as will result in the Secured Obligations of such Guarantor under this guarantee not constituting a fraudulent transfer or conveyance.

Section 2.08. Taxes. Any and all payments by or on account of any obligation of any Guarantor hereunder shall be made free and clear of and without deduction or withholding for Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by a Guarantor, then the applicable Guarantor
shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if a Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.08) the Collateral Agent or any Term Loan Secured Party, as applicable, receives an amount equal to the sum it would have received had no such deductions been made. The provisions of Section 2.17 of the Credit Agreement shall apply to each Guarantor mutatis mutandis. Any amounts payable by any Guarantor pursuant to this Section 2.08 shall be made without duplication (including with any amount otherwise payable under Section 2.17 of the Credit Agreement). For the avoidance of doubt, any Guarantor shall not be required to pay any greater amount under this Section 2.08 than such Guarantor would have been required to pay had it been a Loan Party that was a party to the Credit Agreement.

Section 2.09. **Keepwell.** Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor that would otherwise not be an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder to honor all of its obligations under this Agreement in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 2.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.09 or otherwise under this Agreement voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 2.09 shall remain in full force and effect until the indefeasible payment in full in cash of all the Secured Obligations (other than obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted). Each Qualified ECP Guarantor intends that this Section 2.09 constitute, and this Section 2.09 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section la(18)(A)(v)(II) of the Commodity Exchange Act.

**ARTICLE III**

**PLEDGE OF SECURITIES**

Section 3.01. **Pledge.** As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under: (1) the Equity Interests (a) directly owned by such Grantor as of the Fourth Amendment Effective Date and (b) obtained by such Grantor after the Fourth Amendment Effective Date and, in each case, the certificates representing all such Equity Interests, in each case,
other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Stock”);

(2) the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Fourth Amendment Effective Date and (b) issued to any such Grantor after the Fourth Amendment Effective Date, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b) collectively, but excluding any Excluded Assets, the “Pledged Debt Securities”);

(3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);

(4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and

(5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.01, collectively, the “Pledged Collateral”).

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Credit Agreement.

Section 3.02. Delivery of the Pledged Collateral.

(1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.

(2) Each Grantor will use its commercially reasonable efforts to cause (x) any Indebtedness for borrowed money having an aggregate principal amount in excess of $5.0 million owed to such Grantor by any Person and (y) accrued intellectual property royalties and other amounts owing to NM Nevada Trust (regardless of whether classified as current), to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof;
provided that the foregoing requirement will not apply to intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of Holdings, the Borrower and its Subsidiaries. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

(3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement shall be accompanied to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Administrative Agent may reasonably request. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.

(4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

Section 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants and covenants to and with the Collateral Agent, for the benefit of the Secured Parties that:

(1) Schedule I correctly sets forth, as of the Fourth Amendment Effective Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments evidencing Indebtedness required to be pledged pursuant to the terms of the Credit Agreement on the Fourth Amendment Effective Date;

(2) the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of
limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

(3) except for the security interests granted hereunder, each Grantor:

(a) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;

(b) holds the same free and clear of all Liens, other than Permitted Liens;

(c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Credit Agreement and other than Permitted Liens; and

(d) subject to the rights of such Grantor under the Loan Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all Persons;

(4) other than as set forth in the Credit Agreement or the schedules thereto, and except for restrictions and limitations imposed by the Loan Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Credit Agreement, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Fourth Amendment Effective Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(6) other than as set forth in the Credit Agreement or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person
was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(7) as of the Fourth Amendment Effective Date, this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof;

(8) as of the Fourth Amendment Effective Date, none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction; and

(9) the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary of any Loan Party whose Equity Interests are, or are required to be, Collateral in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Loan Party shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby and as otherwise reasonably required by the Collateral Agent to maintain the security interest of the Collateral Agent therein as a valid, perfected security interest with the Required Collateral Lien Priority, and subject to the relative priorities set forth in the Intercreditor Agreements.

Section 3.04. **Registration in Nominee Name; Denominations.** The Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. Each Grantor will use its commercially reasonable efforts to cause any Loan Party that is not a party to this Agreement to comply with a request by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), pursuant to this Section 3.04, to exchange certificates representing Pledged Securities of such Loan Party for certificates of smaller or larger denominations.
Section 3.05. Voting Rights; Dividends and Interest, Etc.

(1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Borrower of the Collateral Agent’s intention to exercise its rights hereunder:

(a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; provided that except as permitted under the Credit Agreement, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;

(b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and

(c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws; provided that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties,
in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).

(2) Upon the occurrence and during the continuance of an Event of Default and after at least one (1) Business Day’s prior written notice by the Administrative Agent to the Borrower of the Administrative Agent’s intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; provided, however, that even after the occurrence and during the continuance of an Event of Default, and such one at least one (1) Business Day’s prior written notice, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclause (6)(a), subclause (6)(c) and subclause (6)(e) of Section 6.06 of the Credit Agreement.

(3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), for the benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) pursuant to the provisions of this paragraph (3) subject to the Intercreditor Agreement will be retained by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) in an account to be established by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) upon receipt of such money or other property and will be applied in accordance with the provisions of Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.

(4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given at least one (1) Business Day’s prior written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to the Intercreditor Agreement); provided that unless otherwise directed by the Required Lenders, the Collateral Agent
will have the right from time to time following and during the continuance of an Event of Default and such at least one (1) Business Day’s prior written notice to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

ARTICLE IV

SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

Section 4.01. Security Interest.

(1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest (the “Security Interest”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Article 9 Collateral”):

(a) all Accounts;
(b) all Chattel Paper;
(c) all cash, Cash Equivalents and Deposit Accounts;
(d) all Documents;
(e) all Equipment;
(f) all General Intangibles;
(g) all Instruments;
(h) all Inventory;
(i) all Investment Property;
(j) all Letter of Credit Rights;
(k) all Intellectual Property;
(l) all Commercial Tort Claims, including those described on Schedule IV hereto;
(m) each of the following:

(i) Securities Accounts;

(ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;

(iii) all cash held in any Securities Account or Deposit Account; and

(iv) all other Money in the possession of the Collateral Agent;

(n) all books and Records pertaining to the Article 9 Collateral; and

(o) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Article 9 Collateral will not include, this Agreement will not constitute a grant of a security interest in and the security interest granted hereunder will not attach to any Excluded Asset.

(2) Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:

(a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;

(b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and

(c) a description of collateral that describes such property in any other manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

(3) The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the
signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

(4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document (but subject to Section 5.10(5)(c) of the Credit Agreement), no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.

(5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(6) Notwithstanding anything to the contrary in any Loan Document, no Grantor will be required:

(a) subject to clause (b) below, to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):

   (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;


   (iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of $5.0 million; provided that such delivery shall not be required with respect to:

       (A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;

       (B) checks received in the ordinary course of business; and

       (C) notes and debt securities issued in connection with the extension of trade credit by a Grantor in each case with a duration of not more than 364 days;

   (iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral; and

   (v) entering into or causing to be entered into any Control Agreements or similar arrangements with respect to any Deposit Accounts (except with respect to the Blocked Accounts and the Asset Sale Proceeds Account), Securities Accounts, Commodities Accounts or other Collateral that requires perfection by Control; or
(b) except as set forth in Section 5.10(5)(c) of the Credit Agreement, to take any actions outside the United States to create or perfect any security interests in any Collateral (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction except as contemplated by Section 5.10(5)(c) of the Credit Agreement).

Section 4.02. Representations and Warranties. Each Grantor represents and warrants (but solely with respect to any Borrowing made after the date hereof pursuant to Section 2.21 of the Credit Agreement, to the extent required by Section 2.21(6) of the Credit Agreement) to the Collateral Agent and the Secured Parties that:

(1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Credit Agreement.

(2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Fourth Amendment Effective Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.

(3) Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Fourth Amendment Effective Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) was delivered on the Original Closing Date or the Fourth Amendment Effective Date, as applicable, to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.

(4) The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform
Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest has and shall have the Required Collateral Lien Priority on any of the Article 9 Collateral subject to Permitted Liens.

(5) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Fourth Amendment Effective Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.

(6) None of the Grantors holds any Commercial Tort Claim individually in excess of $5.0 million as of the Fourth Amendment Effective Date except as indicated on Schedule IV.

(7) The names of the obligors, amounts owing, due dates and other information with respect to each Grantor’s Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Agent by such Grantor from time to time.

(8) As to itself and its Article 9 Collateral consisting of Intellectual Property (the “Intellectual Property Collateral”), to each Grantor’s knowledge, as of the Fourth Amendment Effective Date:

(a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, registered Trademarks and registered Copyrights owned by such Grantor as of the date hereof (including all such registered with the United States Patent and Trademark Office or United States Copyright Office);

(b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;
Such Grantor has made or performed in the ordinary course of Grantor’s business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.

Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

Section 4.03. Covenants.

Each Grantor agrees to comply with Section 5.10(3) of the Credit Agreement.

Subject to the rights of such Grantor under the Loan Documents to dispose of Collateral and except as would otherwise be permitted by the Credit Agreement, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent, for the benefit of the Secured Parties, in the Article 9 Collateral and the Required Collateral Lien Priority thereof against any Lien that is not a Permitted Lien.

Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.
If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of $5.0 million is or becomes evidenced by any promissory note or other instrument, such note or instrument subject to the Intercreditor Agreement will be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.

None of the Grantors will, without the Collateral Agent’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with prudent business practices or as otherwise permitted under the Credit Agreement.

At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.

Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor’s true and lawful agent (and attorney-in-fact) for the purpose, during the
continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, after the occurrence and during the continuance of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys’ fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 4.03(10) Other Actions. In order to further ensure the attachment and perfection of, and the ability of the Collateral Agent to enforce, for the benefit of the Secured Parties, the Collateral Agent’s security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor’s own expense, to take the following actions with respect to the following Article 9 Collateral:

(1) **Instruments and Tangible Chattel Paper.** If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of $5.0 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.

(2) **Investment Property.** Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably specify. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) as to such security, without further consent of any Grantor or such nominee or (b) cause
the issuer to register the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) as the registered owner of such security.

(3) **Commercial Tort Claims.** If any Grantor shall at any time hold or acquire a Commercial Tort Claim with an asserted or nominal value in excess of $5.0 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.05. **Covenants Regarding Patent, Trademark and Copyright Collateral.** Except as permitted by the Credit Agreement:

(1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor’s business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.

(2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor’s business:

   (a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;

   (b) maintain the quality of products and services offered under such Trademark;

   (c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and

   (d) not knowingly use or knowingly permit its licensees’ use of such Trademark in violation of any third-party rights.

(3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.

(4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal
conduct of such Grantor’s business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, regarding such Grantor’s ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.

(5) Each Grantor, either itself or through any agent, employee, licensee or designee, will, upon the reasonable request of the Collateral Agent, execute and deliver any and all agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent’s security interest in each Patent, Trademark, or Copyright listed in each updated Perfection Certificate (or in any applicable specified information contained in the Perfection Certificate) furnished pursuant to Section 5.04(9) of the Credit Agreement.

(6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor’s business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor’s reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

Section 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Guarantors, the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent’s rights and remedies hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement, any ABL Junior Lien Intercreditor Agreement and the PropCo Subordination Agreements and (2) prior to the Discharge of Term Loan Claims, any obligation hereunder to physically deliver any Term Loan Priority Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the Term Loan Collateral Agent, acting as gratuitous bailee for the Collateral Agent in accordance with the ABL/Term Loan/Notes Intercreditor Agreement. The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of the Intercreditor Agreement or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement regarding the relative priorities of the Collateral Agent, the Term Loan Collateral Agent, the New Second Lien Notes Collateral Agent
and the New Third Lien Notes Collateral Agent in the Collateral, the terms of the ABL/Term Loan/Notes Intercreditor Agreement shall govern and control.

In the event of any conflict or inconsistency between the terms of the PropCo Subordination Agreements, on the one hand, and this Agreement on the other, regarding the relative priorities of the Collateral Agent, the Initial Second Lien Representative and the Initial Third Lien Representative with respect to payment upon the guarantee of any PropCo Guarantor, the terms of the PropCo Subordination Agreements shall govern and control. Terms used but not defined in this Section 4.06 shall be as defined in the applicable Intercreditor Agreement.

ARTICLE V

REMEDIES

Section 5.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law, to take any of or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker’s board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to Persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.
The Collateral Agent shall give the applicable Grantors ten Business Days’ written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent’s intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker’s board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels, in the Collateral Agent’s own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 5.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.
Without limiting any other rights of the Collateral Agent granted pursuant to this Agreement, each Grantor hereby grants to the Collateral Agent, and the representatives and independent contractors of the Collateral Agent, a royalty free, non-exclusive, irrevocable license (such license to be effective upon the occurrence and during the continuance of any Event of Default), to use, apply, and affix any Trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent’s enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

Section 5.02. Application of Proceeds.

(1) Subject to the terms of the Intercreditor Agreement, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the manner specified in the Credit Agreement.

(2) The Collateral Agent will have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or of the officer making the sale will be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers will not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

(3) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Collateral Agent will not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such Guarantee in any particular order.

Section 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1)
proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE VI

INDEMNITY, SUBROGATION AND SUBORDINATION

Section 6.01. Indemnity. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 6.03 hereof), the Borrower agrees that (a) in the event a payment is made by any Guarantor under this Agreement in respect of any Secured Obligation of the Borrower, the Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor are sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a Secured Obligation of the Borrower, the Borrower will indemnify such Guarantor in an amount equal to the greater of the book value or fair market value of the assets so sold.

Section 6.02. Contribution and Subrogation. Subject to Section 2.07, each Guarantor (a “Contributing Guarantor”) agrees (subject to Section 6.03 hereof) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Secured Obligation or assets of any other Guarantor shall be sold pursuant to any Security Document to satisfy any Secured Obligation owed to any Secured Party and such other Guarantor (the “Claiming Guarantor”) shall not have been fully indemnified by the Borrower as provided in Section 6.01 hereof, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets (the “Indemnified Amount”), as applicable, in each case multiplied by a fraction of which the numerator will be the net worth of such Contributing Guarantor on the date hereof and the denominator shall be the aggregate net worth of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party hereto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 hereof to the extent of such payment. Notwithstanding the foregoing, to the extent that any Claiming Guarantor’s right to
Section 6.03.  **Subordination.**

(1) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 6.01 and 6.02 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or otherwise will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) until such time as this Agreement has been terminated in accordance with Section 7.15(1). No failure on the part of the Borrower or any Guarantor to make the payments required by Sections 6.01 and 6.02 hereof (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of the Borrower with respect to the Secured Obligations or any Guarantor with respect to its obligations hereunder, and the Borrower shall remain liable for the full amount of the Secured Obligations and each Guarantor shall remain liable for the full amount of its obligations hereunder.

(2) The Borrower and each Guarantor hereby agree that all Indebtedness and other monetary obligations owed by it to the Borrower, any other Guarantor or any Subsidiary will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted).

(3) The guaranty obligations of Notes PropCo, if any, evidenced hereby are subordinate, in the manner and to the extent set forth in the Notes PropCo Subordination Agreement, if applicable, to the Senior Priority Guarantee Obligations (as defined in the Notes PropCo Subordination Agreement); and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Notes PropCo Subordination Agreement, if applicable.

(4) The guaranty obligations of 2019 Extended Term Loan PropCo, evidenced hereby are subordinate, in the manner and to the extent set forth in the 2019 Extended Term Loan PropCo Subordination Agreement, if applicable, to the Senior Priority Guarantee Obligations (as defined in the 2019 Extended Term Loan PropCo Subordination Agreement); and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the 2019 Extended Term Loan PropCo Subordination Agreement, if applicable.
ARTICLE VII

MISCELLANEOUS

Section 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Grantor will be given to it in care of the Borrower, with such notice to be given as provided in Section 10.01 of the Credit Agreement.

Section 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

1. any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;
2. any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument;
3. any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or
4. subject only to termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

Section 7.03. Limitation By Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.04. Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and
assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Credit Agreement. This Agreement will be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.05. **Successors and Assigns.** Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent. The Collateral Agent hereunder will at all times be the same Person that is the Collateral Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement will also constitute notice of resignation as the Collateral Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent pursuant hereto.

Section 7.06. **Collateral Agent’s Fees and Expenses; Indemnification.** The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.05 of the Credit Agreement and the provisions of Section 10.05 shall be incorporated by reference herein and apply to each Grantor mutatis mutandis.

Section 7.07. **Collateral Agent Appointed Attorney-in-Fact.** Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent’s name or in the name of such Grantor, to:

1. receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;
2. demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
3. ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
4. sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;

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(5) send verifications of Accounts to any Account Debtor;

(6) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;

(7) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;

(8) notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and

(9) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

provided that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

Section 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

Section 7.09. Waivers; Amendment.

(1) No failure or delay by the Collateral Agent or any Lender in exercising any right, power or remedy hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any
provision of this Agreement or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.

(2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

Section 7.10. **WAIVER OF JURY TRIAL.** The provisions of Section 10.11 of the Credit Agreement shall be incorporated by reference herein and apply to each party hereto.

Section 7.11. **Severability.** In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected or impaired thereby.

Section 7.12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

Section 7.13. **Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 7.14. **Jurisdiction; Consent to Service of Process.** The provisions of Section 10.15 of the Credit Agreement shall be incorporated by reference herein and apply to each party hereto.

Section 7.15. **Termination or Release.**

(1) This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate when all the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted) have been paid in full in cash or immediately available funds and the Lenders have no further commitment to lend under the Credit Agreement, the Revolving L/C Exposure has been reduced to zero and each Issuing Bank has no further obligations to issue Letters of Credit under the Credit Agreement.
A Grantor or a Guarantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Grantor or Guarantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor or Guarantor ceases to be a Subsidiary Loan Party or otherwise ceases to be a Guarantor (subject to the limitations on releases of Co-Borrowers set forth in Section 5.13(b) of the Credit Agreement); provided that such portion of the Lenders as are required by the terms of the Credit Agreement to consent to such transaction shall have consented thereto; provided, further, to the extent the Term Loan Security Documents, Second Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) or the Third Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) are in effect on such date, such Grantor or Guarantor (and the security interests in the Collateral in respect thereof) shall be released under such Term Loan Security Documents, Second Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (2).

Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement to any Person that is not a Grantor, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 10.08 of the Credit Agreement or pursuant to Section 5.1 of the ABL/Term Loan/Notes Intercreditor Agreement, the security interest in such Collateral shall be automatically released; provided to the extent the TermLoan Security Documents, Second Lien Notes Collateral Documents or the Third Lien Notes Collateral Documents are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) is released under such Term Loan Security Documents, Second Lien Notes Collateral Documents and the Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (3).

In connection with any termination or release pursuant to paragraph (1), (2) or (3) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor or Guarantor, at such Grantor’s or Guarantor’s expense, all documents that such Grantor or Guarantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor or Guarantor such of the Pledged Collateral that may be in the possession of the Collateral Agent (or a designated bailee, in accordance with the ABL/Term Loan Intercreditor Agreement) and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; provided that the Collateral Agent will not be required to take any action under this Section 7.15(4) unless such Grantor or Guarantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of a Responsible Officer of the Borrower or such Grantor or Guarantor certifying that the transaction giving rise to such termination or release is permitted by the Credit Agreement and was or is consummated in compliance with the Loan Agreement.
Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.

Section 7.16. Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by Section 5.10 of the Credit Agreement of a supplement in substantially the form of Exhibit I hereto, such Subsidiary will become a Grantor and/or a Guarantor hereunder with the same force and effect as if originally named as a Grantor and/or a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

Section 7.17. Effect of Amendment and Restatement. This Agreement is intended to and does completely amend and restate, without novation, that certain Term Loan Guarantee and Collateral Agreement, dated October 25, 2013, by the Grantors party thereto in favor of the Collateral Agent (as amended or supplemented prior to the date hereof, the “Original Guarantee and Collateral Agreement”). Notwithstanding the modifications effected by this Agreement of the representations, warranties and covenants of the Grantors and Guarantors contained in the Original Guarantee and Collateral Agreement, the Grantors and Guarantors acknowledge and agree that any causes of action or other rights created in favor of the Collateral Agent and its successors arising out of the representations, warranties and covenants of the Grantors and/or Guarantors party thereto contained in or delivered in connection with the Original Guarantee and Collateral Pledge Agreement shall survive the execution and delivery of this Agreement. All indemnification obligations of the Grantors and Guarantors pursuant to the Original Guarantee and Collateral Agreement (including any arising from a breach of the representations thereunder) shall survive the amendment and restatement of the Original Guarantee and Collateral Agreement pursuant to this Agreement.

Notwithstanding anything herein or in any other Loan Document to the contrary, the parties hereto expressly acknowledge that it is not their intention that the Fourth Amendment to the Credit Agreement, this Agreement or any of the other Loan Documents executed or delivered pursuant to the Fourth Amendment to the Credit Agreement constitute a novation of any of the obligations, covenants or agreements contained in the Original Guarantee and Collateral Agreement or any other Loan Document, but rather constitute a modification thereof or supplement thereto pursuant to the terms contained therein and herein. The Original Guarantee and Collateral Agreement and the other Loan Documents, in each case as amended, modified or supplemented hereby and by the Fourth Amendment to the Credit Agreement, shall be deemed to be continuing agreements among the parties thereto, and all documents, instruments, and agreements delivered, as well as all Liens created, pursuant to or in connection with the Original Guarantee and Collateral Agreement and the other Loan Documents shall remain in full force and effect, each in accordance with its terms (as amended, modified or supplemented by the Fourth Amendment to the Credit Agreement and this Agreement).
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

GUARANTORS AND GRANTORS:

MARIPOSA INTERMEDIATE HOLDINGS LLC,
a Delaware limited liability company

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:     Vice President

NMG SALON HOLDINGS LLC,
a Delaware limited liability company

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:     President

NMG CALIFORNIA SALON LLC,
a California limited liability company

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:     Senior Vice President

NMG FLORIDA SALON LLC,
a Florida limited liability company

By:  /s/ Tracy M. Preston  
Name:  Tracy M. Preston  
Title:     Senior Vice President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
NMG SALONS LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

NMG TEXAS SALON LLC,
a Texas limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President

BG PRODUCTIONS, INC.,
a Delaware corporation

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

MARIPOSA BORROWER, INC.,
a Delaware corporation

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

NM BERMUDA, LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
NMG GLOBAL MOBILITY, INC.,
a Delaware corporation

By:  /s/ Tracy M. Preston  
Name:   Tracy M. Preston 
Title:   Vice President 

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
GRANTORS:

THE NEIMAN MARCUS GROUP LLC,  
a Delaware limited liability company

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President

THE NMG SUBSIDIARY LLC,  
a Delaware limited liability company

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President

NEMA BEVERAGE CORPORATION,  
a Texas corporation

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: President

NEMA BEVERAGE HOLDING CORPORATION,  
a Texas corporation

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
NEMA BEVERAGE PARENT CORPORATION,
a Texas corporation

By: /s/ Tracy M. Preston
      Name: Tracy M. Preston
      Title: President

BERGDORF GOODMAN INC.,
a New York corporation

By: /s/ Tracy M. Preston
      Name: Tracy M. Preston
      Title: Vice President

BERGDORF GRAPHICS, INC.,
a New York corporation

By: /s/ Tracy M. Preston
      Name: Tracy M. Preston
      Title: Vice President

NM FINANCIAL SERVICES, INC.,
a Delaware corporation

By: /s/ Tracy M. Preston
      Name: Tracy M. Preston
      Title: Vice President

NM NEVADA TRUST,
a Massachusetts Trust

By: /s/ Tracy M. Preston
      Name: Tracy M. Preston
      Title: Vice President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
NMGP, LLC,
a Virginia limited liability company

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President

WORTH AVENUE LEASING COMPANY,
a Florida corporation

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President

NEIMAN MARCUS GROUP LTD LLC,
a Delaware limited liability company

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
GUARANTORS:

NMG TERM LOAN PROPCO LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

NMG NOTES PROPCO LLC,
a Delaware limited liability company

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and Collateral Agent

By: /s/ Marguerite Sutton
Name: Marguerite Sutton
Title: Vice President

By: /s/ Michael Strobel
Name: Michael Strobel
Title: Vice President

[Signature Page to Amended and Restated ABL Guarantee and Collateral Agreement]
SUPPLEMENT NO. dated as of (this “Supplement”), to [(a) the Amended and Restated ABL Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), among the Grantors party thereto, each of the Guarantors party thereto, and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “Administrative Agent”) and as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “Collateral Agent”) (b) the Intercreditor Agreements].

(1) Reference is made to (a) that certain REVOLVING CREDIT AGREEMENT, dated as of October 25, 2013 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, including on the Fourth Amendment Effective Date, the “Credit Agreement”), among MARIPOSA INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company (“Holdings”), NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Borrower”), the Lenders party thereto from time to time and DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent and as Collateral Agent and (b) that certain ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “ABL/Term Loan/Notes Intercreditor Agreement”), among Deutsche Bank AG New York Branch, as an ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as a Term Loan Agent (as defined therein), Ankura Trust Company, LLC, as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings, the Borrower and the Subsidiaries from time to time party thereto.

(1) Capitalized terms used herein and not otherwise defined herein will have the meanings assigned to such terms in the Guarantee and Collateral Agreement referred to therein.

(2) The Grantors and Guarantors have entered into the Guarantee and Collateral Agreement in order to induce the Lenders to make Loans, each Issuing Bank to issue Letters of Credit and each Agent and Lender and their respective Affiliates to extend financial accommodations pursuant to any Specified Hedge Agreement or any agreement constituting a Cash Management Obligation under the Credit Agreement. Section 7.16 of the Guarantee and Collateral Agreement provides that additional Subsidiaries may become Subsidiary Loan Parties under the Guarantee and Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. [The Intercreditor Agreement provides that additional Subsidiaries may become Grantors]

(1) Retain bracketed terms if New Subsidiary is also joining the Intercreditor Agreement pursuant to this Supplement.
and/or Guarantors, as applicable, under the Intercreditor Agreement by execution and delivery of an instrument in the form of this Supplement.] The undersigned Subsidiary (the "New Subsidiary") is executing this Supplement in accordance with the requirements of the Credit Agreement to become [(x)] a Subsidiary Loan Party under the Guarantee and Collateral Agreement[ and (y) a Grantor under the Intercreditor Agreement, in each case] in order to induce the Lenders to make additional Loans, each Issuing Bank to issue additional Letters of Credit and each Agent and Lender and their respective Affiliates to extend financial accommodations pursuant to any Specified Hedge Agreement or any agreement constituting a Cash Management Obligation (if available under the Credit Agreement), and as consideration for any such financial accommodations previously made or issued under the Credit Agreement.

Accordingly, the Administrative Agent and the New Subsidiary agree as follows:

SECTION 1. [(a)] In accordance with Section 7.16 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a Subsidiary Loan Party, a Guarantor and a Grantor under the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Subsidiary Loan Party, a Guarantor and a Grantor, and the New Subsidiary hereby [(1)] agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Subsidiary Loan Party, a Guarantor and a Grantor thereunder [(2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects, on and as of the date hereof]. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Guarantee and Collateral Agreement), does hereby create and grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and Lien on all the New Subsidiary's right, title and interest in and to the Collateral (as defined in and to the extent required by the Guarantee and Collateral Agreement) of the New Subsidiary. Each reference to a “Subsidiary Loan Party,” a “Guarantor,” or a “Grantor” in the Guarantee and Collateral Agreement shall be deemed to include the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

(b) [In accordance with Section 9.3 of the ABL/Term Loan/Notes Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the ABL/Term Loan/Notes Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future ABL Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement), all existing and future Term Loan Lenders (as defined in the Intercreditor Agreement) and all existing and future Existing Noteholders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the ABL/Term Loan/Notes Intercreditor Agreement as fully as if the undersigned had executed and delivered the ABL/Term Loan/Notes Intercreditor Agreement as of the date thereof. This Supplement shall

(2) Clause (2) to be included after the Fourth Amendment Effective Date.

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SECTION 2. The New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Collateral Agent receives a counterpart (whether by electronic transmission or otherwise) of this Supplement that bears the signature of the New Subsidiary.

SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

1. set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof;
2. set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, registered Trademarks and registered Copyrights of the New Subsidiary as of the date hereof;
3. set forth on Schedule IV attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of $5.0 million as of the date hereof; and
4. set forth under its signature hereto, is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Guarantee and Collateral Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).
SECTION 7. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Guarantee and Collateral Agreement will not in any way be affected or impaired thereby. The parties will endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Guarantee and Collateral Agreement. The address of the New Subsidiary for purposes of all notices and other communications under the Intercreditor Agreement is [ ], Attention of [ ] (Facsimile No. [ ], electronic mail address: [ ]).

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Administrative Agent and Collateral Agent have duly executed this Supplement to the Guarantee and Collateral Agreement as of the day and year first above written.

[Name of New Subsidiary]

By: 

Name: 
Title: 

Legal Name: 

Jurisdiction of Formation: 

Location of Chief Executive Office: 

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By: ________________________________

Name: ________________________________
Title: ________________________________
## Pledged Securities of the New Subsidiary

### EQUITY INTERESTS

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<th>Number of Issuer Certificate</th>
<th>Registered Owner</th>
<th>Number and Class of Equity Interest</th>
<th>Percentage of Equity Interests</th>
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### DEBT SECURITIES

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<th>Date of Note</th>
<th>Maturity Date</th>
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</thead>
</table>

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FILING JURISDICTIONS

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FORM OF TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT is dated as of [ ], by [·] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Deutsche Bank AG New York Branch, in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Amended and Restated ABL Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”):

(a) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political
subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule I.

(b) all goodwill associated therewith or symbolized thereby;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.

IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ ],
as Grantor

By:
______________________________
Name:
Title:

IV-4
Accepted and Agreed:

DEUTSCHE BANK AG NEW YORK BRANCH,
as Collateral Agent

By: ______________________________
   Name: __________________________
   Title: ___________________________

By: ______________________________
   Name: __________________________
   Title: ___________________________
SCHEDULE I

to

TRADEMARK SECURITY AGREEMENT

TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

IV-6
FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT is dated as of [   ], by [   ] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Deutsche Bank AG New York Branch, in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Amended and Restated ABL Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”):

(a) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I;

(b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;
(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]

IV-2
IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ ],
as Grantor

By:
Name:
Title:

IV-3
Accepted and Agreed:

DEUTSCHE BANK AG NEW YORK BRANCH,
as Collateral Agent

By:  

Name:  
Title:  

By:  

Name:  
Title:  

IV-4
FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT is dated as of [ ], by [-] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Deutsche Bank AG New York Branch, in its capacity as administrative agent and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Amended and Restated ABL Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”):

(a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

(b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule I:
(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office. Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

SECTION 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ ],
as Grantor

By:

Name:
Title:

IV-3
Accepted and Agreed:

DEUTSCHE BANK AG NEW YORK BRANCH,
as Agent

By: ________________________________
Name: 
Title:

By: ________________________________
Name: 
Title:
## PLEDGED STOCK

<table>
<thead>
<tr>
<th>Grantor</th>
<th>Issuer</th>
<th>Type of Organization</th>
<th>Jurisdiction of Organization / Formation</th>
<th># of Shares Owned</th>
<th>Total Shares Outstanding</th>
<th>% of Interest Pledged</th>
<th>Certificate No.</th>
<th>Par Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mariposa Intermediate Holdings LLC</td>
<td>Neiman Marcus Group LTD LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>1 Unit</td>
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<td>100%</td>
<td>Uncertificated</td>
<td>N/A</td>
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<td>Neiman Marcus Group LTD LLC</td>
<td>Mariposa Borrower, Inc.</td>
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<td>100%</td>
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<td>Neiman Marcus Group LTD LLC</td>
<td>The Neiman Marcus Group LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>100 Units</td>
<td>100</td>
<td>100%</td>
<td>Uncertificated</td>
<td>N/A</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NM Financial Services, Inc.</td>
<td>Corporation</td>
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<td>No par value</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NM Nevada Trust</td>
<td>Trust</td>
<td>Massachusetts</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>Bergdorf Goodman Inc.</td>
<td></td>
<td></td>
<td>1</td>
<td>9</td>
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<td>2</td>
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<td>NMGP, LLC</td>
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<td>Limited liability company</td>
<td>Virginia</td>
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<td>100%</td>
<td>Uncertificated</td>
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<tr>
<td>Grantor</td>
<td>Issuer</td>
<td>Type of Organization</td>
<td>Jurisdiction of Organization / Formation</td>
<td># of Shares Owned</td>
<td>Total Shares Outstanding</td>
<td>% of Interest Pledged</td>
<td>Certificate No.</td>
<td>Par Value</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>Worth Avenue Leasing Company</td>
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<td>$1.00</td>
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<td>N/A</td>
<td>100%</td>
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<td>NMG Global Mobility, Inc.</td>
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<td>100%</td>
<td>1</td>
<td>$1.00</td>
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<td>Neiman Marcus Bermuda, L.P.</td>
<td>Limited Partnership</td>
<td>Bermuda</td>
<td>N/A; 99%</td>
<td>N/A</td>
<td>100%</td>
<td>Uncertificated</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
<td>NEMA Beverage Holding Corporation</td>
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<td>100</td>
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<td>100%</td>
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<td>$1.00</td>
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<td>Grantor</td>
<td>Issuer</td>
<td>Type of Organization</td>
<td>Jurisdiction of Organization / Formation</td>
<td># of Shares Owned</td>
<td>Total Shares Outstanding</td>
<td>% of Interest Pledged</td>
<td>Certificate No.</td>
<td>Par Value</td>
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<td>Texas</td>
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<td>100</td>
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<td>003</td>
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<td>100%</td>
<td>Uncertificated</td>
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<tr>
<td>NMG Salon Holdings LLC</td>
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<td>Limited Liability Company</td>
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<td>100%</td>
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<td>NMG Florida Salon LLC</td>
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<td>100%</td>
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<td>NMG California Salon LLC</td>
<td>Limited Liability Company</td>
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<td>NMG Salon Holdings LLC</td>
<td>NMG Texas Salon LLC</td>
<td>Limited Liability Company</td>
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<td>The Neiman Marcus Group LLC</td>
<td>The NMG Subsidiary LLC</td>
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<td>Fashionphile Group, LLC</td>
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<td>Delaware</td>
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<td>N/A</td>
<td>100%</td>
<td>Uncertificated</td>
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<tr>
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<td>NMG Term Loan PropCo LLC</td>
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<td>100%</td>
<td>Uncertificated</td>
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<td>NMG Notes PropCo LLC</td>
<td>Limited Liability Company</td>
<td>Delaware</td>
<td>100 Units</td>
<td>N/A</td>
<td>100%</td>
<td>Uncertificated</td>
<td>N/A</td>
</tr>
</tbody>
</table>
1. That certain Intercompany Note, dated as of June 7, 2019, by and among each Payor (as defined therein) and each Maker (as defined therein).

2. Intercompany receivable held by NM Nevada Trust from The Neiman Marcus Group LLC, which was approximately $2,880,299,470 as of May 31, 2019.

3. Intercompany receivable held by NM Nevada Trust from Bergdorf Goodman Inc., which was approximately $473,027,518 as of May 31, 2019.
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<th>Registration Date</th>
<th>Owner</th>
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<td>Horchow : the Horchow collection.</td>
<td>TX0000896363</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>Horchow : the Horchow collection.</td>
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<td>Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
<td>CSN0040942</td>
<td>1989</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
<td>TX0000884099</td>
<td>1/15/1982</td>
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</tr>
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<td>Horchow : the Horchow collection.</td>
<td>TX0001047618</td>
<td>1/17/1983</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
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<td>1/17/1983</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<tr>
<td>Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
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<td>1/26/1984</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>SGF : savings on gifts and furnishings.</td>
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<td>9/1/1984</td>
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<tr>
<td>Title</td>
<td>Registration Number</td>
<td>Registration Date</td>
<td>Owner</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------</td>
<td>-------------------</td>
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</tr>
<tr>
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<td>1/15/1985</td>
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<td>13. SGF : savings on gifts and furnishings.</td>
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<td>1/15/1985</td>
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<td>15. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
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<td>16. SGF : savings on gifts and furnishings.</td>
<td>TX0001741167</td>
<td>1/21/1986</td>
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<td>TX0002014499</td>
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<td>22. SGF : savings on gifts and furnishings.</td>
<td>TX0002237684</td>
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<td>31. Easter candletower.</td>
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<td>32. Pigtails and froglegs : a family cookbook from Neiman Marcus.</td>
<td>TX0003623121</td>
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<td>33. Jeweled tiger ornament.</td>
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<td>53. Red crystal ball ornament. Series: Jay Strongwater Christmas ornament ; 20029</td>
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<td>55. Jay Strongwater Christmas ornament, gold moon/stars, NM20033. Title: Gold moons and stars.</td>
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<td>56. Amber daisy ball ornament. Series: Jay Strongwater Christmas ornament ; NM20034</td>
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<td>57. Red daisy ball ornament. Series: Jay Strongwater Christmas ornament ; NM20035</td>
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<td>59. Red swirls ball ornament. Series: Jay Strongwater Christmas ornament, NM20037</td>
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<td>60. Red glass heart ornament. Series: Jay Strongwater Christmas ornament, NM20038</td>
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<td>61. Red jeweled ball ornament. Series: Jay Strongwater Christmas ornament, NM20029</td>
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<td>62. Jeweled gift ornament. Series: Jay Strongwater Christmas ornament ; NM20040</td>
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<td>Red scallop ball ornament. Series: Jay Strongwater Christmas ornament, NM20042</td>
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<td>Red phoenix egg ornament. Series: Jay Strongwater Christmas ornament, NM20043</td>
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<td>66.</td>
<td>Red scroll egg ornament. Series: Jay Strongwater Christmas ornament; NM20045</td>
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<td>Plum lattice heart ornament. Series: Jay Strongwater Christmas ornament; NM20046</td>
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<td>68.</td>
<td>Red frog egg ornament. Series: Jay Strongwater Christmas ornament; NM20047</td>
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<td>71.</td>
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<td>72.</td>
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<td>73.</td>
<td>Green butterfly ornament. Series: Jay Strongwater Christmas ornament, NM20052</td>
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| 76. Red Florentine egg ornament.  
Series: Jay Strongwater Christmas ornament, NM20056 | VA0001172420 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 77. Purple moons/stars ball.  
Series: Jay Strongwater Christmas ornament, NM20057 | VA0001172419 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 78. Red moons/stars ball.  
Series: Jay Strongwater Christmas ornament, NM20058 | VA0001172418 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 79. Salamander egg ornament.  
Series: Jay Strongwater Christmas ornament ; NM20059 | VA0001172429 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 80. Dark amber florentine star.  
Series: Jay Strongwater Christmas ornament ; NM20060 | VA0001172428 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 81. Plum florentine star.  
Series: Jay Strongwater Christmas ornament  
; NM20061 | VA0001172427 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 82. Plum daisy ball ornament.  
Series: Jay Strongwater Christmas ornament  
; NM20062 | VA0001172426 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 83. Red scroll egg ornament.  
Series: Jay Strongwater Christmas ornament, NM20066 | VA0001172403 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 84. Small red finial ornament.  
Series: Jay Strongwater Christmas ornament, NM20017 | VA0001172411 | 1/31/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
<p>| 85. Neiman Marcus cookbook / Kevin Garvin, with John Harrisson ; photography by Ellen Silverman. | TX0005786833 | 11/10/2003 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 86. Neiman Marcus Taste: Timeless American Recipes. | TX0006840535 | 1/10/2008 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 87. Neiman Marcus Pop-Up Book. | TX0006961127 | 1/10/2008 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) |
| 88. Orchard apple with walnuts &amp; brandy : no. 8533 : net wt. 16 oz. (1 lb.) (454 g) | VA0000410146 | 4/23/1990 | The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) and Vanex, Inc. |</p>
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<td>9700 Wilshire Blvd, Beverly Hills, CA 90212</td>
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<tr>
<td>NMG Florida Salon LLC</td>
<td>Florida</td>
<td>5860 Glades Road, Boca Raton, FL 33431</td>
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<tr>
<td>NMG Salon Holdings LLC</td>
<td>Delaware</td>
<td>1618 Main Street, Dallas, Texas 75201</td>
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<tr>
<td>NMG Salons LLC</td>
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<td>1618 Main Street, Dallas, Texas 75201</td>
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<tr>
<td>NMG Texas Salon LLC</td>
<td>Texas</td>
<td>1618 Main Street, Dallas, Texas 75201</td>
</tr>
<tr>
<td>The NMG Subsidiary LLC</td>
<td>Delaware</td>
<td>1618 Main Street, Dallas, Texas 75201</td>
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COMMERICAL TORT CLAIMS

(1) Reference is made to the class action settlement involving Visa and Mastercard, who separately and together with certain banks, engaged with certain actions that resulted in merchants paying excessive interchange fees when accepting Visa and Mastercard credit and debit cards in connection with store and online purchases. Under the settlement, Visa, Mastercard and other bank defendants have agreed to provide approximately $6.24 billion in class settlement funds. The net class settlement fund will be used to pay valid claims of merchants that accepted Visa and Mastercard credit or debit cards between January 1, 2004 through January 25, 2019.

The Court has given preliminary approval to this settlement. A Court hearing is set for November 7, 2019 for the Court to officially approve of the settlement.

Merchants have until July 23, 2019 to decide if they will stay in the settlement and wait to file a claim, object to the settlement and file a notice to appear with the Court, or to opt out and make a separate claim.

The Company is in the process of evaluating the potential recovery on its portion of the claims and believes there is a reasonable chance such recovery will exceed $2.5 million.
<table>
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<td>7. NEMA Beverage Corporation</td>
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<td>8. NEMA Beverage Holding Corporation</td>
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<td>9. NEMA Beverage Parent Corporation</td>
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<td>11. NM Financial Services, Inc.</td>
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<td>12. NM Nevada Trust</td>
</tr>
<tr>
<td>13. NMG Global Mobility, Inc.</td>
</tr>
<tr>
<td>14. The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.)</td>
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<tr>
<td>15. NMGP, LLC</td>
</tr>
<tr>
<td>16. Worth Avenue Leasing Company</td>
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Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, INC.
The NMG Subsidiary LLC
as Issuers

and

the Subsidiary Guarantors party hereto

14.0% Second Lien Notes due 2024

_____________________________________
INDENTURE
Dated as of June 7, 2019

_____________________________________
ANKURA TRUST COMPANY, LLC
as Trustee and Notes Collateral Agent
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INDENTURE, dated as of June 7, 2019 as amended or supplemented from time to time (this “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), and THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), and THE NMG SUBSIDIARY LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party hereto and ANKURA TRUST COMPANY, LLC, as trustee (in such capacity, the “Trustee”) and as collateral agent (in such capacity, the “Notes Collateral Agent”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of the Notes (as defined herein):

ARTICLE I
Definitions and Incorporation by Reference

SECTION 1.1. Definitions.

“144A Global Note” means a global note substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

“2028 Debentures” means the 7.125% senior debentures due 2028 issued by The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) pursuant to the 2028 Debentures Indenture.

“2028 Debentures Collateral” means (i) the Extended Term Loan Priority Real Estate Collateral, (ii) the Original Term Loan Priority Collateral, (iii) the Notes Priority Real Estate Collateral, (iv) the Notes PropCo Equity Interests and (v) the Extended Term Loan PropCo Equity Interests, in each of case (i) to (v), consisting solely of assets if and to the extent required by the 2028 Debentures Letter Agreement in effect on the Issue Date and/or the “equal and ratable clause” set forth in the 2028 Debentures Indenture in effect on the Issue Date.

“2028 Debentures Indenture” means the indenture dated as of May 27, 1998, by and between The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) and Wilmington Savings Fund Society, FSB, as trustee, as supplemented and/or otherwise modified from time to time, including on or about the date hereof.

“2028 Debentures Letter Agreement” means that certain Letter Agreement, dated as of April 10, 2019, by and among TNMG LLC and certain holders of the 2028 Debentures signatory thereto.
“2028 Debentures Liens” means Liens on the 2028 Debentures Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the 2028 Debentures Obligations.

“2028 Debentures Obligations” means the Indebtedness and the related Obligations under the 2028 Debentures and the other Indebtedness Documents related to the 2028 Debentures.

“ABL Agent” means Deutsche Bank AG New York Branch as Administrative Agent under the ABL Credit Agreement, together with its successors and assigns, and any subsequent or successor administrative agent under the ABL Credit Agreement.

“ABL Availability” means, as of any time, the amount available for borrowing by the Issuers and the Subsidiary Guarantors under the ABL Credit Agreement then in effect.

“ABL Credit Agreement” means that certain Revolving Credit Agreement, dated as of October 25, 2013 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time), as amended by a certain Fourth Amendment on the Issue Date (the “Issue Date ABL Credit Agreement”) among the Issuer, the Corporate Co-Issuer, the guarantors from time to time party thereto, the financial institutions named therein and the ABL Agent, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder (to the extent permitted under Section 3.3) or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders. Notwithstanding the foregoing, in order for any instrument (other than the Issue Date ABL Credit Agreement, as amended, supplemented, modified or waived from time to time) to be an “ABL Credit Agreement” under this Indenture, the Issuer shall designate such instrument in writing to the Trustee as an “ABL Credit Agreement.”

“ABL Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement, dated as of the Issue Date, among the Notes Collateral Agent, on behalf of the Holders, the Extended Term Loan Agent, the ABL Agent and the Third Lien Notes Collateral Agent, on behalf of the holders of the Third Lien Notes, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.
“ABL Liens” means Liens on the Collateral having the Required Collateral Lien Priority for Liens securing the ABL Obligations.

“ABL Obligations” means the Indebtedness and the related Obligations under the ABL Credit Agreement and the other Indebtedness Documents related to the ABL Credit Agreement.

“ABL Priority Collateral” means all of the following Collateral:

1. all accounts, but excluding rights to payment for any property that, but for this clause (1), would constitute Term/Notes Priority Collateral that has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

2. all chattel paper (including tangible chattel paper and electronic chattel paper) to the extent evidencing, governing, securing or otherwise related to accounts or inventory;

3. (x) all deposit accounts and money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein and (y) all securities, security entitlements and securities accounts, in each case, to the extent constituting cash or Cash Equivalents or representing a claim to Cash Equivalents; provided that the foregoing shall not include (A) the asset sale proceeds account and all cash, checks and other property held therein or credited thereto and (B) any money, cash, checks other negotiable instruments, funds and other evidences of payment that, but for this clause (3), constitute identifiable Term/Notes Priority Proceeds;

4. all inventory;

5. to the extent involving or governing any of the items referred to in the preceding clauses (1) through (4), all documents, general intangibles (including all payment intangibles but excluding intellectual property), instruments (including promissory notes), commercial tort claims (it being understood that a commercial tort claim does not “involve” or “govern” any of clauses (1) through (4) solely because a claim for money damages is made) and letter-of-credit rights;

6. to the extent evidencing or governing any of the items referred to in the preceding clauses (1) through (5), all supporting obligations;

7. all books and records relating to the foregoing (including all books, databases, customer lists, engineer drawings, and records, whether tangible or electronic, which contain any information relating to any of the foregoing); and

8. all collateral security and guarantees with respect to any of the foregoing and all cash, money, instruments, securities, financial assets, deposit accounts and insurance payments directly received as proceeds of any ABL Priority Collateral ("ABL Priority Proceeds"); provided, however, that no
proceeds of ABL Priority Proceeds will constitute ABL Priority Collateral unless such proceeds of ABL Priority Proceeds would otherwise constitute ABL Priority Collateral.

“Acquired Indebtedness” means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is Incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Ad Hoc Committee of Unsecured Noteholders” means that certain ad hoc committee of Consenting Pre-Transactions Unsecured Noteholders represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and Houlihan Lokey.

“Additional Notes” means additional Notes (other than the Initial Notes and the PIK Interest Notes) issued from time to time under this Indenture in accordance with this Indenture, it being understood that any Notes issued in exchange for or in replacement of any Initial Notes or PIK Interest Notes shall not be Additional Notes.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For the avoidance of doubt, (i) no holder of MYT Holdco Series A Preferred Stock shall be deemed to be an Affiliate of the Issuers or the Subsidiary Guarantors solely due to its holdings of MYT Holdco Series A Preferred Stock and (ii) no holder of the Third Lien Notes shall be deemed to be an Affiliate of the Issuers or the Subsidiary Guarantors solely due to the pledge of the MYT Holdco Common Equity (or the exercise of remedies with respect to such pledge).

“After-Pledged Property” means any property (other than property that constitutes the Collateral as of the Issue Date) of an Issuer and any Subsidiary Guarantor that is required under the Notes Documents to be pledged as Collateral to secure the Notes Obligations.

“Agents” means Notes Collateral Agent, Paying Agent and Registrar.
“Applicable Premium” means, with respect to any Note on any applicable redemption date, the greater of:

(1) 1.0% of the then outstanding principal amount of such Note; and

(2) the excess, if any, of

   (a) the present value at such redemption date of:

      (i) the redemption price at the First Call Date (such redemption price being set forth in the applicable table in Paragraph 7 of the form of Note set forth in Exhibit A hereto); plus

      (ii) all required interest payments due on such Note through the First Call Date (assuming all such interest is paid in the form of Cash Interest, but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

   (b) the then outstanding principal amount of the Note.

Calculation of the Applicable Premium will be made by the Issuer or on behalf of the Issuer by such Person as the Issuer shall designate, provided that such calculation or the correctness thereof shall not be a duty or obligation of the Trustee.

“Applicable Procedures” means, with respect to any transfer, exchange, payment, redemption, offer, communications delivered or other activity of the Depositary, Euroclear and Clearstream on behalf of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer, exchange, payment, redemption, offer, communications delivered or other activity.

“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets of the Issuer or any Restricted Subsidiary; or

(2) the issuance or sale of Equity Interests (other than preferred stock of Restricted Subsidiaries issued in compliance with Section 3.3 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Issuer or another Restricted Subsidiary) (whether in a single transaction or a series of related transactions),

(each of the foregoing referred to in this definition as a “disposition”).
Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the Issuer and its Restricted Subsidiaries (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

(2) the sale, conveyance, lease or other disposition of all or substantially all of the assets of the Issuers in compliance with Section 4.1 or any disposition that constitutes a Change of Control;

(3) any Restricted Payment that is permitted to be made, and is made, under Section 3.4 or any Permitted Investment;

(4) dispositions of assets or issuances or sales of Equity Interests of any Restricted Subsidiary with an aggregate Fair Market Value in any calendar year of less than $15.0 million;

(5) any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Restricted Subsidiary to the Issuer or by the Issuer or a Restricted Subsidiary to another Restricted Subsidiary;

(6) the creation of any Lien permitted under this Indenture;

(7) [Reserved];

(8) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

(9) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(10) [Reserved];

(11) [Reserved];

(12) any exchange of assets for Related Business Assets (including a combination of Related Business Assets and a de minimis amount of cash or Cash Equivalents) of comparable or greater market value, as determined in good faith by the Issuer;
(13) (a) non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles; and

(b) exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the ordinary course of business of the Issuer and the Restricted Subsidiaries;

(14) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(15) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events and (except for purposes of calculating Net Cash Proceeds of any Asset Sale under Section 3.7(b) and Section 3.7(c)) dispositions necessary or advisable (as determined by the Issuer in good faith) in order to consummate any acquisition of any Person, business or assets;

(16) [Reserved]; and

(17) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business, provided that to the extent the property being transferred constitutes Term/Notes Priority Collateral, such replacement property will constitute Term/Notes Priority Collateral.

For the avoidance of doubt, the unwinding of Hedge Agreements will not be deemed to constitute an Asset Sale.


“Bankruptcy Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, examinership, insolvency, reorganization, administration, compromise, scheme of arrangement, voluntary arrangement, or similar federal, state or foreign law for the relief of debtors, adjustment of debts or affecting the rights of creditors generally.

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or
contingency (including the passage of time) that has not yet occurred. The terms “Beneficial Ownership,” “Beneficially Owns” and “Beneficially Owned” have a corresponding meaning.

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or the place of payment are authorized or required by law to close.

“Call Right” means the right of the lenders under the Extended Term Loan Agreement to finance and cause the redemption by the Issuers of the Third Lien Obligations (or, if less than $200.0 million principal amount of Third Lien Obligations are then outstanding, the Second Lien Obligations, following the redemption in full of the Third Lien Obligations), at par, in cash, in an aggregate principal amount equal to $200.0 million, upon the occurrence and during the continuance of an event of default under the Extended Term Loan Agreement, which $200.0 million shall be treated under such Extended Term Loan Agreement as additional Extended Term Loans, including by being secured ratably with all other Extended Term Loans by the same assets and with the same Required Collateral Lien Priority; provided that such additional Extended Term Loans shall have a “first-out” right relative to the other Extended Term Loans, with respect to claims in respect of the Notes Priority Real Estate Collateral and Notes PropCo Equity Interests.

“Call Right Cap Recovery” has the meaning assigned to such term in the Junior Lien Intercreditor Agreement.

“Call Right Collateral” means the Notes Priority Real Estate Collateral and the Notes PropCo Equity Interests.

“Capital Stock” means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.
“Capitalized Lease Obligation” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance or capital leases on a balance sheet of such Person under GAAP (as in effect on the Issue Date, notwithstanding any modification or interpretative change thereto after the Issue Date and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Cash Equivalents” means:

(1) dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local national currencies held by it from time to time in the ordinary course of business and not for speculation;

(2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;

(3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than $250.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;

(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons (other than the Sponsors) with a rating of at least “A-2” by Moody’s or “A” by S&P (or reasonably equivalent
ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and
marketable short-term money market and similar securities having a rating of at least “A-2” or “P-2” from either S&P or Moody’s (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in national currencies other than those set forth in clause (1) above; provided that such amounts are converted into any currency listed in clause (1) above as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

“Cash Management Obligations” means obligations owed by any Issuer or any Subsidiary Guarantor to any other Person in respect of or in connection with Cash Management Services.

“Cash Management Services” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“Change of Control” means the occurrence of any of the following events:

(a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more of the Permitted Holders, acquires Beneficial Ownership of Voting Stock of the Issuer representing more than 50% of the aggregate ordinary voting power for the election of directors of the Issuer (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested); or
(b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Issuer and its Restricted Subsidiaries, taken as a whole, to any Person other than one or more of the Permitted Holders.

“Clearstream” means Clearstream Banking, Société Anonyme.


“Collateral” means Extended Term Loan Priority Real Estate Collateral, the Extended Term Loan PropCo Equity Interests, the Original Term Loan Priority Collateral, the ABL Priority Collateral, the Notes Priority Real Estate Collateral and the Notes PropCo Equity Interests. The Collateral does not include any Excluded Assets.

“Collateral Asset Sale” means an Asset Sale of (i) any Collateral or (ii) any assets of Notes PropCo or Extended Term Loan PropCo.

“Company Order” means a written request or order signed in the name of the Issuers by any Officer of each of the Issuers.

“Company Parties” means, collectively, Neiman Marcus Group, Inc. and each of its Subsidiaries that has executed and delivered the Transaction Support Agreement.

“Consignment Inventory” means any Inventory (as defined in the UCC) held by a grantor on a consignment basis, which Inventory is not owned by a grantor (and would not be reflected on a consolidated balance sheet of Issuers and their Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the Issuer, acting in good faith, identifies such proceeds as such in writing to the Notes Collateral Agent.

“Consolidated EBITDA” means, with respect to the Issuer for any period, the Consolidated Net Income of the Issuer for such period:

1. increased, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:

   a. provision for Tax Distributions based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes, paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of Tax Distributions actually made to the holders of Equity Interests of the Issuer or any Parent Entity in respect of such period (in each case, to the
extent attributable to the operations of the Issuer and its Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Issuer; plus

(b) Consolidated Interest Expense; plus

cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Issuer or any Restricted Subsidiary; plus

d) all depreciation and amortization charges and expenses; plus

e) all:

(i) losses, charges, fees, costs and expenses relating to the Transactions;

(ii) transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Indenture, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the Incurrence, modification or repayment of Indebtedness permitted to be Incurred under this Indenture (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions; and

(iii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period; plus

(f) any expense or deduction attributable to minority equity interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Issuer; plus

g) the amount of indemnities, fees, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 3.8; plus

(h) earn-out obligations incurred in connection with any acquisition of any business, assets or Person in accordance with the terms of this Indenture or other Investment; plus

(i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests.
held by officers or employees of the Issuer and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of the Issuer or any Permitted Parent in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; plus

(j) all non-cash losses, charges and expenses, including any write-offs or write-downs; provided that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period:

(i) the Issuer may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated; and

(ii) to the extent the Issuer does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; plus

(k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; and

(2) decreased, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Issue Date). For the avoidance of doubt, amortization of tenant and developer allowances will not be deducted pursuant to this clause (2).

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

(1) the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capitalized Lease Obligations and net payments and receipts (if any) pursuant to Hedging Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs
of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, any expenses resulting from the discounting of the 2028 Debentures as a result of the purchase accounting treatment of the Original Transactions (as defined in the Extended Term Loan Agreement) and the Transactions and all discounts, commissions, fees and other charges associated with any receivables facility), plus

(2) consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued, plus

(3) any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been guaranteed by the referent Person, less

(4) interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Issue Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Issue Date by 365 and then dividing such product by the number of days from and including the Issue Date to and including the last day of such period.

For purposes of this definition, interest on Capitalized Lease Obligations will be deemed to accrue at the interest rate reasonably determined by the Issuer to be the rate of interest implicit in such Capitalized Lease Obligations in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP and before any deduction for preferred stock dividends; provided that:

(1) all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, consolidation, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments (including any transition-related expenses incurred before, on or after the Issue Date), will be excluded;
(2) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded;

(3) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by an Officer of the Issuer) will be excluded;

(4) all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded;

(5) all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded;

(6) (a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof;

(7) the cumulative effect of a change in accounting principles during such period will be excluded;

(8) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to any acquisition consummated before or after the Issue Date, and the amortization, write-down or write-off of any amounts thereof, net of Taxes, will be excluded;

(9) all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded;

(10) all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

(11) any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity
accruals and reserves for liabilities or expenses that are established or adjusted as a result of the Transactions within 12 months after the Issue Date will be excluded;

(13) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

(14) any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(15) (a) the non-cash portion of “straight-line” rent expense will be excluded and (b) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(16) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount:

(a) has not been denied by the applicable carrier in writing; and

(b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period);

provided that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

(17) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);
(a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities in an aggregate amount not to exceed $20.0 million for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded; and

(b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded; and

(19) non-cash charges for deferred tax asset valuation allowances will be excluded.

“Consolidated Total Assets” means, as of any date, the total assets of the Issuer and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“Contractual Performance Amount” means, with respect to an Event of Default, an amount equal to the redemption price of all then outstanding Notes, calculated in accordance with Paragraph 7 of the form of Note set forth in Exhibit A hereto (including accrued and unpaid interest thereon), as if the date such Event of Default occurred was a redemption date for purposes thereof.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Notes Collateral Agent (or other bailee for perfection pursuant to the Intercreditor Agreements) with control of any such accounts, in form and substance reasonably satisfactory to the Notes Collateral Agent, and such other parties thereto in accordance with the Intercreditor Agreements.

“Corporate Co-Issuer” has the meaning set forth in the preamble hereto.

“Corporate Trust Office” will be at the address of the Trustee specified in Section 13.1 or such other address as to which the Trustee may give notice to the Issuers or Holders pursuant to the procedures set forth in Section 13.1.

“Credit Agreement” means:

(1) the Extended Term Loan Agreement; and
whether or not the Extended Term Loan Agreement remains outstanding, if designated by the Issuer in writing to the Trustee to be included in the definition of “Credit Agreement,” one or more:

(a) debt facilities, indentures or commercial paper facilities providing for revolving credit loans, term loans, notes, debentures, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit;

(b) debt securities, notes, mortgages, guarantees, collateral documents, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances); or

(c) instruments or agreements evidencing any other Indebtedness, including Capitalized Lease Obligations, in each case, with the same or different borrowers or issuers,

in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased (provided that such increase in borrowings is permitted under this Indenture), replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors.

“Credit Support” means, with respect to any Person and any Indebtedness or other Obligations, (i) such Person’s guarantee of or becoming a direct or indirect obligor with respect to, such Indebtedness or other Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Obligations (including by means of a “keepwell” or other similar commitment).

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Customary Intercreditor Agreement” means (a) to the extent executed in connection with the incurrence of Pari Passu Lien Indebtedness, a customary intercreditor agreement in form and substance reasonably acceptable to the Notes Collateral Agent and the Issuer, which agreement shall provide that the Liens on the Collateral securing such Pari Passu Lien Indebtedness shall be Pari Passu Liens, and (b) the extent executed in connection with the incurrence of Junior Lien Indebtedness, the Junior Lien Intercreditor Agreement or another customary intercreditor agreement in form and substance reasonably acceptable to the Notes Collateral Agent and the Issuer, which agreement shall provide that the Liens on the Collateral securing such Junior Lien Indebtedness shall be Junior Liens.
“Default” means any event which, but for the giving of notice, lapse of time or both, would be, an Event of Default.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.6, substantially in the form of Exhibit A hereto except that such Note will not bear the Global Note Legend and will not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.

“Depositary” means, with respect to the Global Notes, The Depository Trust Company and any successor thereto.

“Designated Non-cash Consideration” means the Fair Market Value of non-cash consideration received by the Issuer or any Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate of the Issuer, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Issuer or any Parent Entity, as applicable (other than Excluded Equity), that is issued after the Issue Date for cash and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate of the Issuer, on the issuance date thereof, the cash proceeds of which are contributed to the capital of the Issuer (if issued by Parent or any other Parent Entity).

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is puttable, redeemable or exchangeable), in each case, at the option of the holder thereof or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; provided that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Equity Interests than the asset sale and change of control provisions applicable to the Notes and any purchase requirement triggered thereby may not become operative until compliance with the asset sale and change of control provisions applicable to the Notes (including the purchase of any Notes tendered pursuant thereto)), or

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock, or

(3) is redeemable at the option of the holder thereof, in whole or in part,

in each case prior to the date that is 91 days after the earlier of the maturity date of the Notes and the date the Notes are no longer outstanding; provided that only the portion of Equity Interests that so mature or are mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date.
will be deemed to be Disqualified Stock; and provided, further, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and provided, further, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“Domestic Subsidiary” means any Restricted Subsidiary that is not a Foreign Subsidiary.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear system.

“Event of Default” has the meaning ascribed in Section 6.1.


“Exchange Offers” means the offers to exchange the Third Lien Notes for Unsecured Notes as described in the Offering Circular under the caption “Summary—The Recapitalization Transactions.”

“Excluded Assets” means:

(a) all Excluded Equity Interests;

(b) all leasehold Real Property interests that do not constitute the Issuer’s or its Subsidiaries’ interests in full line stores, Bergdorf Goodman store real properties or warehouse or distributions centers;

(c) all fee simple Real Property interests acquired after the Issue Date with a fair market value (as determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement)) of less than or equal to $2.5 million on a per property basis;

(d) assets of any Foreign Subsidiary that is existing as of the Issue Date to the extent such Foreign Subsidiary is not required to become a Subsidiary Guarantor;
(e) assets of any Foreign Subsidiaries or FSHCO, in each case, that is created or acquired after the Issue Date (“Exempted Future Foreign Assets”) with respect to which the grant of Liens thereon securing the Notes Obligations, the Extended Term Loan Obligations or the Non-Participating Term Loan Exchange Obligations would result in materially adverse tax consequences or materially adverse regulatory consequences (in each case, “Material Adverse Consequences”), in each case, as reasonably determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement) (it being understood for purposes of the foregoing that any asset may be deemed an Exempted Future Foreign Asset due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019);

(f) any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;

(g) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;

(h) any Excluded Account (as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(i) vehicles and any other assets subject to certificates of title;

(j) any letter of credit rights to the extent not perfected as supporting obligations by the filing of a UCC financing statement on the primary Collateral;

(k) any Issuer’s or Subsidiary Guarantor’s right, title or interest in any lease, license, contract or agreement to which such entity is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than the Issuer or any Subsidiary), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity);

(l) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any
requirement to obtain the consent of any Governmental Authority which has not been obtained);

(m) any Commercial Tort Claim (as defined in the UCC) with an asserted or nominal value not in excess of $5.0 million;

(n) any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Issuer and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement);

(o) (a) any assets and proceeds thereof subject to a Lien permitted under clause (3) of the definition of “Permitted Liens” to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Notes Collateral Agent or (b) any assets subject to a Lien permitted by clause (7) of the definition of “Permitted Liens” so long as the documents providing for such Lien do not permit such assets to be pledged to the Notes Collateral Agent;

(p) the Specified Credit Card Receivables, any Specified Credit Card Payments and any Specified In-Store Credit Card Payments (in each case, as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(q) the Capital One Credit Card Receivables Accounts (as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(r) any Consignment Inventory and any Consignment Proceeds; or

(s) any Leased-Department Inventory and any Leased-Department Proceeds (in each case, as defined on the Issue Date in the Extended Term Loan Collateral Agreement).

In the event any asset described above (1) is an asset described in clauses (a) through (g) or clauses (i) through (n) above and is pledged for the benefit of creditors under any Obligations (other than the Notes Obligations), or (2) is an asset described in clause (h) or clauses (p) through (s) above and is pledged for the benefit of any Obligation listed in the Required Collateral Lien Priority table (other than the Notes Obligations), in each case of clause (1) and (2), such asset shall be pledged as After-Pledged Property with respect to the Notes with the Required Collateral Lien Priority; provided, however, in the case of clause (1), any such asset pledged for the benefit of a third-party creditor under any Obligations (other than an Obligation listed in the Required Collateral Lien Priority table) may be pledged on a first-priority basis to such third-party creditor, followed by subordinated Liens in favor of the Notes Obligations otherwise in accordance with the Required Collateral Lien Priority, but reducing the priority of each Lien described in such Required Collateral Lien Priority table by one level of Lien priority and giving effect to the first-priority Liens of such third-party creditor on such subject asset).

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An Officer of the Issuer shall evaluate whether the Material Adverse Consequences still apply to any Exempted Future Foreign Assets pursuant to clause (e) above on no less than a quarterly basis. An Exempted Future Foreign Asset shall no longer be an Excluded Asset under clause (e) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences no longer apply to such Exempted Future Foreign Asset and (B) the date a Lien on such Exempted Future Foreign Asset is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors.

“Excluded Equity” means:

(a) Disqualified Stock;

(b) any Equity Interests issued or sold to a Restricted Subsidiary or any employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries (to the extent such employee stock ownership plan or trust has been funded by the Issuers or any Restricted Subsidiaries); and

(c) any Equity Interest that has already been used or designated (x) as (or the proceeds of which have been used or designated as) Designated Preferred Stock, or (y) to increase the amount available under clause (15) of the definition of “Permitted Investments.”

“Excluded Equity Interests” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

(a) interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of a pledge to secure the Notes Obligations);

(b) Equity Interests in not-for-profit subsidiaries;

(c) to the extent applicable law requires that a Subsidiary of such pledging Issuer or Subsidiary Guarantor issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by Persons other than the such Issuer or Subsidiary Guarantor, such qualifying shares, nominee shares or similar shares held by Persons other than the Issuer or Subsidiary Guarantor, as applicable;

(d) any Equity Interests (including Equity Interests in captive insurance subsidiaries) if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); provided that
such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or

(e) any Equity Interests of Foreign Subsidiaries or FSHCOs (“Excluded Foreign Equity Interests”) in each case with respect to which the grant of Liens thereon securing the Notes Obligations, the Extended Term Loan Obligations or the Non-Participating Term Loan Exchange Obligations would result in Material Adverse Consequences, in each case, as reasonably determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement) (it being understood for purposes of the foregoing that any Equity Interests may be deemed to be Excluded Foreign Equity Interests due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019).

An Officer of the Issuer shall re-evaluate whether the Material Adverse Consequences still apply to any Excluded Foreign Equity Interests pursuant to clause (e) above on no less than a quarterly basis. An Excluded Foreign Equity Interest shall no longer be an Excluded Foreign Equity Interest under clause (e) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences no longer apply to such Excluded Foreign Equity Interest and (B) the date a Lien on such Excluded Foreign Equity Interest is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors.

“Excluded Subsidiary” means any:

(a) (i) Unrestricted Subsidiary, (ii) captive insurance Subsidiary, and (iii) not-for-profit Subsidiary;

(b) Subsidiary that is not a Wholly Owned Subsidiary of the Issuer, only to the extent such Subsidiary was created, formed or acquired in connection with a Permitted Acquisition;

(c) Foreign Subsidiary or FSHCO acquired or created after the Issue Date and with respect to which (i) an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent have determined that making such Subsidiary a Subsidiary Guarantor is not practicable (including as a result of local law in the jurisdiction in which such Subsidiary is organized or other applicable law, rule or regulation), or (ii) an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent determine that the burden or cost (including as a result of any adverse changes in applicable tax laws) of providing a guarantee from such Subsidiary outweigh the benefit of the guaranty afforded thereby (it being understood for purposes of each of the foregoing that any such Subsidiary Guarantee may be released due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change
in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019); and

(d) Subsidiary if acting as a Subsidiary Guarantor, or its Guarantee, would (i) be prohibited by law or regulation or (ii) require a governmental or third-party consent, approval, license or authorization;

in each case, unless the Issuer determines in its sole discretion, upon written notice to the Notes Collateral Agent, that any of the foregoing Persons should not be an Excluded Subsidiary until the date on which the Issuer has informed the Notes Collateral Agent that it elects to have such Person be an Excluded Subsidiary; provided that the Subsidiary Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

With respect to any Foreign Subsidiary or FSHCO that is an Excluded Subsidiary under clause (c) above, an Officer of the Issuer shall re-evaluate whether the conditions described in sub clause (i) or (ii) that caused such Foreign Subsidiary or FSHCO to be an Excluded Subsidiary under clause (c) above (the “Exclusion Conditions”) still are applicable to such Foreign Subsidiary or FSHCO no less than quarterly. A Foreign Subsidiary or FSHCO shall no longer be an Excluded Subsidiary under clause (c) above upon the earliest to occur of (A) the tenth Business Day after an Officer determines that the Exclusion Conditions no longer apply to such Foreign Subsidiary or FSHCO, (B) the date a Lien on such Foreign Subsidiary or FSHCO is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors and (C) the date such Foreign Subsidiary or FSHCO provides Credit Support for any Indebtedness of the Issuers or any Subsidiary Guarantors.

“Extended Post-Closing Period” means the Initial Post-Closing Period automatically extended by an additional 30 days.

“Extended Term Loan Agent” means Credit Suisse AG, as Administrative Agent under the Extended Term Loan Agreement, together with its successors or assigns, and any subsequent administrative agent under the Extended Term Loan Agreement.

“Extended Term Loan Agreement” means the amended or amended and restated credit agreement to be entered into on or around the Issue Date (the “Issue Date Extended Term Loan Agreement”) among the Issuer, the LLC Co-Issuer, the New Co-Issuer Subsidiary, the financial institutions named therein and the Extended Term Loan Agent, amending or amending and restating in its entirety the Pre-Transactions Term Loan Agreement, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, in each case as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or
investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder permitted under Section 3.3 or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders. Notwithstanding the foregoing, in order for any instrument (other than the Issue Date Extended Term Loan Agreement, as amended, supplemented, modified or waived from time to time) to be an “Extended Term Loan Agreement” under this Indenture, the Issuer shall designate such instrument in writing to the Trustee as an “Extended Term Loan Agreement.”

“Extended Term Loan Liens” means Liens on the Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the Extended Term Loan Obligations.

“Extended Term Loan Obligations” means the Indebtedness and related Obligations under the Extended Term Loan Agreement and the Obligations under other Indebtedness Documents related to the Extended Term Loans (but not including, for the avoidance of doubt, Non-Participating Term Loan Obligations and Non-Participating Term Loan Exchange Obligations).

“Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Issuer formed to hold the Extended Term Loan Priority PropCo Assets.

“Extended Term Loan PropCo Equity Interests” means the Equity Interests of Extended Term Loan PropCo.

“Extended Term Loans” means the term loans extended by the lenders under the Extended Term Loan Agreement beyond the maturity date contemplated by the Pre-Transactions Term Loan Agreement (but not including, for the avoidance of doubt, Non-Participating Term Loans and Non-Participating Term Loan Exchange Indebtedness).

“Fair Market Value” means, with respect to any asset or property, the price that could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction (as determined in good faith by the senior management or the Board of Directors of the Issuer, whose determination will be conclusive for all purposes under this Indenture and the Notes).

“First Call Date” means June 7, 2021.

“First Lien” means, with respect to any Collateral, the Lien on such Collateral securing the Extended Term Loan Obligations as of the Issue Date and any Lien on such Collateral that has the same priority as that of the Lien on such Collateral securing the Extended Term Loan Obligations as of the Issue Date, including any Lien.
“Foreign Subsidiary” means a Restricted Subsidiary not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia.

“FSHCO” means any Domestic Subsidiary substantially all the assets of which are Equity Interests or Indebtedness of one or more Foreign Subsidiaries that are treated as controlled foreign corporations within the meaning of Section 957 of the Code.

“GAAP” means, generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies); provided that the Issuer may at any time elect by written notice to the Trustee to fix GAAP as in effect on the date specified in such notice and, upon any such notice, references herein to GAAP will thereafter be construed to mean for all purposes of this Indenture (other than for financial reporting purposes):

(a) for periods beginning on and after the date specified in such notice, GAAP as in effect on the date specified in such notice; and

(b) for prior periods, GAAP as in effect from time to time during such periods. Notwithstanding anything to the contrary above or in the definition of Capitalized Lease Obligations, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Issue Date, only those leases that would result or would have resulted in Capitalized Lease Obligations on the Issue Date (assuming for purposes hereof that they were in existence on the Issue date) will be considered capital leases and all calculations under this Indenture will be made in accordance therewith.

“Global Note Legend” means the legend set forth in Section 2.1(c), which is required to be placed on all Global Notes issued under this Indenture.

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto issued in accordance with Section 2.1 or Section 2.6.

“Governmental Authority,” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“guarantee” means, as to any Person, a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business),
direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means any guarantee of the Obligations of the Issuers under this Indenture and the Notes in accordance with the provisions of this Indenture.

“Hedge Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Issuer or any of its Subsidiaries will be a Hedge Agreement.

“Holder” means the Person in whose name a Note is registered on the Registrar’s books; provided that it may include the “beneficial owner” of an interest in a Note.

“Hudson Yards Indebtedness” means the deferred financing obligations reflected on the balance sheet of the Issuer related to its ownership for accounting purposes of a portion of the Issuer’s retail property at Hudson Yards.

“Immaterial Subsidiary” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered, have assets with a value in excess of 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% of total revenues of the Issuer and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Issuer for which Required Financial Statements have been delivered, did not have assets with a value in excess of 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Issuer and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“Incur” means, with respect to any Indebtedness, Capital Stock or Lien, to issue, assume, guarantee, incur or otherwise become liable for, or subject to, such Indebtedness, Capital Stock or Lien, as applicable; provided that any Indebtedness, Capital Stock or Lien of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Person at the time it becomes a Subsidiary, and “Incurrence” shall have a corresponding meaning.

“Indebtedness” means, with respect to any Person, without duplication:

(1) all obligations of such Person for borrowed money;
(2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
(3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
(4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
(5) all Capitalized Lease Obligations of such Person;
(6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
(7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
(8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
(9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and
(10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

Provided that Indebtedness will not include:

(a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
(b) prepaid or deferred revenue arising in the ordinary course of business;
(c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
(d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.
The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Documents” means, with respect to any Indebtedness, all agreements and instruments governing such Indebtedness, all evidences of such Indebtedness or Credit Support thereof, all security documents for such Indebtedness (and documents and filings related thereto) and any intercreditor or similar agreements related thereto.

“Indenture” has the meaning set forth in the preamble hereto.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another Person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates own at least 10% of the outstanding Equity Interests of such Person or entity (measured by voting power, economic value or number).

“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Initial Notes” means the $550.0 million in aggregate principal amount of the 14.0% Second Lien Notes due 2024 of the Issuers issued under this Indenture on the Issue Date.

“Initial Post-Closing Period” means the period which ends 90 days after the Issue Date.

“Initial Purchasers” means Credit Suisse Securities (USA) LLC with respect to the offer and sale of the Initial Notes, and such other initial purchasers party to future purchase agreements entered into in connection with an offer and sale of any Additional Notes.

“Intercreditor Agreements” means the ABL Intercreditor Agreement, the Junior Lien Intercreditor Agreement, any other Customary Intercreditor Agreement, the Extended Term Loan Subordination Agreement and the Notes PropCo Subordination Agreement.

“Interest Coverage Ratio” means, as of any date, the ratio of (1) the Consolidated EBITDA of the Issuer for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Issuer for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Issuer or Preferred Stock of the Issuer or any Restricted Subsidiary made during such period; provided that, in the event that the Issuer classifies Indebtedness Incurred on the
date of determination as, in part, Ratio Debt and, in part, Permitted Debt (other than Permitted Refinancing Indebtedness), any calculation of Consolidated Interest Expense pursuant to this definition will not include any such Permitted Debt.

“Interest Payment Date” means, in the case of the Initial Notes, April 15 and October 15 of each year, commencing on October 15, 2019 and, in the case of any Additional Notes, such interest payment dates as may be designated by the Issuer in accordance with the provisions of Section 2.2 and, in each case, ending at the Stated Maturity of the Notes.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

“Investment Grade Securities” means:

1. securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
2. securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;
3. corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
4. investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees of Indebtedness), advances or capital contributions (excluding accounts receivable, trade credit and advances or other payments made to customers, dealers, suppliers and distributors and payroll, commission, travel and similar advances to officers, directors, managers, employees, consultants and independent contractors made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Equity Interests of any Restricted Subsidiary, or any Restricted Subsidiary issues any Equity Interests, in either case, such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Equity Interests of and all other...
Investments in such Restricted Subsidiary retained. In no event will a guarantee of an operating lease of the Issuer or any Restricted Subsidiary be deemed an Investment.

The amount of any Investment outstanding at any time (including for purposes of calculating the amount of any Investment outstanding at any time under any provision of Section 3.4 and for all other purposes of Section 3.4) will be the original cost of such Investment (determined, in the case of any Investment made with assets of the Issuer or any Restricted Subsidiary, based on the Fair Market Value of the assets invested), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Issuer or a Restricted Subsidiary in respect of such Investment, and in the case of an Investment in any Person, will be net of any Investment by such Person in the Issuer or any Restricted Subsidiary.

“Issue Date” means June 7, 2019.

“Issue Date Extended Term Loan Amount” means the aggregate principal amount of Extended Term Loans outstanding immediately after the completion of the Transactions on the Issue Date.

“Issue Date Remaining Unsecured Notes Amount” means the aggregate principal amount of the Remaining Unsecured Notes outstanding immediately after the completion of the Transactions on as of the Issue Date.

“Junior Lien Indebtedness” means Indebtedness that is secured only by Junior Liens on the Collateral.

“Junior Lien Intercreditor Agreement” means the Junior Lien Intercreditor Agreement, dated as of the Issue Date, among the Notes Collateral Agent, on behalf of the Holders, and the collateral agents holding the First Liens and the Third Liens, among others, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“Junior Lien Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents governing Junior Lien Indebtedness.

“Junior Liens” means Liens on the Collateral, which Liens on any item of Collateral rank junior to the Notes Liens on such item of Collateral pursuant to a Customary Intercreditor Agreement.

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) 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; provided that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Liquidated Damages Amount” has the meaning ascribed in Section 6.2.
“Management Agreements” means each of (i) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager III, LLC, a Delaware limited liability company, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., (ii) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager IV, LLC, a Delaware limited liability company, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., and (iii) that certain Management Services Agreement, dated as of October 25, 2013, by and among CPPIB Equity Investments Inc., a corporation incorporated under the Canada Business Corporations Act, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., in each case, as in effect on the Issue Date, as amended, amended and restated, supplemented or otherwise modified in a manner not adverse to the Holders in any material respect.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the NM Group on the Issue Date or who became directors, officers or management personnel of NM Group or any direct or indirect parent of NM Group, as applicable, and its Subsidiaries following the Issue Date (other than in connection with a transaction that would otherwise be a Change of Control if such persons were not included in the definition of “Permitted Holders”), or (in each case) family members thereof, or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date Beneficially Own or have the right to acquire, directly or indirectly, Equity Interests of the Issuer or any Permitted Parent.

“Mariposa Intermediate” means Mariposa Intermediate Holdings LLC, a Delaware limited liability company, and its successors.

“Maturity Date” means April 25, 2024.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“MYT Account” means a segregated account of MYT Parent for the benefit of the Trustee on behalf of the Holders, pledged to secure the Notes. Upon the maturity of the Notes or their earlier retirement, replacement or redemption in full, the proceeds held in the MYT Account shall be released to the MYT Guarantor Entities or their assignees for application in accordance with the MYT Holdco Preferred Series A Certificate or, whenever no shares of MYT Holdco Series A Preferred Stock are outstanding, the MYT Holdco Preferred Series B Certificate, or whenever no shares of MYT Holdco Series B Preferred Stock are outstanding, the MYT Third Lien Notes Pledge Agreement.

“MYT Alternate Security” means any security that is acceptable in the sole discretion of holders of at least 66-2/3% of the aggregate principal amount of the outstanding Notes.
“MYT Asset Sale” means any direct or indirect sale, disposition, monetization or other transfer of any assets or property of the MYT Entities (whether directly or indirectly or synthetically, including through derivative transactions) to an Independent Third Party.

Notwithstanding the preceding, none of the following items will be deemed to be a MYT Asset Sale:

(1) a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the MYT Entities (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

(2) dispositions of assets or property with an aggregate Fair Market Value in any calendar year of less than $5.0 million;

(3) any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Subsidiary of the MYT Holdco to the MYT Holdco or by the MYT Holdco or a Subsidiary of the MYT Holdco to another Subsidiary of MYT Holdco;

(4) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business, liquidation of inventory in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

(5) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(6) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the MYT Entities, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes; and

(7) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events.

“MYT Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.
“MYT Covenants” means the covenants contained in Section 4.06 of the MYT Guarantee and Collateral Agreement.

“MYT Deposit Event” means (i) the irrevocable deposit of net cash proceeds of MYT Secondary Sales or distributions in respect of the equity of MYT Holdco in the MYT Account in an aggregate amount that is not less than (x) $200.0 million less (y) the aggregate amount of Qualified LCs that have been provided and (ii) the provision of such Qualified LCs.

“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement, dated as of the Issue Date, among MYT Parent, the MYT Guarantor Entities and the Trustee as Trustee and Notes Collateral Agent, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“MYT Guarantor Entities” means, collectively, and together with their respective successors, MYT Holdco, MYT Intermediate Holdco, Mariposa Luxembourg I S. à r.l., Mariposa Luxembourg II S. à r.l. and New MYT Dutch HoldCo (and each other Person who is required to become a MYT Guarantor Entity pursuant to the terms of the MYT Guarantee and Collateral Agreement).

“MYT Holdco” means MYT Holding Co., a direct Wholly Owned Subsidiary of MYT Parent, a newly formed Delaware corporation, together with its successors.

“MYT Holdco Common Equity” means the common Equity Interests of the MYT Holdco.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.

“MYT Limited Guarantee” means the guarantee provided by each of the MYT Guarantor Entities pursuant to the MYT Guarantee and Collateral Agreement.

“MYT Limited Guarantee Collateral” means the “Collateral,” as defined in the MYT Guarantee and Collateral Agreement.

“MYT Operating Entities” means (i) NMG Germany GmbH, (ii) mytheresa.com GmbH (Germany), (iii) mytheresa.com Service GmbH (Germany), (iv) Theresa Warenvertrieb GmbH (Germany) and (v) the Subsidiaries of any of the foregoing described in clauses (i) through (iv).

“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.

“MYT Secondary Sale” means (i) the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in the MYT Holdco) of equity interests of the MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party, other than a primary sale of equity interests for cash whose net cash proceeds are contributed to or retained by the MYT Entities or (ii) any MYT Asset Sale other than a Qualified MYT Asset Sale.

“MYT Third Lien Notes Pledge Agreement” means the pledge agreement to be entered into or on around the Issue Date among MYT Parent, MYT Holdco, the trustee under each Third Lien Notes Indenture and the Third Lien Notes Collateral Agent, on behalf of the holders of the Third Lien Notes.

“MYT Waterfall” means clauses (11) through (13) of Section 4.03 of the MYT Guarantee and Collateral Agreement.

“MyTheresa Designation” means, collectively, all designations by any of the Company Parties or any of their related parties prior to the execution date of the Transaction Support Agreement of any of the MYT Entities as “unrestricted” subsidiaries under the indentures governing the Unsecured Notes, the Pre-Transactions Term Loan Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Company Party or any of its related parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Company Party (including but not limited to NMG International LLC, a Delaware limited liability company) prior to the execution date of the Transaction Support Agreement to or for the benefit of any other Company Parties of (1) any Equity Interests in the MYT Entities, (2) any indebtedness owed by the MYT Entities to any
Company Party (including but not limited to NMG International LLC), and (3) any and all other Claims or Equity Interests of any Company Party (including but not limited to NMG International LLC) in the MYT Entities, and all acts or omissions taken by any Company Party or any of its related parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1) to (3) above.

“Net Cash Proceeds” means the aggregate cash proceeds (using the Fair Market Value of any Cash Equivalents) received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses incurred as a result thereof, Taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to Section 3.7(b) or (c), as applicable) to be paid as a result of such transaction, any costs associated with unwinding any related Hedge Agreements in connection with such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

“New MYT Dutch HoldCo” means a Dutch B.V. to be formed after the Issue Date, wholly-owned subsidiary of MYT Intermediate Holding Co. and direct parent of NMG Germany GmbH as a result of a merger by absorption of Mariposa Luxembourg II S.à r.l. into Mariposa Luxembourg I S.à r.l. and a subsequent merger by absorption of Mariposa Luxembourg I S.à r.l. into such newly formed Dutch B.V.

“NM Group” means, collectively, Neiman Marcus Group, Inc. and its Subsidiaries.

“Non-Mortgageable Leases” means all leasehold Real Properties subject to provisions restricting the mortgaging, assignment or other creation of a security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by an Officer of the Issuer) to be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or
both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest; provided that no leasehold Real Property shall be a Non-Mortgageable Lease if it is not treated as a Non-Mortgageable Lease under any of the Indebtedness Documents governing any Indebtedness of the Issuer or any Restricted Subsidiary.

“Non-Participating Term Loan Collateral” means the Original Term Loan Priority Collateral and the ABL Priority Collateral.

“Non-Participating Term Loan Exchange Indebtedness” means Indebtedness incurred by the Issuers, or by any of them or any Subsidiary Guarantor, under the Extended Term Loan Agreement or otherwise to Refinance any of the Non-Participating Term Loans, in an aggregate principal amount not exceeding 100% of the aggregate principal amount of the Non-Participating Term Loans actually Refinanced by, such Indebtedness and guarantees of such Indebtedness by the Issuers and/or Subsidiary Guarantors; so long as any such Indebtedness (i) otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Non-Participating Term Loans (except that such Indebtedness and guarantees thereof may be unsecured, secured with Extended Term Loan Liens or secured with Liens junior to the Extended Term Loan Liens any or all of on the Collateral and guaranteed by any Person that guarantees the Extended Term Loans, including the Notes PropCo and the Extended Term Loan PropCo)), (ii) has no amortization, (iii) is not subject to any “most-favored nation” provision, (iv) has a maturity date no earlier than the maturity date of the Extended Term Loans on the Issue Date, (v) has a cash interest rate not exceeding that of the Extended Term Loans on the Issue Date and (vi) is subordinated in right of payment or “waterfall” priority to the Extended Term Loan Obligations.

“Non-Participating Term Loan Exchange Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to the Non-Participating Term Loan Exchange Indebtedness.

“Non-Participating Term Loan Liens” means Liens on the Non-Participating Term Loan Collateral, securing the Non-Participating Term Loan Obligations, which Liens have the Required Collateral Lien Priority for Liens securing the Non-Participating Term Loan Obligations.

“Non-Participating Term Loans” means term loans outstanding under the Pre-Transactions Term Loan Agreement on the Issue Date that the lenders decline to exchange into Extended Term Loans (but not including, for the avoidance of doubt, any Non-Participating Term Loan Exchange Indebtedness).

“Non-Participating Term Loan Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to the Non-Participating Term Loans.

“Non-U.S. Person” means a Person who is not a U.S. Person.
“Note Party” means each Issuer, each Subsidiary Guarantor and each MYT Guarantor Entity.

“Notes” means the Initial Notes, the PIK Notes (or any increase in the principal amount of a Global Note) and the Additional Notes, all of which will be treated as a single class for all purposes, except as otherwise provided in this Indenture, and unless the context otherwise requires, all references to the Notes will include the Initial Notes, the PIK Notes (or any increase in the principal amount of a Global Note) and any Additional Notes, and any references to “principal amount” of the Notes include any increase in the principal amount of the outstanding Notes as a result of a PIK Payment.

“Notes Collateral Agent” means Ankura Trust Company, LLC, in its capacity as such, until a successor replaces it and, thereafter, means the successor.

“Notes Collateral Agreement” means that certain Second Lien Notes Collateral Agreement, dated as of the Issue Date, by and among the Issuers, the Subsidiary Guarantors and the Notes Collateral Agent, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“Notes Custodian” means the custodian with respect to the Global Note (as appointed by the Depositary), or any successor Person thereto and will initially be The Huntington National Bank.

“Notes Documents” means this Indenture, the Notes, the Guarantees, the Security Documents, the Intercreditor Agreements and any other Indebtedness Documents related thereto.

“Notes Liens” means Liens on the Collateral securing the Notes Obligations, which Liens have the Required Collateral Lien Priority for Liens securing the Notes Obligations.

“Notes Obligations” means the Indebtedness and the related Obligations of the Issuers and the Subsidiary Guarantors under the Notes Documents.

“Notes Priority Real Estate Collateral” consists of the assets known as (1) Tysons Galleria (Store 1023) located at 2255 International Drive, McLean, Virginia 22102, (2) Topanga Plaza (Store 1105) located at 6550 Topanga Canyon Boulevard, Woodland Hills, California 91303, (3) Walnut Creek (Store 1110) located at 1275 Broadway Plaza, Walnut Creek, California 94596, (4) Fort Lauderdale (Store 1018) located at 2442 East Sunrise Boulevard, Fort Lauderdale, Florida 33304, (5) Troy (Store 1033) located at 2705 West Big Beaver Road, Troy, Michigan 48084, (6) Coral Gables (Store 1034) located at 390 San Lorenzo Avenue, Coral Gables, Florida 33146, (7) Charlotte (Store 1102) located at 4400 Sharon Road, Charlotte, North Carolina 28211 and (8) Austin (Store 1101) located at 3400 Palm Way, Austin, Texas 78758, each of which is not collateral for the Pre-Transactions Term Loan Obligations as of the Issue Date.
“Notes Priority Real Estate Recovery” means the occurrence of either (a) the exercise and consummation of the Call Right or (b) the recovery by the holders of the Third Lien Obligations and the Second Lien Obligations of $200.0 million, in the aggregate, on the realization of (x) Liens securing such Third Lien Obligations and Second Lien Obligations on (i) the Notes Priority Real Estate Collateral and (ii) the Notes PropCo Equity Interests and (y) guarantees of the Second Lien Obligations and Third Lien Obligations by Notes PropCo (including the Subsidiary Guarantee by Notes PropCo).

“Notes PropCo” means NMG Notes PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Issuer formed to hold the Notes Priority PropCo Assets.

“Notes PropCo Equity Interests” means the Equity Interests of Notes PropCo.

“Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Offering Circular” means the Offering Circular related to the offering of the Notes, dated June 3, 2019.

“Officer” means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary (or any person serving the equivalent function of any of the foregoing) of such Person (or of the general partner of such Person) or any individual designated as an “Officer” for purposes of this Indenture by the Board of Directors of such Person (or the Board of Directors of the general partner of such Person).

“Officer’s Certificate” means a certificate signed on behalf of the Issuer by an Officer of the Issuer that meets the requirements set forth in this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuers.

“Original Term Loan Priority Collateral” means assets of the Issuers and the Subsidiary Guarantors constituting collateral for the Obligations under the Pre-Transactions Term Loan Agreement immediately prior to the Issue Date, which assets include, among other things, seven owned real properties and substantially all personal property (including substantially all intellectual property) of the Issuers and the Subsidiary Guarantors other than the ABL Priority Collateral and Excluded Assets. The
Original Term Loan Priority Collateral does not include the Extended Term Loan Priority Real Estate Collateral, the Extended Term Loan PropCo Equity Interests, the Notes Priority Real Estate Collateral or the Notes PropCo Equity Interests.

“Parent” means Neiman Marcus Group, Inc., a corporation organized under the laws of the State of Delaware, and its successors.

“Parent Entity” means any direct or indirect parent of the Issuer.

“Pari Passu Lien Indebtedness” means Indebtedness that is secured only by Pari Passu Liens on the Collateral; provided that if such Indebtedness is guaranteed by Notes PropCo or Extended Term Loan PropCo, such guarantees provided by Notes PropCo and Extended Term Loan PropCo shall be unsecured and rank pari passu in right of payment with the Notes PropCo Guarantee and the Extended Term Loan PropCo Guarantee, respectively.

“Pari Passu Lien Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to Pari Passu Lien Indebtedness.

“Pari Passu Liens” means Liens on the Collateral, which Liens on any item of Collateral shall rank pari passu to the Notes Liens on such item of Collateral (but without regard to the control of remedies), pursuant to a Customary Intercreditor Agreement.

“Participant” means, with respect to the Depositary, Euroclear or Clearstream a Person who has an account with the Depositary, respectively (and, with respect to the Depositary, will include Euroclear or Clearstream).

“Permanent Regulation S Global Note” means a permanent Global Note in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Temporary Regulation S Global Note upon expiration of the Restricted Period.

“Permitted Acquisition” means the purchase or other acquisition, by merger, consolidation, amalgamation or otherwise, by the Issuer or its Restricted Subsidiaries of Equity Interests in, the assets of (including all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person, including minority investments and joint ventures (or any subsequent investment made in a Person, business unit, division, product line or line of business previously acquired in a Permitted Acquisition); provided, that joint ventures (x) may not be consummated with affiliates of Mariposa Intermediate, the Issuers, or their Subsidiaries and (y) must be bona fide operating businesses reasonably related to the Issuer’s business and any such acquisition, minority investment or joint venture may not constitute an investment in debt or equity of Mariposa Intermediate or its Subsidiaries.
“Permitted Asset Swap” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Issuer or any of its Restricted Subsidiaries and another Person; provided that any cash or Cash Equivalents received must be applied in accordance with Section 3.7.

“Permitted Debt” has the meaning assigned to it in Section 3.3(b).

“Permitted Holders” means each of:

1. the Sponsors;
2. any member of the Management Group (or any controlled Affiliate thereof of which members of the Management Group hold at least 50% of the Voting Stock and 50% of the economic value);
3. any other holder of a direct or indirect Equity Interest in Parent that holds such Equity Interest as of the Issue Date;
4. any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in clauses (1), (2) or (3) above are members; provided that (a) without giving effect to the existence of such group or any other group, the Persons described in clauses (1), (2) and (3) above, collectively, Beneficially Owned Voting Stock representing 50% or more of the aggregate ordinary voting power of the Voting Stock of the Issuer (or any Permitted Parent) then held by such group and (b) if the Beneficial Ownership described in subclause (a) is shared with any Person other than the Persons described in clauses (1), (2) and (3) above, the Persons described in clauses (1), (2) and (3) above hold at least 50% of the economic value of the equity securities of the Issuer (or Permitted Parent, as the case may be) then held by such group; and
5. any Permitted Parent.

Any Person or group, together with its Affiliates, whose acquisition of Beneficial Ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

“Permitted Investments” means:

1. Investments made in order to consummate or complete the Transactions;
2. loans and advances to officers, directors, employees or consultants of any Parent Entity, the Issuer or any Restricted Subsidiary not to exceed $25.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made); provided
that loans and advances to consultants in the form of upfront payments made in connection with employment or consulting arrangements entered into in the ordinary course of business shall not be subject to such $25.0 million cap;

(3) Investments in (i) the Issuers or Subsidiary Guarantors, provided that any Investment in Notes PropCo and Extended Term Loan PropCo shall only be made to fund lease and other operating payments that are due in the ordinary course or to maintain its respective legal existence, to the extent they are not already covered by Issuer or any other Subsidiary other than Notes PropCo or Extended Term Loan PropCo, as applicable or (ii) Restricted Subsidiaries that are not Subsidiary Guarantors not to exceed $25.0 million in an aggregate principal amount at any time outstanding, provided that Investments (other than in respect of Excluded Assets) under this subclause (ii) shall take the form of intercompany loans which shall be pledged as Collateral to secure the Notes Obligations, provided further in case of both subclause (i) and (ii) that Investments in Subsidiaries that are not Wholly Owned Subsidiaries shall be on arm’s length terms;

(4) [Reserved];

(5) Cash Equivalents and Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made:

(6) Investments arising out of the receipt by the Issuer or any of its Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 3.7;

(7) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(8) Investments acquired as a result of a foreclosure by the Issuer or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(9) Hedging Agreements;

(10) Investments existing on, or contractually committed as of, the Issue Date and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (10) is not increased at any time above the amount of such Investments existing or committed on the Issue Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the
Issue Date or as otherwise permitted under this definition or under Section 3.4, provided that Investments outstanding as of the Issue Date which were Incurred or allocated under a specific clause of the definition of “Permitted Investments” under the indentures governing the Remaining Unsecured Notes as of immediately prior to the Issue Date shall be deemed to be incurred on the Issue Date under the corresponding specific clause of the definition of “Permitted Investments” under this Indenture and not under this clause (10);

(11) Investments resulting from pledges and deposits that are Permitted Liens;

(12) intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries Incurred pursuant to Section 3.3(b)(xxi);

(13) acquisitions of obligations of one or more officers or other employees of any Parent Entity, the Issuer or any Subsidiary of the Issuer in connection with such officer’s or employee’s acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the Issuer or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(14) Guarantees of operating leases (for the avoidance of doubt, excluding Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(15) Investments to the extent that payment for such Investments is made with Equity Interests (other than Excluded Equity) of the Issuer;

(16) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 3.4;

(17) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(18) Guarantees permitted under Section 3.3;

(19) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Issuer or any Restricted Subsidiary;

(20) Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;
(21) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(22) [Reserved];

(23) intercompany current liabilities owed to joint ventures Incurred in the ordinary course of business in connection with the cash management operations of the Issuer and its Subsidiaries;

(24) (a) Investments in Permitted Acquisitions in an aggregate amount, taken together with all other Investments made pursuant to this clause (24) and the aggregate principal amount of any Indebtedness Incurred or assumed under clause (xii) of the definition of “Permitted Debt” that are at the time outstanding, not to exceed $300.0 million less the aggregate consideration paid by TNMG LLC prior to the Issue Date in respect of that certain investment made by TNMG LLC pursuant to that certain Unit Purchase Agreement, dated as of April 17, 2019, by and among FashionPhile Group, LLC, TNMG LLC and the other parties party thereto (the “FashionPhile Consideration”) (not including any consideration consisting of common equity of Mariposa Intermediate, proceeds of common equity issued by Mariposa Intermediate and contributed to Issuer or contributions to Mariposa Intermediate’s common equity capital further contributed to Issuer, and not including any transaction costs of the Issuer and its Restricted Subsidiaries associated with such Permitted Acquisition); provided that affiliates of Mariposa Intermediate, the Issuers, or their Subsidiaries (including any Sponsor but excluding Mariposa Intermediate, the Issuers, and their Subsidiaries) may co-invest in any such joint venture with an unaffiliated third party on terms substantially similar to the terms of the applicable Issuers’ or Subsidiary’s investment without such affiliates’ investments being subject to the caps set forth herein); provided, further, however, that (1) no individual Permitted Acquisition transaction or series of related transactions shall, together with the aggregate principal amount of any Indebtedness Incurred or assumed under clause (xii) of the definition of “Permitted Debt” that is at the time outstanding, exceed $150.0 million plus, after such Permitted Acquisition is made, an additional incremental aggregate amount of $25.0 million in such Permitted Acquisition (subject to the aggregate cap of $300.0 million of this clause (24)), and (2) no Permitted Acquisition transaction may be made if pro forma ABL Availability would be less than $300.0 million;

(b) Any Wholly Owned Subsidiary acquired pursuant to subclause (a) of this clause (24) must become a Subsidiary Guarantor, and assets acquired pursuant to Permitted Acquisitions (including 100% of all equity interests, which shall not, for the avoidance of doubt, constitute Excluded Assets) must be included in the Collateral in each case in accordance with the terms and conditions set forth in the Security Documents; provided however that any non-Wholly Owned Subsidiary or any minority-owned entity or joint venture entity so acquired pursuant to
this clause shall be permitted to utilize this clause to permit such entity to fund its ratable share of investments in other bona fide operating businesses, in each case, subject to the $300.0 million aggregate cap, $150.0 million per transaction cap and $25.0 million incremental cap set forth above, and for purposes of clarity, a third party owner (that is not Mariposa Intermediate or any of its Subsidiaries) of a non-Wholly Owned Subsidiary, minority-owned entity or joint venture entity shall not be required to pledge its equity interests in such entity as Collateral;

(25) [Reserved];

(26) Investments that are made with the net proceeds of common equity issued by or contributed to Mariposa Intermediate and contributed to the Issuer; and

(27) additional Investments; provided that the aggregate Fair Market Value of such Investments made since the Issue Date that remain outstanding (with all such Investments being valued at their original Fair Market Value and without taking into account subsequent increases or decreases in value) does not exceed $25.0 million, plus any returns of capital actually received by the Issuer or any Restricted Subsidiary in respect of such Investments; provided that any Investments pursuant to this clause (27) cannot be in any Parent Entity or its subsidiaries (other than an Issuer or Subsidiary Guarantor or its subsidiaries), including any MYT Entity, and the Investment shall take the form of an intercompany loan which shall be pledged to secure the Notes Obligations (other than Excluded Assets); provided that Investments by the Issuer or its Restricted Subsidiaries with non-Wholly Owned Subsidiaries shall be on arm’s-length terms.

“Permitted Liens” means, with respect to any Person:

(1) (a) Extended Term Loan Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (i) of the definition of “Permitted Debt” and Extended Term Loan Obligations related thereto;

(b) ABL Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (ii) of the definition of “Permitted Debt” and ABL Obligations related thereto;

(c) Third Lien Notes Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (iii)(B) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto;

(d) 2028 Debentures Liens on the 2028 Debentures Collateral, securing Indebtedness Incurred in accordance with clause (iii) (C) of the definition of “Permitted Debt” and the 2028 Debentures Obligations related thereto;
(e) Third Lien Notes Liens on the Collateral, securing (i) Indebtedness Incurred in accordance with clause (iii)(D)(2) of the definition of “Permitted Debt” and Remaining Unsecured Notes Exchange Obligations related thereto and (ii) Permitted Refinancing Indebtedness incurred in respect of such Indebtedness and Obligations related to such Permitted Refinancing Indebtedness;

(f) (i) Non-Participating Term Loan Liens on the Non-Participating Term Loan Collateral, securing Indebtedness Incurred in accordance with clause (iii)(E)(1) of the definition of “Permitted Debt” and Non-Participating Term Loan Obligations related thereto, and (ii) Extended Term Loan Liens, Pari Passu Liens or Junior Liens on the Collateral, securing Non-Participating Term Loan Exchange Indebtedness Incurred in accordance with clause (iii)(E)(2) of the definition of “Permitted Debt” and Non-Participating Term Loan Exchange Obligations related thereto;

(g) (i) Notes Liens on the Collateral securing Indebtedness Incurred in accordance with clause (iii)(A)(1) of the definition of “Permitted Debt” and the Notes Obligations related thereto and (ii) Pari Passu Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (iii)(A)(2) of the definition of “Permitted Debt” and Pari Passu Lien Obligations related thereto;

(2) Liens existing on the Issue Date; provided that Liens outstanding as of the Issue Date that were incurred or allocated under a specific Liens clause under the indentures governing the Remaining Unsecured Notes shall be deemed to be incurred on the Issue Date under the corresponding Liens clause under this Indenture, and not under this clause (2);

(3) Liens securing Indebtedness Incurred in accordance with clause (v) of the definition of “Permitted Debt;” provided that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(4) [Reserved];

(5) (a) Liens on assets of Foreign Subsidiaries that are not Subsidiary Guarantors and (b) Junior Liens on assets of Foreign Guarantors, in either case securing Indebtedness Incurred in accordance with clause (xxi) of the definition of “Permitted Debt”;

(6) Liens securing Permitted Refinancing Indebtedness incurred in accordance with clause (xxiv) of the definition of “Permitted Debt” (with respect to clauses (iv) and (xxiv) of the definition of “Permitted Debt”); provided that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which
the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto) and are no higher priority than the original Lien;

(7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Issuer or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) [Reserved];

(9) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in good faith by appropriate proceedings and for which reserves have been set aside in accordance with GAAP;

(10) Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Issue Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Indenture); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing judgments that do not constitute an Event of Default pursuant to Section 6.1(g) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which the Issuer or any affected Restricted Subsidiary, has set aside on its books reserves in accordance with GAAP with respect thereto;

(12) Liens imposed by law, including landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, to the Issuer or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

(13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and
deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Issuer or any Restricted Subsidiary;

(14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capitalized Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers (but not to secure Indebtedness or receivables or capital lease financing), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) Incurred, in each case, by the Issuer or any Restricted Subsidiary in the ordinary course of business, including those Incurred to secure health, safety and environmental obligations in the ordinary course of business;

(15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capitalized Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of real property, servicing agreements, development agreements, site plan agreements and other similar encumbrances Incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Issuer or any Restricted Subsidiary;

(16) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(17) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Issuer or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations Incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary or (b) relating to purchase orders and other agreements entered into with customers of the Issuer or any Restricted Subsidiary in the ordinary course of business;

(18) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(19) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Issuer and any of its Restricted Subsidiaries, taken as a whole;
(20) Liens solely on any cash earnest money deposits made by the Issuer or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment;

(21) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(22) Liens arising from precautionary Uniform Commercial Code financing statements;

(23) Liens on Equity Interests of any joint venture, to the extent such Equity Interests are Excluded Equity Interests, (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

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

(25) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(26) Liens securing insurance premium financing arrangements;

(27) [Reserved];

(28) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; provided that such defeasance or satisfaction and discharge is not prohibited by this Indenture;

(29) Liens (a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts Incurred in the ordinary course of business; and (c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(30) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(31) Junior Liens on the Collateral securing Indebtedness permitted to be Incurred pursuant to Section 3.3(a) and related Junior Lien Obligations; and
(32) Junior Liens on the Collateral securing additional obligations in an aggregate outstanding principal amount not to exceed the $50.0 million; provided that the cash interest rate on any such obligations may not exceed 8.0% per annum.

For purposes of determining compliance with this definition, (x) a Lien need not be Incurred solely by reference to one category of Permitted Liens described in this definition but may be Incurred under any combination of such categories (including in part under one such category and in part under any other such category), (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Issuer will, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (z) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (1) or (32) above (giving effect to the Incurrence of such portion of such Indebtedness), the Issuer, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (1) or (32) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition. Notwithstanding the foregoing, (A) all Extended Term Loan Liens shall be Incurred under clause (1)(a) of this definition, (B) all ABL Liens shall be Incurred under clause (1)(b) of this definition, (C) all Third Lien Notes Liens securing Third Lien Notes Incurred under clause (ii)(B) of the definition of “Permitted Liens” and the Third Lien Notes Obligations related thereto shall be Incurred under clause (1)(c) of this definition, (D) all 2028 Debentures Liens shall be Incurred under clause (1)(d) of this definition, (E) all Third Lien Notes Liens securing Indebtedness Incurred under clause (iii)(D)(2) or (iii)(D)(4) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto shall be Incurred under clause (1)(e) of this definition, (F) all Non-Participating Term Loan Liens shall be Incurred under clause (1)(f)(i) of this definition, (G) all Liens securing Non-Participating Term Loan Exchange Obligations shall be Incurred under clause (1)(f)(ii) of this definition, (H) all Notes Liens securing Notes Incurred under clause (iii)(A)(1) of the definition of “Permitted Debt” and related Notes Obligations shall be Incurred under clause (1)(g)(i) of this definition and (I) all Pari Passu Liens shall be Incurred under clause (1)(g)(ii) of this definition, and, in each case of subclauses (A) through (I) above, such Liens may not be later reallocated.

“Permitted Parent” means any Parent Entity for so long as it is controlled only by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof; provided that such Parent Entity was not formed in connection with, or in contemplation of, a transaction (other than the Transactions) that would otherwise constitute a Change of Control.

“Permitted PropCo Guaranteed Obligations” means the (i) the Extended Term Loan Obligations, (ii) the Notes Obligations, (iii) the Third Lien Notes Obligations, (iv) the ABL Obligations, (v) the Non-Participating Term Loan Exchange Obligations and (vi) the 2028 Debentures Obligations.
“Permitted Refinancing Indebtedness” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “Refinance” or a “Refinancing”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

1. The principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. The final maturity of such Permitted Refinancing Indebtedness is equal to or later than the maturity of the Indebtedness so Refinanced and the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Maturity Date were instead due on the date that is one year following the Maturity Date; provided that no Permitted Refinancing Indebtedness Incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced;

3. If the Indebtedness being Refinanced is subordinated, as to any assets, in right of payment or lien priority to the Notes Obligations, such Permitted Refinancing Indebtedness is subordinated, as to such assets, in right of payment or lien priority to such Notes Obligations on terms at least as favorable to the lenders as those contained in the documentation governing the Indebtedness being Refinanced;

4. No Permitted Refinancing Indebtedness will have different obligors, or greater (including higher ranking priority) Guarantees or security, than the Indebtedness being Refinanced (and, for the avoidance of doubt, any Liens securing such Permitted Refinancing Indebtedness may not extend to additional assets or be higher in priority than the Liens securing the Indebtedness being Refinanced); and

5. In the case of a Refinancing of Indebtedness that is secured by any Collateral and subject to specified Required Collateral Lien Priority, the applicable Liens securing such Permitted Refinancing Indebtedness do not have a higher priority than the Required Collateral Lien Priority applicable to the Notes Liens and a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the
Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Maturity Date after the date of original Incurrence thereof.

Notwithstanding the foregoing: (a) Indebtedness incurred to Refinance the Remaining Unsecured Notes must be Remaining Unsecured Notes Exchange Indebtedness; (b) Indebtedness incurred to Refinance the Non-Participating Term Loans must be Non-Participating Term Loan Exchange Indebtedness; (c) Indebtedness incurred to Refinance the Notes and the related Notes Obligation must be unsecured Indebtedness, Junior Lien Indebtedness or Pari Passu Lien Indebtedness; (d) Indebtedness incurred to Refinance any Indebtedness guaranteed by Notes PropCo may not have the benefit of a guarantee by Notes PropCo that has a higher priority in right of payment than the guarantee by Notes PropCo of the Indebtedness being Refinanced; and (e) Indebtedness incurred to Refinance any Indebtedness guaranteed by Extended Term Loan PropCo may not have the benefit of a guarantee by Extended Term Loan PropCo that has a higher priority in right of payment than the guarantee by Extended Term Loan PropCo of the Indebtedness being Refinanced.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Preferred Stock” means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution or winding up.

“Pre-Transactions Term Loan Agreement” means that certain term loan credit agreement, dated as of October 25, 2013, among Mariposa Intermediate Holdings LLC, the Issuer (as successor by merger to Mariposa Merger Sub LLC), the subsidiaries of the Issuer from time to time party thereto, Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent, and the lenders party thereto from time to time, as amended, amended and restated, supplemented or otherwise modified prior to (but not on or after) the Issue Date (and which Pre-Transactions Term Loan Agreement, for the avoidance of doubt, is not the Extended Term Loan Agreement).

“Pre-Transactions Term Loan Lenders” means the lenders party to the Pre-Transactions Term Loan Agreement.

“Pre-Transactions Term Loan Obligations” means the Indebtedness and related Obligations under the Pre-Transactions Term Loan Agreement and the Obligations under other Indebtedness Documents related to the Pre-Transactions Term Loans.

“Pre-Transactions Term Loans” means the term loans by the lenders under the Pre-Transactions Term Loan Agreement.
“Pro Forma Basis” means, as of any date, that pro forma effect will be given to the Transactions, any Investment, any issuance, Incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued or Incurred as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, in each case that have occurred during the four consecutive fiscal quarter period of the Issuer being used to calculate such financial ratio (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Issuer and its Restricted Subsidiaries to be realized based upon actions taken or reasonably expected to be taken within 12 months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Issuer and provided further that such adjustments shall not exceed 10% of Consolidated EBITDA (after giving effect to such application or adjustment) of the Issuer for the applicable four fiscal quarter period.

“QIB” means any "qualified institutional buyer" (as defined in Rule 144A).

“Qualified LCs” means one or more letters of credit issued by a reputable bank or trust company that is organized under the laws of the United States of America or any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act)) supporting the guarantee of the Notes by the MYT Guarantor Entities, in an aggregate amount equal to the difference between (x) $200.0 million and (y) the amount of net cash proceeds of MYT Secondary Sales that has been irrevocably deposited in the MYT Account.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities; provided that (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.
“Rating Agency” means:

(1) each of Moody’s and S&P; and

(2) if Moody’s or S&P ceases to rate the Notes for reasons outside of the Issuer’s control, a “nationals recognized statistical rating organization” within the meaning of Section 3 of the Exchange Act selected by the Issuer or any Parent Entity as a replacement agency for Moody’s or S&P, as the case may be.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interest in real property owned in fee or leased, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Record Date” for the interest payable on any applicable Interest Payment Date means, in the case of the Initial Notes, April 1 and October 1 immediately preceding such Interest Payment Date (whether or not a Business Day) and, in the case of any Additional Notes, such record date (whether or not a Business Day) as may be designated by the Issuers in accordance with the provisions Section 2.2, in each case, next preceding such Interest Payment Date.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Regulation S Global Note” means a Temporary Regulation S Global Note or Permanent Regulation S Global Note, as applicable.

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless such Person is, or upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Remaining Unsecured Notes” means any 8.00% senior cash pay notes due 2021 and 8.75%/9.50% senior PIK toggle notes due 2021 that remain outstanding following the consummation of the Exchange Offers.

“Remaining Unsecured Notes Exchange Indebtedness” means:

(a) additional Third Lien Notes Incurred to Refinance any of the Remaining Unsecured Notes and guarantees of such additional Third Lien Notes by the Subsidiary Guarantors; or

(b) unsecured Indebtedness Incurred to Refinance any of the Remaining Unsecured Notes and guarantees of such unsecured Indebtedness by the Subsidiary Guarantors;
so long as, in each case of (a) and (b), any such Indebtedness (i) otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Remaining Unsecured Notes (except that such additional Third Lien Notes and guarantees thereof may be secured with Third Lien Notes Liens on the Collateral and guaranteed by any Person that guarantees the Third Lien Notes, including the Notes PropCo and the Extended Term Loan PropCo), (ii) has no amortization, (iii) is not subject to any “most-favored nation” provision, (iv) has a maturity date no earlier than the maturity date of the Third Lien Notes issued on the Issue Date, (v) in the case of (a), has a cash interest rate not exceeding the cash interest rate on the Third Lien Notes issued in the Exchange Offer for the same class of Unsecured Notes and (vi) in the case of (b), has a cash interest rate not exceeding the cash interest rate on the relevant class of Remaining Unsecured Notes outstanding as of the Issue Date.

“Remaining Unsecured Notes Exchange Obligations” means the Indebtedness and the related Obligations under the Remaining Unsecured Notes Exchange Indebtedness and the other Indebtedness Documents related to the Remaining Unsecured Notes Exchange Indebtedness.

“Required Collateral Lien Priority” means, with respect to any Lien on any Collateral, that such Lien on such Collateral has the priority indicated in the table below, based on the category of asset subject to such Lien listed at the top of each column and the Obligations secured by such Lien listed at the beginning of each row:

<table>
<thead>
<tr>
<th>Extended Term Loan Obligations</th>
<th>Original Term Loan Priority Collateral</th>
<th>ABL Priority Collateral</th>
<th>Notes Priority Real Estate Collateral and Notes PropCo Equity Interests (pre-Notes Priority Real Estate Recovery)</th>
<th>Notes Priority Real Estate Collateral and Notes PropCo Equity Interests (post-Notes Priority Real Estate Recovery)</th>
<th>Extended Term Loan PropCo Equity Interests</th>
<th>MYT Limited Guarantee Collateral and MYT Account (i)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Participating Term Loan</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Obligations</td>
<td>None</td>
<td>1</td>
<td>2</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Notes Obligations</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2(ii)</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>1(iii)</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>1(iv)</td>
<td>1 (iv)</td>
<td>None</td>
<td>3(iv)</td>
<td>2(v)</td>
<td>1(iv)</td>
</tr>
</tbody>
</table>

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Notes Liens on MYT Limited Guarantee Collateral will be released following the earlier to occur of (i) a MYT Deposit Event and (ii) the provision of MYT Alternate Security pursuant to the terms of the MYT Guarantee and Collateral Agreement.

Recovery not to exceed $200.0 million, together with recovery for Second Lien Notes Obligations.

Recovery not to exceed $200.0 million, together with recovery for Third Lien Notes Obligations.

Priority shall be pari passu with the Extended Term Loan Liens and the Non-Participating Term Loan Exchange Liens or if there are no Extended Term Loan Liens or Non-Participating Term Loan Exchange Liens, (i) with respect to the Call Right Collateral prior to the Call Right Cap Recovery, the 2028 Debenture Obligations will retain its Lien priority thereon (i.e., third priority) and (ii) with respect to the Extended Term Loan Priority Real Estate Collateral, Original Term Loan Priority Collateral, and the Equity Interests in the Extended Term Loan PropCo, the Lien priority provided for the 2028 Debentures will be pari passu with the highest priority Lien remaining on the relevant asset) solely on assets if and to the extent required by the 2028 Debentures Indenture as in effect on the Issue Date. The Trustee and the Notes Collateral Agent may conclusively rely on a written statement of an Officer of the Issuers as to the priority of any asset and any requirements set forth in documents referenced in this footnote.

To the extent no Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, if the Call Right Cap Recovery has occurred, priority will be pari passu with the highest priority Lien remaining on the relevant asset, solely on assets if and to the extent required by the 2028 Debentures Indenture. The Trustee and the Notes Collateral Agent may conclusively rely on a written statement of an Officer of the Issuers as to the priority of any asset and any requirements set forth in documents referenced in this footnote.

“Required PropCo Guarantee Priority” means, with respect to any guarantee of Permitted PropCo Guaranteed Obligations by Notes PropCo or Extended Term Loan PropCo, that such guarantee has the priority indicated in the table below in respect of contractual right of payment, based on the Obligations guaranteed by Notes PropCo and Extended Term Loan PropCo (as the case may be) listed at the beginning of each row:

<table>
<thead>
<tr>
<th>Obligations</th>
<th>Priority of Guarantee by Notes PropCo (pre-Notes Priority Real Estate Recovery)</th>
<th>Priority of Guarantee by Notes PropCo (post-Notes Priority Real Estate Recovery)</th>
<th>Priority of Guarantee by Extended Term Loan PropCo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Notes Obligations</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Non-Participating Term Loan Obligations</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
</tr>
</tbody>
</table>

To the extent no Extended Term Loan Obligations nor any Non-Participating Term Loan Exchange Obligations are outstanding, after a Call Right Cap Recovery the priority of the guarantee by Notes PropCo of 2028 Debenture Obligations shall match the priority of the senior-most remaining guarantee.
“Required Financial Statements” means the financial statements required to be delivered under Section 3.2.

“Restricted Definitive Note” means a Definitive Note bearing the Private Placement Legend.

“Restricted Global Note” means a Global Note bearing the Private Placement Legend.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Period” means the 40-day distribution compliance period as defined in Regulation S.

“Restricted Subsidiary” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Indenture, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Issuer.

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Rule 903” means Rule 903 promulgated under the Securities Act.

“Rule 904” means Rule 904 promulgated under the Securities Act.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor to the rating agency business thereof.

“SEC” means the Securities and Exchange Commission.

“Second Lien Obligations” means, with respect to any Collateral, the Notes Obligations and any other Indebtedness or other Obligations secured by a Second Lien thereon.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Security Documents” means the Notes Collateral Agreement, the MYT Guarantee and Collateral Agreement, the Intercreditor Agreements, the Copyright Security Agreement and the Trademark Security Agreement related to the Notes and mortgages, intellectual property security notices and any other agreements, filings and instruments granting, perfecting or otherwise evidencing the Notes Liens.

“Senior Priority Obligations” means, with respect to the Net Cash Proceeds of a Collateral Asset Sale of any asset, (i) if such asset is not an asset of Notes PropCo or Extended Term Loan PropCo, Indebtedness that is secured by a Lien on such
asset that ranks senior to the Notes Liens on such asset (after taking into account the Notes Priority Real Estate Recovery, if applicable), (ii) if such asset is an asset of Notes PropCo, Indebtedness that is guaranteed by Notes PropCo on a basis senior to the Notes PropCo Guarantee (after taking into account the Notes Priority Real Estate Recovery, if applicable), and (iii) if such asset is an asset of Extended Term Loan PropCo, Indebtedness that is guaranteed by Extended Term Loan PropCo on a basis senior to the Extended Term Loan PropCo Guarantee; provided that, in no event shall Remaining Unsecured Notes Obligations be Senior Priority Obligations.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” of the Issuer within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Similar Business” means any business engaged or proposed to be engaged in by the Issuer and its Restricted Subsidiaries on the Issue Date and any business or other activities that are similar, ancillary, complementary, incidental or related to, or an extension, development or expansion of, the businesses in which the Issuer and its Restricted Subsidiaries is engaged on the Issue Date.

“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Indebtedness” means (i) any Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors that are subordinated in right of payment to any of the Notes Obligations, (ii) any unsecured Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors (including the Remaining Unsecured Notes), (iii) any Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors (including Junior Lien Obligations) that are secured by Liens on the Collateral ranking junior to the Notes Liens, (iv) the Third Lien Notes Obligations, (v) the Remaining Unsecured Notes Exchange Obligations and (vi) the Non-Participating Term Loan Obligations; provided that Non-Participating Term Loan Obligations shall not be deemed to be Subordinated Indebtedness with respect to repayments of such Indebtedness from Net Cash Proceeds of Non-Participating Term Loan Collateral securing such Indebtedness (to the extent the Non-Participating Term Loan Liens on such Non-Participating Term Loan Collateral are senior in priority to the Notes Liens on such Non-Participating Term Loan Collateral) in accordance with Section 3.7. For the avoidance of doubt, (i) the ABL Obligations, the Extended Term Loan Obligations, the
Non-Participating Term Loan Exchange Obligations and the 2028 Debentures Obligations shall not be deemed to be Subordinated Indebtedness and (ii) for purposes of the application of Section 3.7 with respect to any asset, (A) any Obligations guaranteed by the holder of such asset on a basis that is junior to the relevant guarantee of the Notes Obligations and (B) any Obligations secured by a Lien on such asset ranking junior to the Lien on such asset securing the Notes Obligations, in each case, shall be Subordinated Indebtedness.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person.

“Subsidiary Guarantee” means the guarantee of the Guaranteed Obligations that is required to be provided pursuant to Section 3.11 and Article X, including the Notes PropCo Guarantee and the Extended Term Loan PropCo Guarantee and excluding the MYT Limited Guarantees.

“Subsidiary Guarantor” means any Subsidiary of the Issuers that provides a guarantee of the Guaranteed Obligations, as required by Section 3.11 and Article X, including Notes PropCo and Extended Term Loan PropCo and excluding the MYT Entities and the MYT Guarantor Entities unless such entities Incur Indebtedness or other Obligations after the Issue Date that require such entities to provide Subsidiary Guarantees pursuant to Section 3.11 and Article X.

“Taxes” means all present and future taxes, levies, imposts, deductions, duties, assessment, fees, withholdings (including backup withholding) or other charges imposed by any government or taxing authority, including any interest, additions to tax or penalties with respect thereto.

“Temporary Regulation S Global Note” means a temporary Global Note in the form of Exhibit A bearing the Global Note Legend, the Guarantor Legend, the Private Placement Legend, and the Temporary Regulation S Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903.

“Temporary Regulation S Legend” means the legend set forth in Section 2.1(e).

“Term/Notes Priority Collateral” means all Collateral other than ABL Priority Collateral.
“Term/Notes Priority Proceeds” means all cash, money, instruments, securities, financial assets, deposit accounts and insurance payments directly received as proceeds of any Term/Notes Priority Collateral.

“Third Lien” means, with respect to any Collateral, the Lien on such Collateral securing the Third Lien Notes Obligations and any Lien on such Collateral that has the same priority as that of the Lien on such Collateral securing the Third Lien Notes Obligations.

“Third Lien Notes” means (x) the 8.000% Third Lien Notes due October 25, 2024 and (y) the 8.750% Third Lien Notes due October 25, 2024, in each of case (x) and (y) to be issued by the Issuer pursuant to an indenture to be dated on or about the Issue Date, as the same may be amended from time to time (the “Third Lien Notes Indentures”).

“Third Lien Notes Collateral Agent” means Wilmington Trust, National Association, as collateral agent under each of the Third Lien Notes Indentures and any successor thereto.

“Third Lien Notes Liens” means Liens on the Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the Third Lien Obligations.

“Third Lien Notes Obligations” means the Indebtedness and related Obligations under the Third Lien Notes and the other Indebtedness Documents related to the Third Lien Notes.

“Third Lien Obligations” means, with respect to any Collateral, the Third Lien Notes Obligations and any other Indebtedness or other Obligations secured by a Third Lien thereon.


“Transaction Support Agreement” means that certain transaction support agreement, dated March 25, 2019, by and among Neiman Marcus Group, Inc. and each of its Subsidiaries signed thereunder, the Sponsors, certain Pre-Transactions Term Loan Lenders signed thereunder (the “Consenting Pre-Transactions Term Loan Lenders”), nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Issuer’s Unsecured Notes signed thereunder (the “Consenting Pre-Transactions Unsecured Noteholders”).

“Transactions” means the issuance of the Second Lien Notes and the Guarantees thereof, the issuance of the Third Lien Notes and the guarantees thereof, the amendment or amendment and restatement of the Pre-Transactions Term Loan Agreement into the Extended Term Loan Agreement and the borrowing thereunder, the issuance of the MYT Holdco Preferred Stock and other transactions as contemplated by the terms of the Transaction Support Agreement.
“Treasury Rate” means, as of the applicable Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Redemption Date to the First Call Date; provided, however, that if the period from such Redemption Date to the First Call Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“Trust Officer” means any officer within the corporate trust administration department of the Trustee, with direct responsibility for performing the Trustee’s duties under this Indenture and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such person’s knowledge of and familiarity with the particular subject.

“Trustee” has the meaning set forth in the preamble hereto.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“Unrestricted Definitive Note” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“Unrestricted Global Note” means a permanent Global Note substantially in the form of Exhibit A attached hereto that bears the Global Note Legend and the Guarantor Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary or its nominee, representing Notes that do not bear the Private Placement Legend.

“Unrestricted Subsidiary” means, at any time that such Person is a Subsidiary of the Issuer, any MYT Entity in the event any MYT Entity is required to be contributed to the Issuer or its subsidiaries in accordance with any settlement, judgment, court order or other resolution of a claim, cause of action or litigation with respect to the MyTheresa Distribution. In the event any such MYT Entity is required to be contributed to the Issuer or its subsidiaries in accordance with the immediately preceding sentence, 100% of the Equity Interests of the top-tier MYT Entity (the “Contributed MYT Equity Interests”) held by the Issuer or any of its Subsidiary Guarantors immediately following such contribution shall be required to be pledged as Collateral to the Notes Collateral.
Agent to secure the Notes Obligations on a second-priority basis, subject to (i) the first-priority Liens on such Contributed MYT Equity Interests securing the Extended Term Loan Obligations and the 2028 Debentures Obligations and Non-Participating Term Loan Exchange Obligations (if any), (ii) the third-priority Liens on such Contributed MYT Equity Interests securing the Third Lien Notes Obligations and (iii) the fourth-priority Liens on such Contributed MYT Equity Interests securing the ABL Obligations; provided, however, that notwithstanding the foregoing, such pledge of Contributed MYT Equity Interests shall not affect the MYT Waterfall or the MYT Covenants; provided, further, however that in the event such Contributed MYT Equity Interests are required to be distributed in accordance with Section 3.4(b)(xiv), then any such equity pledges or Liens granted on such Contributed MYT Equity Interests contemplated by this definition of “Unrestricted Subsidiary” shall be automatically and immediately released without any further action by any party.

“Unsecured Notes” means the 8.00% senior cash pay notes due 2021 and the 8.75%/9.50% senior PIK toggle notes due 2021 of the Issuer and Corporate Co-Issuer.

“U.S. Government Obligations” means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in each case, are not callable or redeemable at the option of the issuer thereof, and will also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.
“Weighted Average Life to Maturity” means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

1. the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by

2. the sum of all such payments.

“Wholly Owned Restricted Subsidiary” is any Wholly Owned Subsidiary that is a Restricted Subsidiary.

“Wholly Owned Subsidiary” of any Person means a direct or indirect Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares or interests required pursuant to applicable law) will at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.2. Other Definitions.

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**SECTION 1.3. **

**Rules of Construction.** Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) “or” is not exclusive;
(d) “including” means including without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) the word “will” has the same meaning as “shall” and denotes a mandatory requirement;

(g) references to sections of, or rules under, the Securities Act or Exchange Act will be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(h) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture;

(i) unless the context otherwise requires, all references to any “interest” or to any other amount payable on or with respect to the Notes shall be deemed to refer to Cash Interest or PIK Interest as the context may require;

(j) the words “herein,” “hereof” and “hereunder” and any other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision; and

(k) notwithstanding anything to the contrary in this Indenture, solely for purposes of determining whether any notice, direction, action to be taken or consent to be given under this Indenture is authorized, provided or given (as the case may be) by a sufficient aggregate principal amount of Notes, an owner of a beneficial interest in a Global Note shall be treated as a Holder, and the Trustee shall accept reasonable evidence of such beneficial interest provided by such owner (which may be in the form of “screenshots” of such owner’s position).

ARTICLE II

The Notes

SECTION 2.1. Form and Dating.

(a) The Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A hereto, the terms of which are incorporated in and made a part hereof. The Notes may have notations, legends or endorsements approved as to form by the Issuers, and required by law, stock exchange rule, agreements to which the Issuers are subject or usage. Each Note will be dated the date of its authentication. The Notes will be issuable only in minimum denominations of $2,000.00 and integral multiples of $1.00 in excess thereof. On any Interest Payment Date on which the Issuers pay PIK Interest (a “PIK Payment”), with respect to a Global Note, the Trustee will increase the principal amount of such Global Note by an amount equal to the PIK Interest payable, rounded down to the nearest whole dollar, for the relevant interest period on the
principal amount of such Global Note, to the credit of the Holders on the relevant record date and an adjustment will be made on the register maintained by the Registrar with respect to such Global Note to reflect such increase. On any Interest Payment Date on which the Issuers makes a PIK Payment by issuing Definitive Notes (a “PIK Interest Note”) under this Indenture having the same terms as the Notes, the principal amount of any such PIK Interest Note issued to any Holder, for the relevant interest period as of the relevant record date for such Interest Payment Date, will be rounded down to the nearest whole dollar. In connection with any PIK Payment, the Issuers are entitled, without the consent of the Holders (and without regard to any restrictions or limitations set forth under Sections 3.3 and 3.5), to increase the outstanding principal amount of the Notes or to issue the PIK Interest Notes under this Indenture on the same terms and conditions as the Notes.

(b) Additional Notes may be issued only in compliance with this Indenture, including Sections 3.3 and 3.5 of this Indenture. The Issuers will have the right to designate the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Notes, which may differ from the maturity date, interest rate and optional redemption provisions applicable to the Initial Notes. Additional Notes that differ with respect to maturity date, interest rate or optional redemption provisions from the Initial Notes will constitute a different series of Notes from the Initial Notes. Additional Notes that have the same maturity date, interest rate and optional redemption provisions as the Initial Notes will be treated as the same series as the Initial Notes and any PIK Interest Notes (including any increases in Global Notes reflecting a PIK Payment) unless otherwise designated by the Issuers. Exception as otherwise provided in Section 9.2(a), the Initial Notes, any PIK Interest Notes (including any increases in Global Notes reflecting a PIK Payment) and any Additional Notes issued under this Indenture will vote and consent together on all matters as one class and no series of Notes will have the right to vote or consent as a separate class on any matter. The Issuers will also have, subject to the provisions of Section 9.2(a), the right to vary the application of the provisions of this Indenture to any series of Additional Notes. Unless the context requires otherwise, references to “Notes” for all purposes of this Indenture include the PIK Interest Notes (or any increase in the principal amount of a Global Note) and any Additional Notes that are actually issued and any references to “principal amount” of the Notes include any increase in the principal amount of the outstanding Notes as a result of a PIK Payment.

(c) The Notes will initially be issued in the form of one or more Global Notes and The Depository Trust Company (“DTC”), its nominees and their respective successors, will act as the Depositary with respect thereto. Each Global Note will represent such of the outstanding Notes as will be specified therein and each will provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions and the payment of PIK Interest. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Notes Custodian, at the direction of the Trustee, in accordance with instructions given by
the Holder thereof as required by Section 2.6 or by the Issuers in connection with a PIK Payment. Each Global Note (i) will be registered in the name of the Depositary for such Global Note or the nominee of such Depositary, (ii) will be delivered by the Trustee to such Depositary or held by the Notes Custodian for the Depositary pursuant to such Depositary’s instructions, (iii) will bear a Global Note Legend in substantially the following form:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS NOTE IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

and (iv) will bear a Guarantor Legend in substantially the following form:

(A) THE GUARANTEE BY EXTENDED TERM LOAN PROPCO OF THE GUARANTEED OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE “EXTENDED TERM LOAN SUBORDINATION AGREEMENT”) DATED AS OF JUNE 7, 2019 AMONG THE
COLLATERAL AGENT, EXTENDED TERM LOAN PROPCO AND THE OTHER PARTIES THERETO, TO THE SENIOR PRIORITY GUARANTEE OBLIGATIONS (AS DEFINED THEREIN), AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT; AND (B) THE GUARANTEE BY NOTES PROPCO OF THE GUARANTEED OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE “NOTES PROPCO SUBORDINATION AGREEMENT”) DATED AS OF JUNE 7, 2019 AMONG THE COLLATERAL AGENT, NOTES PROPCO AND THE OTHER PARTIES THERETO, TO THE SENIOR PRIORITY GUARANTEE OBLIGATIONS (AS DEFINED THEREIN); AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE NOTES PROPCO SUBORDINATION AGREEMENT.

(d) Except as permitted by Section 2.6(g), any Note not registered under the Securities Act will bear the following private placement legend (the “Private Placement Legend”) on the face thereof:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH AN ISSUER OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE), ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE...
ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS NOTE, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS NOTE CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, “SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, WITHIN THE MEANING OF 29 C.F.R. SECTION 2510.3-103 AS MODIFIED BY SECTION 3(42) OF ERISA OR OTHERWISE OR (2) THE ACQUISITION AND HOLDING OF THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.
The Temporary Regulation S Global Note will bear a legend in substantially the following form:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S, (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR
BY ITS ACQUISITION OF THIS NOTE, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS NOTE CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, “SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, WITHIN THE MEANING OF 29 C.F.R. SECTION 2510.3-103 AS MODIFIED BY SECTION 3(42) OF ERISA OR OTHERWISE OR (2) THE ACQUISITION AND HOLDING OF THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

(f) Each Global Note and each Definitive Note issued at a more than de minimis discount to its redemption price at maturity (and all Notes issued in exchange therefor or substitution thereof) will bear an OID Legend in substantially the following form (the “OID Legend”):

    THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE. A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY FOR SUCH NOTE BY SUBMITTING A REQUEST FOR SUCH INFORMATION TO THE ISSUERS AT THE FOLLOWING ADDRESS: NEIMAN MARCUS GROUP LTD INC., ONE MARCUS SQUARE, 1618 MAIN STREET, DALLAS, TX 75201, ATTENTION: LEGAL DEPARTMENT.

(g) Members of, or Participants in, the Depositary (“Agent Members”) will have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary, or the Trustee as Notes Custodian and the Depositary may be treated by the Issuers, the Trustee and any agent of the Issuers or the Trustee as the absolute owner of the Global Note for all purposes whatsoever, including but not limited

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to notices and payments. Notwithstanding the foregoing, nothing herein will prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note. Notwithstanding anything to the contrary contained herein, any notice to be delivered to DTC (including, but not limited to, a notice of redemption) may be delivered electronically by the Trustee or the Issuers in accordance with Applicable Procedures of DTC.

SECTION 2.2. Form of Execution and Authentication. An Officer will sign the Notes for each of the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature of the Trustee will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will authenticate (a) Initial Notes for original issue on the Issue Date in an aggregate principal amount of $550,000,000 and (b) subject to compliance with Section 3.3, one or more series of Additional Notes for original issue after the Issue Date (such Notes to be substantially in the form of Exhibit A) in an unlimited amount, in each case upon written order of each of the Issuers signed by an Officer of each of the Issuers (an “Authentication Order”), which Authentication Order will, in the case of any issuance of Additional Notes, certify that such issuance is in compliance with Section 3.3. In addition, at any time, from time to time, the Trustee shall upon an Authentication Order authenticate and deliver PIK Interest Notes that may be validly issued under this Indenture.

Each such Authentication Order will specify the amount of Notes to be authenticated, the date on which the Notes are to be authenticated, whether the securities are to be Initial Notes or Additional Notes and the aggregate principal amount of Notes outstanding on the date of authentication, and will further specify the amount of such Notes to be issued as Global Notes or Definitive Notes. Such Notes will initially be in the form of one or more Global Notes, which (i) will represent, and will be denominated in an amount equal to the aggregate principal amount of, the Notes to be issued, (ii) will be registered in the name of the Depositary or its nominee and (iii) will be held by the Notes Custodian.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuers to authenticate Notes. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Issuers or any Affiliate of the Issuers. The initial authenticating agent is The Huntington National Bank.
Notwithstanding anything to the contrary herein, no Officer’s Certificate or Opinion of Counsel shall be required to be delivered in connection with a payment of PIK Interest (whether by an issuance of PIK Interest Notes or by an increase in Global Notes reflecting a PIK Payment).

SECTION 2.3. Registrar and Paying Agent. The Issuers will maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange (including any co-registrar, the “Registrar”) and (ii) an office or agency in the United States where Notes may be presented for payment (“Paying Agent”). The Registrar will keep a register of the Notes and of their transfer and exchange and, upon written request from the Issuers, the Registrar will provide the Issuers with a copy of such register to enable them to maintain a register of the Notes at their registered offices. The Issuers may appoint one or more co-registrars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent. The Issuers may change any Paying Agent, Registrar or co-registrar without prior notice to any Holder. The Issuers will notify the Trustee in writing and the Trustee will notify the Holders of the name and address of any Agent not a party to this Indenture. The Issuers or any of their Subsidiaries may act as Paying Agent, Registrar or co-registrar. The Issuers will enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement will implement the provisions hereof that relate to such Agent. The Issuers will notify the Trustee in writing of the name and address of any such Agent. If the Issuers fail to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee will act as such, and will be entitled to appropriate compensation in accordance with Section 7.6.

The Issuers initially appoint the Trustee as Registrar and Paying Agent with respect to the Notes.

The Issuers shall be responsible for making all calculations called for under the Notes, including determination of redemption price, premium, if any, Applicable Premium, if any, interest, determination of the amount of interest that shall be payable as PIK Interest or Cash Interest and any additional amounts or other amounts payable on the Notes. The Issuers will make the calculations in good faith and, absent manifest error, their calculations will be final and binding on the Holders. The Issuers will provide a schedule of such calculations to the Trustee, certified by an Officer of the Issuer, and the Trustee is entitled to rely conclusively on the accuracy of the Issuer’s calculations without independent verification. The Trustee shall forward the Issuers’ calculations to any Holder upon the written request of such Holder.

SECTION 2.4. Paying Agent to Hold Money in Trust. The Issuers will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, and interest on the Notes, and will notify the Trustee in writing of any Default by the Issuers in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by such Paying Agent to the Trustee. Upon payment over to
the Trustee, the Paying Agent (if other than one of the Issuers) will have no further liability for the money delivered to the Trustee. If one of the Issuers acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent.

SECTION 2.5. Lists of Holders. The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and will otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Issuers will furnish to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders, including the aggregate principal amount of the Notes held by each thereof, and the Issuers will otherwise comply with TIA § 312(a).

SECTION 2.6. Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. A Global Note may not be transferred except, as a whole, by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. Global Notes will be exchanged by the Issuers for Definitive Notes, subject to any applicable laws, only (i) if the Issuers deliver to the Trustee written notice from the Depositary that the Depositary is unwilling or unable to continue to act as Depositary for the Global Notes or that it is no longer a clearing agency registered under the Exchange Act and, in either case, the Issuers fail to appoint a successor Depositary within 120 days after the date of such notice from the Depositary; (ii) if the Issuers in their sole discretion determine that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and deliver a written notice to such effect to the Trustee; provided that in no event will the Temporary Regulation S Global Note be exchanged by the Issuers for Definitive Notes prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act; or (iii) upon request of the Trustee or Holders of a majority of the aggregate principal amount of outstanding Notes if there will have occurred and be continuing an Event of Default with respect to the Notes. In any such case, the Issuers will notify the Trustee in writing that, upon surrender by the Participants and Indirect Participants of their interests in the Global Notes, certificated Notes will be issued to each Person that such Participants, Indirect Participants and DTC jointly identify as being the beneficial owner of the related Notes. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.7 and Section 2.10. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.6 or Section 2.7 or Section 2.10, will be authenticated and delivered in the form of, and will be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.6(a). However, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.6(b) or Section 2.6(c) below.

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(b) **Transfer and Exchange of Beneficial Interests in the Global Notes.** The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions hereof and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth in this Indenture to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with the applicable subparagraphs below.

(i) **Transfer of Beneficial Interests in the Same Global Note.** Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however,* that prior to the expiration of the Restricted Period, no transfer of beneficial interests in a Temporary Regulation S Global Note may be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser) unless permitted by applicable law and made in compliance with Section 2.6(b)(ii) and Section 2.6(b)(iii) below. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions will be required to be delivered to the Registrar to effect the transfers described in this Section 2.6(b)(i) unless specifically stated above.

(ii) **All Other Transfers and Exchanges of Beneficial Interests in Global Notes.** In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.6(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase, or (B) (1) if Definitive Notes are at such time permitted to be issued pursuant to this Indenture, a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note will be registered to effect the transfer or exchange referred to in (1) immediately above; *provided* that in no event will Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Temporary Regulation S Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee will adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.6(i) below.
(iii) **Transfer of Beneficial Interests to Another Restricted Global Note.** A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.6(b)(ii) above and the Registrar receives the following:

(A) if the transferees will take delivery in the form of a beneficial interest in a 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; and

(B) if the transferees will take delivery in the form of a beneficial interest in the Temporary Regulation S Global Note or the Permanent Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(iv) **Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.** A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.6(b)(ii) above, and

(A) the Registrar receives the following:

1. if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

2. if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who will take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.
If any such transfer is effected pursuant to subparagraph (A) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer will issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (A) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) **Transfer and Exchange of Beneficial Interests for Definitive Notes.**

(i) **Transfer and Exchange of Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes.** Subject to Section 2.6(g), if any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof;
the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(i) below; and the Issuers will execute and the Trustee will authenticate and deliver to the Person designated in the certificate a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest will instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c)(i) will bear the Private Placement Legend and will be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Section 2.6(c)(i)(A) and Section 2.6(c)(i)(C), a beneficial interest in the Regulation S Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Transfer and Exchange of Beneficial Interests in Restricted Global Notes for Unrestricted Definitive Notes. Subject to Section 2.6(a), a holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who will take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof,

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the
Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Transfer and Exchange of Beneficial Interests in Unrestricted Global Notes for Unrestricted Definitive Notes. Subject to Section 2.6(g), if any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.6(b)(i) above, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(i) below, and the Issuers will execute and the Trustee will authenticate and deliver to the Person designated in the certificate an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest will instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) will not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Transfer and Exchange of Restricted Definitive Notes for Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with
Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note.

(ii) Transfer and Exchange of Restricted Definitive Notes for Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who will take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this
Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.6(d)(ii), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) **Transfer and Exchange of Unrestricted Definitive Notes for Beneficial Interests in Unrestricted Global Notes.** A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Unrestricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from an Unrestricted Definitive Note or a Restricted Definitive Note, as the case may be, to a beneficial interest is effected pursuant to Section 2.6(d)(ii)(A) or this Section 2.6(d)(iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers will issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Unrestricted Definitive Notes or Restricted Definitive Notes, as the case may be, so transferred.

(e) **Transfer and Exchange of Definitive Notes for Definitive Notes.** Upon request by a Holder of Definitive Notes and such Holder’s compliance with the provisions of this Section 2.6(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder will present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or its attorney, duly authorized in writing. In addition, the requesting Holder will provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

(i) **Transfer of Restricted Definitive Notes to Restricted Definitive Notes.** Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;
(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including, if the Issuers so request, a certification and/or Opinion of Counsel in form reasonably acceptable to the Issuers to the effect that such transfer is in compliance with the Securities Act.

(ii) Transfer and Exchange of Restricted Definitive Notes for Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) the Registrar receives the following:

   (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

   (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who will take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers so request) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Transfer of Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar will register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Temporary Regulation S Global Note.

(i) Notes offered and sold in reliance on Regulation S will be issued initially in the form of the Temporary Regulation S Global Note, which will be deposited on behalf of the purchasers of the Notes represented thereby with the Notes

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(ii) During the Restricted Period, beneficial ownership interests in Temporary Regulation S Global Notes may only be sold, pledged or transferred (A) to the Issuers, (B) in an offshore transaction in accordance with Rule 904 of Regulation S (other than a transaction resulting in an exchange for an interest in a Permanent Regulation S Global Note) or (C) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any State of the United States; and beneficial interests in a 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, whether before or after the expiration of the Restricted Period, only if the transferor first delivers to the Trustee a written certificate to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (if applicable).

(iii) Within a reasonable period after expiration or termination of the Restricted Period, beneficial interests in each Temporary Regulation S Global Note will be exchanged for beneficial interests in a Permanent Regulation S Global Note upon delivery to DTC of the certification of compliance and the transfer of applicable Notes pursuant to the Applicable Procedures. Simultaneously with the authentication of the corresponding Permanent Regulation S Global Note, the Trustee will cancel the corresponding Temporary Regulation S Global Note. The aggregate principal amount of a Temporary Regulation S Global Note and a Permanent Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(iv) Notwithstanding anything to the contrary in this Section 2.6, a beneficial interest in the Temporary Regulation S Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(g) **Private Placement Legend.**

(i) Except as permitted by subparagraph (ii) below, each Restricted Global Note and each Restricted Definitive Note (and all Notes issued in exchange therefor or substitution thereof) will bear the Private Placement Legend.

(ii) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c) (iv), (d)(ii), (d)(iii), (e)(ii) or (e)(iii) of this Section 2.6 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.
(h) **Global Note Legend.** Each Global Note will bear the Global Note Legend.

(i) **Cancellation and/or Adjustment of Global Notes.** At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Notes Custodian at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Notes Custodian at the direction of the Trustee to reflect such increase.

(j) **General Provisions Relating to Transfers and Exchanges.**

   (i) To permit registrations of transfers and exchanges, the Issuers will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.2 or at the Registrar’s request.

   (ii) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.2, 2.10, 3.7, 3.9, 5.7, 5.8 and 9.4).

   (iii) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits hereof, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

   (iv) Neither the Registrar nor the Issuers will be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business on a Business Day 15 days before the delivery of a notice of redemption of Notes and ending at the close of business on the day of such delivery, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

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Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers will be affected by notice to the contrary.

The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.2.

All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile or electronically.

The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

None of the Trustee, the Issuers or any Agent will have any responsibility for any actions taken or not taken by the Depositary.

Affiliates of the Issuers, including investment funds affiliated with either of the Sponsors, may acquire, hold and dispose of the Notes and exercise voting, consent and other similar rights with respect to such Notes (subject to the express restrictions contained in this Indenture).

SECTION 2.7. Replacement Notes. If any mutilated Note is surrendered to the Trustee, or the Issuers and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, the Issuers will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee’s requirements for replacements of Notes are met. The Holder must supply indemnity or security sufficient in the judgment of the Trustee (with respect to the Trustee) and the Issuers (with respect to the Issuers) to protect the Issuers, the Trustee, any Agent or any authenticating agent from any loss which any of them may suffer if a Note is replaced. The Issuers and the Trustee may charge for their fees and expenses in replacing a Note including amounts to cover any tax, assessment, fee or other governmental charge that may be imposed in relation thereto.

Every replacement Note is an obligation of the Issuers.
SECTION 2.8. Outstanding Notes. The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.8 as not outstanding.

For the avoidance of doubt, the aggregate principal amount outstanding under any Note shall include any increase in the outstanding principal amount in Global Notes as the result of payment of PIK Interest.

If a Note is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 3.1, it will cease to be outstanding and interest on it will cease to accrue.

Subject to Section 2.9, a Note does not cease to be outstanding because the Issuers, a Subsidiary of the Issuers or an Affiliate of any of the Issuers holds the Note.

SECTION 2.9. Treasury Notes. In determining whether the Holders of the requisite portion of outstanding Notes have concurred in any request, demand, authorization, direction, notice, waiver or consent (other than in respect of any action pursuant to Section 9.2(a), which requires the consent of each Holder of an affected Note), Notes Beneficially Owned by, or held by or for the account of, the Issuers, any Subsidiary of the Issuers or any Affiliate of any of the Issuers will be disregarded and considered as though not outstanding. For purposes of determining whether the Trustee will be protected in relying on any such request, demand, authorization, direction, notice, waiver or consent, only Notes which a Trust Officer actually knows to be so Beneficially Owned or held will be considered as not outstanding. Upon request of the Trustee, the Issuers will promptly furnish to the Trustee an Officer’s Certificate listing and identifying all Notes, if any, known by the Issuers to be Beneficially Owned or held by or for the account of any of the above-described persons, and the Trustee will be entitled to accept such Officer’s Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

SECTION 2.10. Temporary Notes. Until Definitive Notes are ready for delivery, the Issuers may prepare and the Trustee will upon receipt of an Authentication Order authenticate temporary Notes. Temporary Notes will be substantially in the form of Definitive Notes but may have variations that the Issuers consider appropriate for temporary Notes. Without unreasonable delay, the Issuers will prepare and the Trustee, upon receipt of an Authentication Order, will authenticate Definitive Notes in exchange for temporary Notes. Until such exchange, temporary Notes will be entitled to the same rights, benefits and privileges as Definitive Notes.

SECTION 2.11. Cancellation. The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee
SECTION 2.12. Payment of Interest; Defaulted Interest.

(a) Interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name such Note (or one or more predecessor Notes) is registered at the close of business on the regular Record Date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3.

(b) Any interest on any Note which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days will forthwith cease to be payable to the Holder on the regular Record Date by virtue of having been such Holder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called “Defaulted Interest”) will be paid by the Issuers, at their election in each case, as provided in clause (i) or (ii) below:

(i) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which will be fixed in the following manner. The Issuers will notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date (not less than 30 days after such notice unless a shorter period will be acceptable to the Trustee) of the proposed payment (the “Special Interest Payment Date”), and at the same time the Issuers will deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or will make arrangements for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Issuers will fix a record date (the “Special Record Date”) for the payment of such Defaulted Interest, which will be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Issuers will promptly notify the Trustee of such Special Record Date and will, or at the written request and in the name and expense of the Issuers, the Trustee will, cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 13.1, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest will be paid on the Special Interest Payment Date to the Persons in
whose names the Notes (or their respective predecessor Notes) are registered at the close of business on such Special Record Date and will no longer be payable pursuant to the following clause (ii).

(ii) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment pursuant to this clause (ii), such manner of payment will be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.13. CUSIP and ISIN Numbers. The Issuers in issuing the Notes may use “CUSIP” and/or “ISIN” numbers (if then generally in use). The Trustee will not be responsible for the use of CUSIP or ISIN numbers, and the Trustee makes no representation as to their correctness as printed on any Note or notice to Holders. The Issuers will promptly notify the Trustee in writing of any change in the CUSIP or ISIN numbers. A separate CUSIP or ISIN number will be issued for any Additional Notes, unless (i) the Initial Notes and such Additional Notes have the same maturity date, interest rate and optional redemption provisions and are treated as “fungible” for U.S. federal income tax purposes, (ii) both the Initial Notes and such Additional Notes are issued in the same series (as set forth in Section 2.2) without (or with less than a de minimis amount of) original issue discount for U.S. federal income tax purposes or (iii) another then-recognized identifier is used.

SECTION 2.14. Record Date. The Record Date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture will be determined as provided for in TIA § 316(c).

ARTICLE III

Covenants

SECTION 3.1. Payment of Notes. The Issuers will promptly pay the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal, premium, if any, and interest will be considered paid on the date due if by 3:00 p.m. (New York City time) on the Business Day prior to such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal, premium, if any, and interest then coming due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that payment date pursuant to the terms of this Indenture.
Each Note will bear interest at a rate equal to: (1) an annual rate of 8.0% payable in cash (“Cash Interest”), plus (2) an annual rate of 6.0% (the “PIK Interest”) payable by increasing the principal amount of the outstanding Notes represented by one or more book entry Notes or Global Notes or, with respect to Notes represented by individual certificates, if any, by issuing PIK Interest Notes, in each case by rounding down to the nearest $1.00.

PIK Interest will be considered paid on the date due if on such date the Trustee has received (i) an Officer’s Certificate to increase the balance of any Global Note to reflect such PIK Interest or (ii) PIK Interest Notes duly executed by the Issuers together with a written order, pursuant to Section 2.02, of the Issuers signed by an Officer of the Issuers requesting the authentication of such PIK Interest Notes by the Trustee. In connection with the payment of PIK Interest in respect of the Notes, the Issuers will, without the consent of Holders (and without regard to any restrictions or limitations set forth under Section 3.3 and Section 3.5), either increase the outstanding principal amount of the Notes or issue PIK Interest Notes under this Indenture.

The Issuers will pay interest on overdue principal at the rate specified therefor in the Notes.

Notwithstanding anything to the contrary contained in this Indenture, the Issuers may, to the extent they are required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder. Any Issuer, any Subsidiary Guarantor, the Trustee and the Paying Agent or any successor in interest to any of the foregoing (each, a “Payor”) may withhold from any interest payment made on any Note to or for the benefit of any Person who is not a “United States person” (as such term is defined for U.S. federal income tax purposes) U.S. federal withholding tax, and pay such withheld amounts to the Internal Revenue Service, unless such Person provides documentation to such Issuer or other Payor such that an exemption from U.S. federal withholding tax would apply to such payment if interest on such Note were treated entirely as income from sources within the United States for U.S. federal income tax purposes. The Payors will have no obligation to gross-up for any such withholding or deduction.

The Issuers shall notify the Trustee and the Paying Agent in the event that they determine that any payment to be made by the Trustee or the Paying Agent under the Notes is a payment which could be subject to FATCA Withholding if such payment were made to a recipient that is generally unable to receive payments free from FATCA Withholding, and the extent to which the relevant payment is so treated, provided, however, that the Issuer’s obligation under this Section 3.1 shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuers, the Notes, or both. For purposes of this paragraph, “FATCA Withholding” means any withholding or deduction required pursuant to an agreement described in section 1471(b) of the Code, or otherwise imposed pursuant to sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto. Additionally, the Issuers hereby covenant with the Trustee and Paying Agent that they will provide the Trustee and Paying Agent with
sufficient information so as to enable the Trustee or Paying Agent to determine whether or not the Trustee or Paying Agent is obliged, in respect of any payments to be made by it under this Indenture, to make any FATCA Withholding.

SECTION 3.2. Reports and Other Information.

(a) Whether or not the Issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Issuer will provide to the Holders and the Trustee the following reports:

(i) within 90 days after the end of each fiscal year (or such longer period as would be provided by the SEC if the Issuer were then subject to SEC reporting requirements as a non-accelerated filer), an annual report containing:

(A) audited annual financial statements of the Issuer and a report thereon from the Issuer’s independent accounting firm;

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section similar in scope to the information required under such caption by Form 10-K of the Exchange Act (which shall include a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million made pursuant to clause (24) of the definition thereof); and

(C) until the earlier to occur of (1) a MYT Deposit Event and (2) the provision of MYT Alternate Security, a narrative discussion of the key financial metrics of the MYT Entities consistent with a customary earnings press release;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or such longer period as would be permitted by the SEC if the Issuer were then subject to SEC reporting requirements as a non-accelerated filer), quarterly reports containing:

(A) unaudited quarterly financial statements of the Issuer for the fiscal quarter most recently ended and the corresponding fiscal quarter of the prior fiscal year;

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” similar in scope to the information required under such caption by Form 10-Q of the Exchange Act and, in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter (which shall include a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million made pursuant to clause (24) of the definition thereof); and
(C) until the earlier to occur of (1) a MYT Deposit Event and (2) the provision of MYT Alternate Security, a narrative discussion of the key financial metrics of the MYT Entities consistent with a customary earnings press release; and

(iii) within the time period specified for filing current reports on Form 8-K by the SEC, all current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file such reports for any of the following events (A) significant acquisitions or dispositions by the Issuer or its Restricted Subsidiaries or the MYT Entities, (B) the bankruptcy of the Issuer or a Significant Subsidiary or of any of the MYT Entities, (C) the acceleration of any Indebtedness of the Issuer or any Restricted Subsidiary or any of the MYT Entities having a principal amount in excess of $15.0 million, (D) a change in the Issuer’s certifying independent auditor, (E) the appointment or departure of the Chief Executive Officer or Chief Financial Officer (or persons fulfilling similar duties) of the Issuer or any of the MYT Operating Entities, (F) non-reliance on previously issued financial statements of the Issuer or the MYT Entities, (G) change of control transactions with respect to the Issuer or the MYT Entities, (H) entering into, materially modifying or terminating material contracts of the Issuer or its Restricted Subsidiaries (for the avoidance of doubt, excluding officer employment arrangements) and (I) the incurrence of costs associated with exit or disposal activities by the Issuer, its Restricted Subsidiaries or the MYT Entities; and

(iv) In addition, the Issuer shall provide, in the same manner as the reports described above, copies of all operative Indebtedness Documents (including full and complete schedules and exhibits thereto) with respect to any outstanding Indebtedness of the Issuer and its Restricted Subsidiaries or the MYT Entities whose principal amount (or committed amount) exceeds $25.0 million.

The information described in clauses (iii) and (iv) above with respect to the MYT Entities need not be provided after the earlier to occur of (x) a MYT Deposit Event and (y) the provision of MYT Alternate Security.

(b) For the avoidance of doubt, notwithstanding the foregoing, (i) the Issuer will not be required to furnish any information, certificates or reports required by (A) Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (B) Regulation G or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (ii) the reports referred to above will not be required to contain the separate financial statements or other information contemplated by Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X and (iii) the reports referred to above will not be required to present compensation or beneficial ownership information.

(c) At any time that the Issuer (and any applicable Parent Entity) is not subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act, in lieu of filing such reports with the SEC, the Issuer may make available such information electronically (including by posting to a non-public, password-protected website

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maintained by the Issuer or a third party) to any Holder, any bona fide prospective investor the Notes, any bona fide market maker (or person who intends to be a market maker) in the Note or any bona fide securities analyst, in each case, who provides to the Issuer its email address, employer name and other information reasonably requested by the Issuer. Any Person who requests such financial information from the Issuer or seeks to participate in any conference call required by this covenant will be required to represent to and agree with the Issuer (and by accepting such financial information, such Person will be deemed to have represented to and agreed with the Issuer) to the Issuer’s good faith satisfaction that:

(i) it is a Holder, a bona fide prospective investor in the Notes, a bona fide market maker (or intended market maker) with respect to the Notes or a bona fide securities analyst, as applicable;

(ii) if it is a prospective purchaser of the Notes, it is (A) a Qualified Institutional Buyer (as defined in Rule 144A of the Securities Act), (B) a non-U.S. Person (as defined in Regulation S under the Securities Act) or (C) an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating an investment in the Notes (or, if it is a bona fide market maker or intended market maker, only in connection with making a market in the Notes or, if it is a bona fide securities analyst, for preparing analysis for Holders and prospective purchasers of the Notes that otherwise have access to the financial information in compliance with this covenant); and

(vi) it (A) will not use such information in any manner intended to compete with the business of the Issuer and (B) is not a Person (which includes such Person’s Affiliates, other than the Affiliates of a bona fide securities research analyst with whom such research analyst does not share such information) that is principally engaged in or derives a significant portion of its revenues from operating or owning a business which is substantially similar to the business engaged in by the Issuer and its Restricted Subsidiaries on the Issue Date.

(d) The Issuer shall respond, as promptly as practicable, in good faith, to any request for access to the website described above.

(e) To the extent not satisfied by the foregoing, for so long as any Notes are outstanding (unless satisfied and discharged or defeased), the Issuer will furnish to Holders and prospective purchasers of the Notes, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision).
(f) Notwithstanding the foregoing, the financial statements, information, auditors’ reports and other documents required to be provided as described above, may be, rather than those of the Issuer, those of any Parent Entity; provided that, if the financial information so furnished relates to such Parent Entity, the same is accompanied by consolidating information, which may be posted to the website of the Issuer or on a non-public, password-protected website maintained by the Issuer or a third party, which explains in reasonable detail the differences between the information relating to such Parent Entity, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

(g) Issuer will be deemed to have satisfied the reporting requirements of Section 3.2(a) if (i) at any time that the Issuer or any Parent Entity is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or is a voluntary filer, the Issuer or any Parent Entity has filed such reports containing such information (including the information required pursuant to Section 3.2(e), which, for the avoidance of doubt, need not be filed with the SEC via EDGAR to the extent it is otherwise provided to Holders in accordance with this Section 3.2) with the SEC via the EDGAR (or successor) filing system or (ii) at any time that the Issuer or any Parent Entity does not file such reports with the SEC via the EDGAR (or a successor) filing system, the Issuer or any Parent Entity makes such reports available electronically (including by posting to a non-public, password-protected website as provided above) pursuant to this Section 3.2. Notwithstanding the foregoing, the Trustee shall have no obligation to monitor or confirm, on a continuing basis or otherwise, whether the Issuer or any Parent Entity posts such reports, information and documents on any website or the SEC’s EDGAR service, or to collect any such information from the Issuer’s or any Parent Entity’s website or the SEC’s EDGAR service.

(h) Promptly after the date the annual and quarterly financial information for the prior fiscal period have been furnished pursuant to Section 3.2(a)(i) or Section 3.2(a)(ii), the Issuer will hold a quarterly conference call to review the most recent financial results, which shall also include a discussion of the financial metrics of the MYT Entities and a reasonable question and answer session open to all invited call participants. Prior to the date such conference call is to be held, the Issuer will post to its website or a non-public, password-protected website maintained by the Issuer or a third party an announcement of such quarterly conference call for the benefit of the Trustee, the Holders, beneficial owners of the Notes, prospective purchasers of the Notes, securities analysts and market making financial institutions, which announcement will contain the time and the date of such conference call and direct the recipients thereof to contact an individual at the Issuer (for whom contact information will be provided in such notice) to obtain information on how to access such quarterly conference call; provided that any Person who attends such conference call with the Issuer will be required to represent to and agree with the Issuer (and by attending such conference call, such person will be deemed to have represented and agreed with the Issuer) to clauses (i) through (vi) of Section 3.2(c).

(i) Delivery of reports, information and documents to the Trustee is for informational purposes only and its receipt of such reports, information and
documents shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Issuers’, any Parent Entity’s, any Subsidiary Guarantor’s or any other Person’s compliance with any of its covenants under this Indenture or the Notes (as to which the Trustee is entitled to rely exclusively on an Officer’s Certificate delivered pursuant to this Indenture). The Trustee shall have no liability or responsibility for the content, filing or timeliness of any report, information or document delivered or filed under or in connection with this Indenture or the transactions contemplated thereunder.

SECTION 3.3. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock, and the Issuer will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; provided, however, that the Issuers and any Subsidiary Guarantor may Incur unsecured or Junior Lien Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock and any Subsidiary Guarantor may issue shares of Preferred Stock, in each case if the Interest Coverage Ratio for the Issuer’s most recently ended four full fiscal quarters for which Required Financial Statements have been delivered immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued is 2.25 to 1.00 or greater (“Ratio Debt”), as if the additional Indebtedness had been Incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of the proceeds therefrom had occurred, at the beginning of such four-quarter period.

(b) The foregoing limitations will not apply to (collectively, “Permitted Debt”):

(i) the Incurrence by the Issuers and the Subsidiary Guarantors of Indebtedness pursuant to one or more Credit Agreements up to an aggregate outstanding principal amount, including all Indebtedness incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (i) (and any successive Refinancing Indebtedness), not to exceed an amount equal to the Issue Date Extended Term Loan Amount plus, solely in the event the Call Right is exercised, an amount equal to the aggregate principal amount of the Third Lien Notes and Notes redeemed in connection therewith (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) in connection with any Refinancings less the amount applied to permanently repay Indebtedness incurred under this clause (i) pursuant to Section 3.7;

(ii) the Incurrence by the Issuers and the Subsidiary Guarantors of Indebtedness pursuant to the ABL Credit Agreement and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof)

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up to an aggregate outstanding principal amount, including all Indebtedness incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (ii) (and any successive Refinancing Indebtedness), not to exceed an amount equal to $1,000.0 million (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) in connection with any Refinancings less the amount applied to permanently repay Indebtedness incurred under this clause (ii) pursuant to Section 3.7;

(iii)

(A) (1) the Incurrence by the Issuers of the Notes issued on the Issue Date and PIK Notes issued in respect thereof (and PIK Notes issued in respect of such PIK Notes) and the Incurrence by the Subsidiary Guarantors of the Subsidiary Guarantees related to the foregoing Notes and PIK Notes; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(B) (1) the Incurrence by the Issuers of the Third Lien Notes issued on the Issue Date and the Incurrence by the Subsidiary Guarantors of guarantees of such Third Lien Notes; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(C) (1) the Incurrence by the LLC Co-Issuer of the 2028 Debentures outstanding on the Issue Date and the Incurrence by Extended Term Loan PropCo and Notes PropCo of a guarantee of such 2028 Debentures having the Required PropCo Guarantee Priority; and

(2) the Incurrence by the LLC Co-Issuer and Extended Term Loan PropCo of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(D) (1) the Incurrence by the Issuers of the Remaining Unsecured Notes and the Incurrence by the Subsidiary Guarantors of guarantees outstanding on the Issue Date of such Remaining Unsecured Notes;

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Remaining Unsecured Notes Exchange Indebtedness described in clause (a) of the definition thereof in respect of the Indebtedness described in subclause (1), in an aggregate principal amount not to exceed (w) 85% of the Issue Date Remaining Unsecured Notes Amount, minus (x) 85% of the aggregate principal amount of Remaining Unsecured Notes previously Refinanced by the Incurrence of Remaining Unsecured Notes Exchange Indebtedness described in clause (a) of the definition thereof in respect of the Indebtedness described in subclause (1).
Indebtedness pursuant to subclause (3) below, minus (y) 85% of the aggregate principal amount of Remaining Unsecured Notes that have been repaid after the Issue Date (other than as a result of a Refinancing with Remaining Unsecured Notes Exchange Indebtedness), minus (z) the aggregate principal amount of Indebtedness Incurred pursuant to this subclause (2) that is repaid after the Issue Date (including as a result of the Incurrence of Refinancing Indebtedness (provided that clause (y) above shall not apply to any Remaining Unsecured Notes repaid pursuant to Section 3.4(b)(xii)(D) within 45 days prior to the stated maturity date of the Remaining Unsecured Notes);

(3) the Incurrence by the Issuers and the Subsidiary Guarantors of Remaining Unsecured Notes Exchange Indebtedness described in clause (b) of the definition thereof in respect of the Indebtedness described in subclause (1), in an aggregate principal amount not to exceed (w) 100% of the Issue Date Remaining Unsecured Notes Amount, minus (x) 100% of the aggregate principal amount of Remaining Unsecured Notes previously Refinanced by the Incurrence of Remaining Unsecured Notes Exchange Indebtedness Incurred pursuant to subclause (2) above, minus (y) 100% of the aggregate principal amount of Remaining Unsecured Notes that have been repaid after the Issue Date (other than as a result of a Refinancing with Remaining Unsecured Notes Exchange Indebtedness), minus (z) the aggregate principal amount of indebtedness Incurred pursuant to this subclause (3) that is repaid after the Issue Date (including as a result of the Incurrence of Refinancing Indebtedness); and

(4) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of Indebtedness incurred pursuant to subclause (2) or (3) above; and

(E) (1) the Incurrence by the Issuers of the Non-Participating Term Loans and the Incurrence by the Subsidiary Guarantors of guarantees of such Non-Participating Term Loans; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Non-Participating Term Loan Exchange Indebtedness;

(iv) Indebtedness of the Issuer and its Restricted Subsidiaries existing on the Issue Date (other than Indebtedness described in clause (i), (ii) or (iii) above), provided that Indebtedness outstanding as of the Issue Date which was incurred or allocated under a specific clause of the definition of “Permitted Debt” under the indentures governing the Remaining Unsecured Notes as of immediately prior to the Issue Date shall be deemed to be incurred on the Issue Date under the corresponding specific clause of the definition of “Permitted Debt” under this Indenture, and not under this clause (iv);

(v) Capitalized Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness (including, for the avoidance of
doubt, the Hudson Yards Indebtedness outstanding as of Issue Date) to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Issuer or any of its Restricted Subsidiaries under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Issuer or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness Incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (v) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (A) $200.0 million and (B) 2.25% of Consolidated Total Assets as of the date any such Indebtedness is Incurred (the “Capitalized Lease Obligations Cap”); provided that (x) such Indebtedness is Incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness and (y) the Capitalized Lease Obligations Cap shall be reduced by an amount equal to the amount that the Hudson Yards Indebtedness is reduced (whether by repayment, retirement, recharacterization, discharge or otherwise) after the Issue Date (but such reductions shall not result in a Capitalized Lease Obligations Cap of less than the greater of (A) $100.0 million and (B) 1.125% of Consolidated Total Assets as of the date any such Indebtedness is Incurred);

(vi) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; provided that upon the Incurrence of any Indebtedness with respect to reimbursement obligations regarding workers’ compensation claims, such obligations are reimbursed not later than 45 days following such Incurrence;

(vii) Indebtedness arising from agreements of the Issuer or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, Incurred in connection with the acquisition or disposition of any business, assets or a Restricted Subsidiary of any of the Issuers in accordance with the terms of this Indenture, other than Guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition;

(viii) intercompany Indebtedness between or among the Issuer or any of its Restricted Subsidiaries; provided that (A) such Indebtedness owing to a Restricted Subsidiary that is not a Subsidiary Guarantor will only be permitted by this clause (viii) if at all times such Indebtedness is unsecured and subordinated in right of payment to the applicable Issuer’s Obligations with respect to the Notes or Guarantee of such Subsidiary Guarantor, as applicable, (B) no such Indebtedness owing by the Extended Term Loan PropCo or Notes PropCo shall be incurred hereunder except to the extent permitted under clause (3)(i) of the definition of “Permitted Investments”, and
(C) any subsequent issuance or transfer of any Capital Stock or any other event that results in any Restricted Subsidiary lending such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) will be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (viii);

(ix) Indebtedness pursuant to Hedge Agreements;

(x) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case, provided in the ordinary course of business, including those Incurred to secure health, safety and environmental obligations in the ordinary course of business;

(xi) (A) guarantees of Indebtedness of the Issuers or any of the Subsidiary Guarantors; or (B) guarantees of Indebtedness of any other Subsidiary, in each case of (A) and (B) permitted to be Incurred under this Indenture; in each case of (A) and (B), to the extent (1) such guarantees are Permitted Investments (other than pursuant to clause (18) of the definition thereof) and (2) in the case of guarantees made by the Issuers or any of the Subsidiary Guarantors pursuant to clause (B) above, such guarantees are made in connection with a Permitted Acquisition;

(xii) (A) Indebtedness Incurred or assumed in connection with an acquisition of any assets (including Capital Stock), business or Person and Indebtedness of any Person that becomes a Restricted Subsidiary or is merged into or consolidated or amalgamated with Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture and (B) Indebtedness Incurred or assumed in anticipation of an acquisition of any assets, business or Person; provided that in each case contemplated by the foregoing subclauses (A) and (B):

(1) immediately after giving effect for such acquisition, merger, consolidation or amalgamation, no Event of Default has occurred and is continuing and on a Pro Forma Basis, either (x) the Issuer would be permitted to incur at least $1.00 of additional Ratio Debt or (y) the Interest Coverage Ratio of the Issuer would increase;

(2) the aggregate principal amount of any such Indebtedness Incurred pursuant to this clause (xii) by Restricted Subsidiaries that are not Subsidiary Guarantors, together with any Permitted Refinancing Indebtedness Incurred by Restricted Subsidiaries that are not Subsidiary Guarantors to Refinance any Indebtedness originally Incurred pursuant to this clause (xii) (and any successive Permitted Refinancing Indebtedness thereof), may not exceed $50.0 million at any one time outstanding;

(3) the aggregate principal amount of any Indebtedness Incurred or assumed under the foregoing subclauses (A) and (B), together with (x) the aggregate principal amount of any Permitted
Refinancing Indebtedness in respect thereof and (y) the aggregate amount of any Investments outstanding under clause (24) of the definition of “Permitted Investments”, does not exceed the limits set forth in that clause; and

(4) the assets acquired, if held in the Issuer or a Subsidiary Guarantor (other than Notes PropCo and Extended Term Loan PropCo), shall be pledged as Collateral, subject to Liens with the Required Collateral Lien Priority;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification is received by the Issuer of its incurrence;

(xiv) Indebtedness of the Issuer or any Restricted Subsidiary supported by a letter of credit issued pursuant to any Credit Agreement, so long as such letter of credit has not been terminated and is in a principal amount not in excess of the stated amount of such letter of credit;

(xv) [Reserved];

(xvi) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xvii) [Reserved];

(xviii) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(xix) Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Issuer or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 3.4;

(xx) [Reserved];

(xxi) Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness Incurred by Foreign Subsidiaries to Refinance any Indebtedness originally Incurred pursuant to this clause (xxi) (and any successive Permitted Refinancing Indebtedness), not to exceed $25.0 million;
(xxii) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are Incurred in the ordinary course of business and not in connection with the borrowing of money;

(xxiii) Indebtedness representing deferred compensation or other similar arrangements Incurred by the Issuer or any Restricted Subsidiary (A) in the ordinary course of business or (B) in connection with any Permitted Investment;

(xxiv) any Permitted Refinancing Indebtedness Incurred to Refinance Indebtedness Incurred as Ratio Debt or under clause (iv) or this clause (xxiv) of this Section 3.3(b);

(xxv) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xxvi) Indebtedness Incurred by the Issuer or any Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case Incurred or undertaken in the ordinary course of business;

(xxvii) Indebtedness Incurred by the Issuer or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Notes in accordance with this Indenture; and

(xxviii) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness Incurred to Refinance any Indebtedness originally Incurred pursuant this clause (xxviii) (and any successive Permitted Refinancing Indebtedness), not to exceed $100.0 million; provided that the cash interest rate on any such Indebtedness may not exceed 8.0% per annum.

(c) For purposes of determining compliance with this Section 3.3, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be Incurred as Ratio Debt, the Issuer may, in its sole discretion, at the time of Incurrence, combine, divide, classify or reclassify, or at any later time combine, divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 3.3; provided that (i) all Indebtedness under the Extended Term Loans or guarantees thereof (and any Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (i) of the definition of “Permitted Debt,” (ii) all Indebtedness under the ABL Credit Agreement or guarantees thereof (and any Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (ii) of the definition of “Permitted Debt,” (iii) all Indebtedness under the Third Lien Notes or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(B) of the definition

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of “Permitted Debt,” (iv) all Indebtedness under the 2028 Debentures or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(C) of the definition of “Permitted Debt,” (v) all Indebtedness under the Remaining Unsecured Notes or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(D) of the definition of “Permitted Debt,” and (vi) all Indebtedness under the Non-Participating Term Loans or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(E) of the definition of “Permitted Debt,” and, in each case of clauses (i) through (vi) above, the Issuer will not be permitted to reclassify at any later date all or any portion of such Indebtedness. All Indebtedness originally Incurred under clause (xxviii) of the definition of “Permitted Debt” will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be Incurred by the obligor thereon as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including PIK Interest on the Notes), and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 3.3. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 3.3.

(d) For purposes of determining compliance with any dollar-denominated restriction on the Incurrence of Indebtedness, the dollar-equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower dollar-equivalent), in the case of revolving credit debt; provided that if such Indebtedness is Incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being Refinanced (plus unpaid accrued interest and premiums (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).
Interests, including any payment made in connection with any merger or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any Parent Entity, including in connection with any merger or consolidation;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness of any of the Issuers or any Subsidiary Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness of any of the Issuers or any Subsidiary Guarantor in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within 45 days of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement (provided that a repayment of Remaining Unsecured Notes during such 45-day period shall be in an amount that would be permitted pursuant to Section 3.4(b)(xii)(D) and will count against the amount permitted pursuant to such provision) and (B) Indebtedness permitted under Section 3.3(b)(viii)); or

(iv) make any Restricted Investment;

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "Restricted Payments").

(b) The provisions of Section 3.4(a) will not prohibit:

(i) the making of any Restricted Payment described in Section 3.4(a)(iii) or Section 3.4(a)(iv) in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Issuer; provided that the amount of any such net cash proceeds that are utilized for any Restricted Payment pursuant to this clause (i) will be excluded from and Section 3.4(b)(ii)(C);

(ii) Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors.
(collectively, "Related Persons") of the Issuer or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (ii), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or any other agreement or arrangement or any stock subscription or shareholder or similar agreement; provided that the aggregate amount of such purchases or redemptions may not exceed:

(A) $20.0 million in any fiscal year for purchases or redemptions from Persons that are current Related Persons at the time of such purchase or redemption; plus

(B) $5.0 million in the aggregate from the Issue Date for purchases or redemptions from former Related Persons; plus

(C) the amount of net cash proceeds contributed to the Issuer that were received by any Parent Entity since the Issue Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements; plus

(D) the amount of net proceeds of any key man life insurance policies received during such fiscal year; plus

(E) the amount of any bona fide cash bonuses otherwise payable (but not actually paid) to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests; and;

provided, further, that cancellation of Indebtedness owing to the Issuer or any of its Restricted Subsidiaries from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(iii) [Reserved];

(iv) [Reserved];

(v) Restricted Payments to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal or combined or unitary state tax return that includes the Issuer and its Restricted Subsidiaries (or the taxable income thereof) (such payments being referred to as "Tax Distributions"), or to any Parent Entity that is a partner or a sole
owner of the Issuer in the event the Issuer is treated as a partnership or a “disregarded entity” for U.S. federal income tax purposes, in each case, in an amount not to exceed the amount that the Issuer and its Restricted Subsidiaries would have been required to pay in respect of federal, state or local Taxes (as the case may be) in respect of such fiscal year if the Issuer and its Subsidiaries paid such Taxes directly as a stand-alone taxpayer (or stand-alone group) (such amounts, plus any cash actually distributed by an Unrestricted Subsidiary for such period pursuant to the second proviso below, the “Issuer Tax Amount”); provided, that any amounts paid pursuant to this clause (v) shall actually be used by a Parent Entity to pay taxes to an applicable taxing authority; provided further that Restricted Payments will be permitted in respect of the income of an Unrestricted Subsidiary only to the extent of the amount of cash distributed to the Issuer or any Restricted Subsidiary by such Unrestricted Subsidiary for such purpose; provided further that amounts paid under this clause (v) and taken together with any amounts paid in respect of federal, state or local Taxes under Section 3.8(b)(xvi) shall not exceed the Issuer Tax Amount for any applicable year;

(vi) Restricted Payments to permit any Parent Entity to:

(A) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Issuer and the Restricted Subsidiaries, but not, for the avoidance of doubt, any costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Issuers and their Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, with a Restricted Payment to a Parent Entity), subject to reasonable pro-ration of joint services, costs, fees and expenses;

(B) pay fees and expenses related to any public offering or private placement of debt or equity securities of any Parent Entity or any Permitted Investment, whether or not consummated, to the extent the proceeds of any of the foregoing transactions are contributed to the Issuers;

(C) pay franchise Taxes and other fees and expenses in connection with any Parent Entity’s ownership of any Restricted Subsidiary or the maintenance of its legal existence;

(D) make payments under transactions permitted by Section 3.8 (other than Section 3.8(b)(xvi)), to the extent such payments are due at the time of such Restricted Payment; or

(E) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors,
managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Issuer and its Restricted Subsidiaries, but not, for the avoidance of doubt, any indemnities, costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Issuers and their Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, with a Restricted Payment to a Parent Entity), incurred after the Issue Date, subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses;

(vii) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(viii) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;

(ix) Restricted Payments to any Parent Entity for the purpose of paying indemnities of, and reimbursement of reasonable and documented out-of-pocket fees and expenses to any Sponsor, in each case incurred in connection with the provision by such Sponsors of bona fide services (including such services provided under the Management Agreements as in effect on the Issue Date) to any Parent Entity for the benefit of the Issuer and its Subsidiaries and not, for the avoidance of doubt, in respect of MYT Entities, the MyTheresa Distribution, or any litigation related thereto (other than litigation for defense of the Issuer and its Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by the Issuer shall not be paid for, directly or indirectly, by any Restricted Payment to the Issuer), subject to reasonable pro-ration of joint services, fees, costs and expenses.

(x) the mandatory redemption of a de minimis aggregate principal amount of (a) 8.75%/9.50% senior PIK toggle notes due 2021 pursuant to Section 5.10 of the indenture governing such notes and (b) 8.750% Third Lien Notes due October 25, 2024 pursuant to a substantially similar provision in the indenture governing such notes, in each case as of the Issue Date;

(xi) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Indenture;
(xii) Restricted Payments to repurchase, repay, exchange for or refinance Non-Participating Term Loans using the proceeds of Non-Participating Term Loan Exchange Indebtedness (including by means of an exchange offer or modification of the Non-Participating Term Loans to become Non-Participating Term Loan Exchange Indebtedness);

(B) Restricted Payments to repurchase, repay, exchange for or refinance Remaining Unsecured Notes using the proceeds of Remaining Unsecured Notes Exchange Indebtedness (including by means of an exchange offer or modification of the Remaining Unsecured Notes to become Remaining Unsecured Notes Exchange Indebtedness), so long as any such Remaining Unsecured Notes Exchange Indebtedness is Incurred under clause (iii)(D)(2) or (iii)(D)(3) of the definition of “Permitted Debt”;

(C) Restricted Payments to repurchase, repay, exchange for or refinance Non-Participating Term Loans or Remaining Unsecured Notes using (i) the cash proceeds of common equity sales by or common equity contributions to, the Issuer or (ii) any non-cash assets contributed to or sold to the Issuer in respect of the Issuer’s common equity (including an interest in the MYT Holdco so contributed or purchased); and

(D) Restricted Payments to repurchase or repay Non-Participating Term Loans or Remaining Unsecured Notes using up to an aggregate $60.0 million of cash; provided that the total purchase price or repayment amount of any Indebtedness repurchased or repaid (or any portion of which is repurchased or repaid) pursuant to this subclause (D) more than 45 days prior to the final maturity date of such Indebtedness may not be greater than (x) 90% of face value (in the case of Non-Participating Term Loans) and (y) 40% of face value (in the case of Remaining Unsecured Notes);

(xiii) payments or distributions to satisfy dissenters’ rights, pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of this Indenture;

(xiv) the distribution or dividend of the MYT Assets (or proceeds from a sale of MYT Assets or the MYT Entities) in the event the MYT Assets (or proceeds from such sale) are contributed to the Issuers or any of their Restricted Subsidiaries on or after Issue Date to the extent that the MYT Assets (or such proceeds) are required to be distributed in accordance with any settlement, judgment, court order or other resolution of a Claim, Cause of Action or litigation with respect to the MyTheresa Distribution or the MyTheresa Designation, subject to (i) restoration of all terms set forth in the MYT Holdco Preferred Series A Certificate, (ii) the restoration of the MYT Limited Guarantees of the MYT Guarantor Entities, the MYT Limited Guarantee Collateral and the pledge of the MYT Account or MYT Alternate Security (in each case, to the extent required under the MYT Guarantee and Collateral Agreement), (iii) compliance by the MYT Entities with all of the MYT Covenants and the MYT Waterfall (as if such MYT Waterfall had been in effect while the MYT Assets (or proceeds from a
sale of MYT Assets or MYT Entities) were held by the Issuers or any of their Restricted Subsidiaries) and (iv) the automatic release of any pledges or Liens on the MYT Contributed Equity Interests contemplated by the definition of “Unrestricted Subsidiary”;

(xv) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries and any class or series of Preferred Stock of any Restricted Subsidiaries issued or Incurred in accordance with Section 3.3;

(xvi) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) by the Issuer after the Issue Date; and

(B) the declaration and payment of dividends to Issuer or any Parent Entity, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of the Issuer or any Parent Entity issued after the Issue Date;

provided, however, that (1) for the most recently ended four full fiscal quarters for which Required Financial Statements have been delivered immediately preceding the date of issuance of such Designated Preferred Stock, the Interest Coverage Ratio of the Issuer would have been at least 2.25 to 1.00 and (2) the aggregate amount of dividends declared and paid pursuant to this clause (xvi) does not exceed the net cash proceeds actually received by the Issuer from the sale (or the contribution of the net cash proceeds from the sale) of Designated Preferred Stock; and

(xvii) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness, Disqualified Stock or Preferred Stock of the Issuer and its Restricted Subsidiaries pursuant to provisions similar to Section 3.7 and Section 3.9; provided that, prior to such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Issuers (or a third party to the extent permitted by this Indenture) have made a Change of Control Offer or Asset Sale Offer, as the case may be, with respect to the Notes and have repurchased, redeemed, defeased, acquired or retired all Notes validly tendered and not withdrawn in connection with such Change of Control Offer or Asset Sale Offer, as the case may be.

(c) For purposes of this Section 3.4, if any Investment or Restricted Payment (or a portion thereof) would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of “Permitted Investments,” the Issuer may divide and classify such Investment or Restricted Payment (or a portion thereof) in any manner that complies with this Section 3.4 and may later divide and reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.
(d) The Issuer and its Restricted Subsidiaries shall not, directly or indirectly, use any Investments made pursuant to Section 3.4(b) (i) or any clause of the definition of “Permitted Investment” (i) to provide assets to a Person that Incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to Refinance any Indebtedness of the Issuers or their Restricted Subsidiaries or (ii) to make the payments restricted by Section 3.4(a)(i), (ii), or (iii).

SECTION 3.5. Liens.

The Issuers will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, Incur or suffer to exist any Lien securing Indebtedness on any asset or property of any of the Issuers or any Restricted Subsidiary, except:

   (i) Permitted Liens; or

   (ii) Liens other than Permitted Liens on assets that are not Collateral; provided that with respect to this clause (ii), the Notes or the applicable Subsidiary Guarantee of a Subsidiary Guarantor, as the case may be, are equally and ratably secured with such Lien; provided that any Lien that is granted to secure the Notes Obligations or any Subsidiary Guarantee pursuant to this clause (ii) will be automatically and unconditionally released and discharged at the same time as the release of the underlying Lien that gave rise to the obligation to equally and ratably secure the Notes Obligations or such Subsidiary Guarantee under this clause (ii) (other than a release as a result of the enforcement of remedies in respect of such Lien or the Notes Obligations secured by such Lien).

SECTION 3.6. Dividend and Other Payment Restrictions Affecting Subsidiaries.

(I) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

    (a) (i) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock; or

    (ii) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

    (b) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

    (c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.
(II) Section 3.6(1) will not apply to encumbrances or restrictions existing under or by reason of:

including pursuant to:

(A) contractual encumbrances or restrictions of the Issuer or any Restricted Subsidiary in effect on the Issue Date, including pursuant to:

(1) the Extended Term Loan Agreement and the other documents relating to the Extended Term Loan Agreement;

(2) the ABL Credit Agreement and the other documents relating to the ABL Credit Agreement;

(3) the Third Lien Notes Indentures and the other documents relating to the Third Lien Notes Indentures;

(4) Indebtedness permitted pursuant to Section 3.3(b)(iv); and

(5) Hedge Agreements;

(B) the Notes Obligations and all Indebtedness Documents related thereto;

(C) applicable law or any applicable rule, regulation or order;

(D) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Issuer or any Restricted Subsidiary that was in existence at the time of such acquisition (or at the time it merges with or into the Issuer or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof)), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that in connection with a merger under this clause (D), if a Person other than the Issuer or such Restricted Subsidiary is the Successor Company with respect to such merger, any Subsidiary of such Person, or any agreement or instrument of such Person or any Subsidiary of such Person, will be deemed acquired or assumed, as the case may be, by the Issuer or such Restricted Subsidiary, as the case may be, at the time of such merger;

(E) customary encumbrances or restrictions contained in contracts or agreements for the sale of assets applicable to such assets pending consummation of such sale, including customary restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary;
restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

customary provisions in operating or other similar agreements entered into in the ordinary course of business and which limitation is applicable only to the assets that are the subject of those agreements;

purchase money obligations for property acquired and Capitalized Lease Obligations entered into in the ordinary course of business to the extent such obligations impose restrictions of the nature discussed in Section 3.6(f)(c) on the property so acquired;

customary provisions contained in leases, sub-leases, licenses, sublicenses, contracts and other similar agreements entered into in the ordinary course of business to the extent such obligations impose restrictions of the type described in Section 3.6(I)(c) on the property subject to such lease;

other Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary that is Incurred subsequent to the Issue Date pursuant to Section 3.3; provided that such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuers’ ability to make anticipated principal or interest payments on the Notes in accordance with this Indenture (as determined by the Issuer in good faith);

any encumbrance or restriction contained in the documents relating to any secured Indebtedness otherwise permitted to be Incurred pursuant to Section 3.3 and Section 3.5 to the extent such documents limit the right of the debtor to dispose of the assets securing such Indebtedness;

any encumbrances or restrictions arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, materially affect the Issuers’ ability to make anticipated principal or interest payments on the Notes in accordance with this Indenture (as determined by an Officer of the Issuer in good faith);

customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to the applicable joint venture; and

any encumbrances or restrictions of the type referred to in clauses (a), (h) and (c) of this Section 3.6(II) imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or Refinancings of the contracts, instruments or obligations referred to in clauses (A) through (N) of this Section 3.6(II); provided
that such encumbrances and restrictions contained in any such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing are, in the good faith judgment of the Issuer, not materially more restrictive, taken as a whole, than the encumbrances and restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing.

(III) For purposes of determining compliance with this Section 3.6, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock will not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Issuer or a Restricted Subsidiary to other Indebtedness Incurred by the Issuer or any such Restricted Subsidiary will not be deemed a restriction on the ability to make loans or advances.

SECTION 3.7. Asset Sales.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause or make an Asset Sale, unless:

(1) the Issuer or any of its Restricted Subsidiaries, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that the amount of:

(A) any liabilities (as shown on the Issuer’s or such Restricted Subsidiary’s most recent balance sheet or in the notes thereto) of the Issuer or such Restricted Subsidiary (other than liabilities that are Subordinated Indebtedness) that are assumed by the transferee of any such assets or Equity Interests pursuant to an agreement that releases or indemnifies the Issuer or such Restricted Subsidiary, as the case may be, from further liability (or are otherwise extinguished in connection with the transactions relating to such Asset Sale);

(B) any notes or other obligations or other securities or assets received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 90 days of the receipt thereof; and
any Designated Non-cash Consideration received by the Issuer or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) $25.0 million and (y) 0.35% of Consolidated Total Assets, calculated at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value) will be deemed to be Cash Equivalents for the purposes of this clause (2).

(b) With respect to any Collateral Asset Sale, the following provisions shall apply:

(1) The Issuer shall cause the Net Cash Proceeds of any Collateral Asset Sale to be deposited immediately in an account subject to a Control Agreement for the benefit of the Notes Collateral Agent pursuant to the terms of the Intercreditor Agreements, which may be a Control Agreement in favor of the ABL Agent and/or the Extended Term Loan Agent, acting as gratuitous bailee for the benefit of the Notes Collateral Agent pursuant to the ABL Intercreditor Agreement and/or the Junior Lien Intercreditor Agreement; and

(2) Within 30 days after the Issuer’s or any Restricted Subsidiary’s receipt of the Net Cash Proceeds of any Collateral Asset Sale, the Issuer or any Restricted Subsidiary shall apply an amount equal to the Net Cash Proceeds from such Collateral Asset Sale, at its option, to repay (x) Senior Priority Obligations (with any such repayment of revolving Senior Priority Obligations to be accompanied by a corresponding permanent reduction in commitments with respect thereto) or (y) Obligations under the Notes by, at its option, (A) purchasing Notes through open-market purchases at a price not less than 100% of the principal amount thereof; or (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Notes at a price not less than 100% of the principal amount thereof, provided that (i) in the case of a Collateral Asset Sale with respect to a warehouse or distribution center, no prepayment under this clause (2) shall be required to the extent of the cost of any investment in, or purchase of, a new warehouse or distribution center (but not to exceed the Net Cash Proceeds of such Collateral Asset Sale) completed within 24 months before and 12 months after the date of such Collateral Asset Sale; and (ii) Net Cash Proceeds from Collateral Asset Sales of stores (in an aggregate amount not to exceed $30.0 million after the Issue Date) may be applied to capital expenditures incurred within 12 months of the date of the Collateral Asset Sale.
With respect to Asset Sales other than a Collateral Asset Sale, the following provisions shall apply: Within 365 days after the Issuer’s or any Restricted Subsidiary’s receipt of the Net Cash Proceeds of such Asset Sale, the Issuer or any Restricted Subsidiary may apply an amount equal to the Net Cash Proceeds from such Asset Sale, at its option:

1. to repay (x) Indebtedness (other than Subordinated Indebtedness) or (y) Notes Obligations by, at its option, (A) purchasing Notes through open-market purchases at a price not less than 100% of the principal amount thereof, or (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Notes at a price not less than 100% of the principal amount thereof; or

2. to acquire all or substantially all of the assets of, or any Capital Stock of, another Similar Business, if, after giving effect to any such acquisition of Capital Stock, the Similar Business is or becomes a Restricted Subsidiary or to acquire other assets that are used or useful in a Similar Business; provided, that any such assets that would constitute Collateral shall be pledged as Collateral under the Security Documents and in accordance with this Indenture and the Security Documents substantially simultaneously with such purchase; provided further that the Issuer and its Restricted Subsidiaries will be deemed to have complied with the provisions described in this clause (2) if and to the extent that, within 365 days after the Asset Sale that generated the Net Cash Proceeds, the Issuer or any Restricted Subsidiary enters into a binding agreement to make an investment in compliance with the provision described in this clause (2), and that investment is thereafter completed within 365 days after the end of such 365-day period.

Pending the final application of any Net Cash Proceeds of an Asset Sale (other than a Collateral Asset Sale, which shall be governed by Section 3.7(b) above), the Issuer or any of its Restricted Subsidiaries may temporarily reduce Indebtedness under a revolving credit facility, if any, or otherwise invest or utilize Net Cash Proceeds in any manner not prohibited by this Indenture.

Any amount of Net Cash Proceeds from any Asset Sale that are not invested or applied as provided and within the time period set forth in Section 3.7(b) or Section 3.7(c) will be deemed to constitute “Excess Proceeds.” Notwithstanding the foregoing sentence, any amount of proceeds offered to Holders pursuant to Section 3.7(b) or Section 3.7(c) pursuant to an Asset Sale Offer made at any time after the Asset Sale will be deemed to have been applied as required and will not be deemed to be Excess Proceeds without regard to the extent to which such offer is accepted by the Holders. When the aggregate amount of Excess Proceeds exceeds $25.0 million, the Issuers will make an offer (an “Asset Sale Offer”) to all Holders and, if required by the terms of any Pari Passu Lien
Indebtedness, to all holders of such Pari Passu Lien Indebtedness, to purchase the maximum principal amount of such Notes and Pari Passu Lien Indebtedness, as appropriate, on a pro rata basis, that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to (x) in the case of the Notes, 100% of the principal amount thereof and (y) in the case of Pari Passu Lien Indebtedness, 100% of the principal amount thereof (or in the event such Pari Passu Lien Indebtedness was issued with original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price, if any, as may be provided by the terms of such Pari Passu Lien Indebtedness), to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture and the agreement governing such Pari Passu Lien Indebtedness. The Issuers will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed $25.0 million by transmitting electronically or by mailing to the Holders the notice required pursuant to the terms of this Indenture, with a copy to the Trustee or otherwise in accordance with the Applicable Procedures of the Depositary. The Issuers may satisfy the foregoing obligations with respect to such Net Cash Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Cash Proceeds prior to the expiration of the application period or by electing to make an Asset Sale Offer with respect to such Net Cash Proceeds before the aggregate amount of Excess Proceeds exceeds $25.0 million.

(f) For the case of both an Asset Sale of Collateral and of assets not constituting Collateral, to the extent that the aggregate amount of Notes and other Indebtedness tendered or otherwise surrendered in accordance with the terms of this section is less than the Excess Proceeds, the Issuers may use any remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes and Indebtedness tendered or otherwise surrendered by Holders in accordance with the terms of this section exceeds the amount of Excess Proceeds, the Issuers will select the Notes (and the Issuers or their agents will select such Pari Passu Lien Indebtedness, if applicable) to be purchased in the manner described in Section 3.7(i) below. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds will be reset at zero. To the extent the Excess Proceeds exceed the outstanding aggregate principal amount of the Notes (and, if required by the terms thereof, all Pari Passu Lien Indebtedness), the Issuers need only make an Asset Sale Offer up to the outstanding aggregate principal amount of Notes (and any such Pari Passu Lien Indebtedness), and any additional Excess Proceeds will not be subject to this Section 3.7 and will be permitted to be used for any purpose otherwise permitted by this Indenture in the Issuers’ discretion.
The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the purchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this Section 3.7 by virtue of such compliance.

The provisions under this Indenture relative to the Issuers’ obligation to make an offer to repurchase the Notes as a result of an Asset Sale may be waived or modified at any time with the written consent of the Holders of a majority in principal amount of the Notes.

If more Notes are tendered pursuant to an Asset Sale Offer than the Issuers are required to purchase, selection of such Notes for purchase will be made in compliance with the requirements of the principal national securities exchange, if any, on which such Notes are listed (but only to the extent that the Trustee has been notified in writing of such listing by the Issuer) or if such Notes are not listed, on a pro rata basis or as nearly a pro rata basis as practicable (with adjustments so that only Notes in denominations of the minimum denomination of $2,000.00 or integral multiples of $1.00 in excess thereof) will be purchased, by lot or by such other method as the Trustee will deem fair and appropriate (and in such manner as complies with applicable legal requirements, if any); provided that the selection of Notes for purchase will not result in a Holder with a principal amount of Notes less than the minimum denomination of $2,000.00. If all of the Notes are in global form, interests in the Notes to be redeemed will be selected for redemption by the Depositary in accordance with the Applicable Procedures of the Depositary. No Note will be repurchased in part if less than the minimum denomination of such Note would be left outstanding.

Notices of an Asset Sale Offer will be delivered or caused to be delivered, or in the case of Notes in global form, delivered or cause to be delivered electronically in accordance with the Applicable Procedures of the Depositary, at least 30 but not more than 60 days before the purchase date to each Holder at such Holder’s registered address, with a copy to the Trustee, or otherwise in accordance with Applicable Procedures of the Depositary. If any Note is to be purchased in part only, any notice of purchase that relates to such Note will state the portion of the principal amount thereof that has been or is to be purchased.

A new Note in principal amount equal to the unpurchased portion of any Note purchased in part will be issued in the name of the Holder thereof upon cancellation of the original Note. On and after the purchase date,
SECTION 3.8. Transactions with Affiliates.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer involving aggregate consideration in excess of $15.0 million (each of the foregoing, an “Affiliate Transaction”), unless:

   (i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis; and

   (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, the Issuer delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Issuer, approving such Affiliate Transaction, together with an Officer’s Certificate certifying that the Board of Directors of the Issuer determined or resolved that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 3.8(a) will not apply to:

   (i) transactions between or among (A) the Issuers and the Subsidiary Guarantors or (B) the Issuers and any Person that becomes a Subsidiary Guarantor as a result of such transaction (including by way of a merger, consolidation or amalgamation);

   (ii) transactions between or among the Issuers and any Restricted Subsidiary that involves shared overhead in the ordinary course of business;

   (iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Issuer or any Parent Entity in good faith;

   (iv) loans or advances to employees or consultants of any Parent Entity, the Issuer or any Restricted Subsidiary in accordance with clause (2) of the definition of “Permitted Investments;”

   (v) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Issuer or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable
to the Issuer and its Restricted Subsidiaries, and subject to reasonable pro-rata tion of joint services, indemnities, costs, fees and expenses;

(vi) the Transactions and other transactions, agreements and arrangements in existence on the Issue Date, or any amendment thereto to the extent such amendment is not adverse to the Holders in any material respect;

(vii) (A) any employment agreements entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors; and

(C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto.

(viii) (A) Restricted Payments permitted under Section 3.4; and

(B) Permitted Investments.

(ix) any purchase by any Parent Entity of the Equity Interests of the Issuer and the purchase by the Issuer of Equity Interests in any Restricted Subsidiary;

(x) [Reserved];

(xi) transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm’s length terms;

(xii) any transaction in respect of which the Issuer delivers to the Trustee a letter addressed to the Board of Directors of the Issuer or any Parent Entity from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is in the good faith determination of the Issuer qualified to render such letter, which letter states that such transaction is on terms that are no less favorable to the Issuer or its Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate;

(xiii) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(xiv) the issuance, sale or transfer of Equity Interests of the Issuer to any Parent Entity and capital contributions by any Parent Entity to the Issuer (and payment of reasonable out-of-pocket expenses Incurred by the Sponsors or any Parent Entity in connection therewith);
(xv) the issuance of Equity Interests to the management of any Parent Entity, the Issuer or any of the Restricted Subsidiaries in connection with the Transactions;

(xvi) payments by any Parent Entity, the Issuer or any of the Restricted Subsidiaries pursuant to tax sharing agreements among any Parent Entity, the Issuer and any of the Restricted Subsidiaries that would otherwise be permitted Tax Distributions under Section 3.4(b)(v); provided, that amounts paid under this clause (xvi) in respect of federal, state or local Taxes, taken together with any amounts paid under Section 3.4(b)(v) shall not exceed the Issuer Tax Amount for any applicable year;

(xvii) payments or loans (or cancellation of loans) to employees or consultants that are:

(A) approved by a majority of the disinterested directors of the Issuer in good faith;

(B) made in compliance with applicable law; and

(C) otherwise permitted under this Indenture;

(xviii) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Indenture that are fair to the Issuer and the Restricted Subsidiaries;

(xix) [Reserved];

(xx) transactions pursuant to, and complying with, Section 4.1(b) and the last sentence of Section 4.1(d);

(xxi) the existence of, or the performance by the Issuer or any Subsidiary Guarantor of their obligations under the terms of, any customary registration rights agreement to which they are a party or become a party in the future.

SECTION 3.9. Change of Control.

(a) Upon the occurrence of a Change of Control after the Issue Date, each Holder will have the right to require the Issuers to purchase all or any part of such Holder’s Notes at a purchase price in cash (the “Change of Control Payment”) equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), except to the extent the Issuers have previously elected to redeem the Notes pursuant to Section 5.1.
Within 30 days following any Change of Control, except to the extent that the Issuers have exercised their right to redeem the Notes pursuant to Section 5.1, the Issuers will deliver a notice (a “Change of Control Offer”) to each Holder with a copy to the Trustee, or otherwise in accordance with the Applicable Procedures of the Depositary, describing:

(i) that a Change of Control has occurred or, if the Change of Control Offer is being made in advance of a Change of Control, that a Change of Control is expected to occur, and that such Holder has, or upon such occurrence will have, the right to require the Issuers to purchase such Holder’s Notes at a purchase price in cash equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of Holders of record on a Record Date to receive interest on the relevant Interest Payment Date);

(ii) the transaction or transactions that constitute, or are expected to constitute, such Change of Control;

(iii) the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is delivered (the “Change of Control Payment Date”);

(iv) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(v) that unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(vi) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of such Notes completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vii) that Holders will be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes; provided that the paying agent receives, not later than the expiration time of the Change of Control Offer, a facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount of Notes tendered for purchase, a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased and a description of reasonable detail of any conditions precedent applicable to such withdrawal;

(viii) that if the Issuers are redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The
unpurchased portion of the Notes must be equal to $2,000.00 or an integral multiple of $1.00 in excess thereof;

(ix) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(x) the other instructions determined by the Issuers, consistent with this Section 3.9, that a Holder must follow in order to have its Notes purchased.

(c) While the Notes are in global form and the Issuers make an offer to purchase all of the Notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the Notes to be made through the facilities of the Depositary in accordance with the Applicable Procedures of the Depositary. A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon the occurrence of such Change of Control.

(d) The Issuers will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 3.9. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 3.9, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this Section 3.9 by virtue of such compliance.

(e) On the Change of Control Payment Date, the Issuers will, to the extent permitted by law,

(i) accept for payment all Notes issued by them or portions thereof validly tendered and not withdrawn pursuant to the Change of Control Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer’s Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers.

(f) On the Business Day immediately preceding the Change of Control Payment Date, the Issuers will deposit with the Paying Agent in an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered.

(g) Holders electing to have a Note purchased will be required to surrender the Note, with an appropriate form duly completed, to the Issuers at the address specified in the notice at least three Business Days prior to the Change of Control Payment Date. Holders will be entitled to withdraw their election if the Trustee or the Issuers receive not later than one Business Day prior to the expiration of the Change of Control Offer, facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount at maturity of the Note
which was delivered for purchase by the Holder and a statement that such Holder is withdrawing his selection to have such Note purchased.

(h) On the Change of Control Payment Date, all Notes purchased by the Issuers under this Section 3.9 will be delivered by the Issuers to the Trustee for cancellation, and the Issuers will pay the purchase price plus accrued and unpaid interest, if any, to the Holders entitled thereto. With respect to any Note purchased in part, the Issuers will issue a new Note in a principal amount equal at maturity to the unpurchased portion of the original Note in the name of the Holder upon cancellation of the original Note.

(i) Notwithstanding the foregoing provisions of this Section 3.9, the Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(j) Prior to any Change of Control Offer, each of the Issuers will deliver to the Trustee an Officer’s Certificate stating that all conditions precedent contained herein to the right of each of the Issuers to make such offer have been complied with.

SECTION 3.10. Maintenance of Insurance. The Issuers and the Subsidiary Guarantors will maintain with financially sound and reputable insurance companies, insurance with respect to their properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

SECTION 3.11. Additional Guarantors.

(a) Each of the Issuer’s current and future Domestic Subsidiaries (other than the Co-Issuers, Notes PropCo and Extended Term Loan PropCo) and, subject to clause (b) below, each of the Issuer’s future Foreign Subsidiaries shall, jointly and severally, irrevocably, fully and unconditionally guarantee on a senior basis and subject to the applicable Intercreditor Agreements the Guaranteed Obligations. The foregoing requirement to provide a Subsidiary Guarantee shall not apply to an Excluded Subsidiary.

(b) After the Issue Date, (i) no direct or indirect Subsidiary (including an Excluded Subsidiary) or equity investee of the Issuer may directly or indirectly provide Credit Support for the Indebtedness incurred under clause (i) or (ii) of the definition of “Permitted Debt”, (ii) no direct or indirect Subsidiary (including an Excluded Subsidiary) or equity investee of the Issuer may be an obligor on any Indebtedness for borrowed money for which any Issuer or Subsidiary Guarantor directly or indirectly provides Credit Support, unless, in each case of clause (i) and (ii), such Subsidiary or equity investee provides a Subsidiary Guarantee, and (iii) each Immaterial
Subsidiary existing as of the Issue Date shall, within 90 days following the Issue Date (or such later date as agreed to by the Issuer and the Extended Term Loan Agent) either (A) be dissolved, liquidated or merged out of existence or (B) become a Subsidiary Guarantor with respect to the Guaranteed Obligations.

(c) To the extent a Person is required to provide a Subsidiary Guarantee under the above provisions, such Person shall execute and deliver a supplemental indenture to this Indenture evidencing such Subsidiary Guarantee in the form of Exhibit D within 10 Business Days after the requirement to provide such Subsidiary Guarantee arises under this Indenture on the same terms and conditions as those set forth in this Indenture and applicable to the other Guarantors, together with an Opinion of Counsel and an Officer’s Certificate, and pledge all assets held by such Person (other than Excluded Assets) as After-Pledged Property with Required Collateral Lien Priority as provided under Section 3.16.

(d) Neiman Marcus Bermuda, L.P., a limited partnership organized under the laws of Bermuda, NMG Asia Holdings Limited, a company organized under the laws of Hong Kong, and NMG Asia Limited, a company organized under the laws of Hong Kong, shall not be required to provide a Subsidiary Guarantee unless additional Investments are made after the Issue Date by the Issuers or any Restricted Subsidiaries in such Foreign Subsidiary exceeding $2.5 million in aggregate.


(a) Notes PropCo shall provide an unsecured Subsidiary Guarantee (the "Notes PropCo Guarantee") of the Guaranteed Obligations, which Subsidiary Guarantee shall have the Required PropCo Guarantee Priority. Notes PropCo shall not have any Subsidiaries and may not make any Investments in any Person. No assets that may be pledged to secure the Notes Obligations may be held by Notes PropCo, and Notes PropCo shall not incur any Liens to secure Indebtedness or trade payables. Notes PropCo shall not hold any assets other than Notes Priority PropCo Assets or have any operations other than (i) holding the Notes Priority PropCo Assets and leasing or licensing such Notes Priority PropCo Assets to the Issuers or the Subsidiary Guarantors, and (ii) performing its obligations with respect to the Indebtedness permitted to be incurred under this Indenture (including under the ABL Obligations, the Extended Term Loan Obligations, the Notes Obligations, the 2028 Debentures Obligations, the Third Lien Notes Obligations, the Non-Participating Exchange Term Loan Obligations and the Remaining Unsecured Notes Exchange Obligations and any Permitted Refinancing Indebtedness thereof), (iii) maintaining its legal existence, (iv) issuing Equity Interests to its parent company, (v) making Restricted Payments to its parent company, (vi) participating in tax, accounting and other administrative matters, (vii) providing indemnification to officers and directors, and (viii) activities incidental to the foregoing businesses, activities or operations. While Notes PropCo holds Notes Priority PropCo Assets, Notes PropCo shall not dissolve or liquidate or merge or consolidate with an Issuer or a Restricted Subsidiary.
(b) Extended Term Loan PropCo shall provide an unsecured Subsidiary Guarantee (the “Extended Term Loan PropCo Guarantee”) of the Guaranteed Obligations, which Subsidiary Guarantee shall have the Required PropCo Guarantee Priority. Extended Term Loan PropCo shall not have any Subsidiaries and may not make any Investments in any Person. No assets that may be pledged to secure the Extended Term Loan Obligations may be held by Extended Term Loan PropCo, and Extended Term Loan PropCo shall not incur any Liens to secure Indebtedness or trade payables. Extended Term Loan PropCo shall not hold any assets other than Extended Term Loan Priority PropCo Assets or have any operations other than (i) holding the Extended Term Loan Priority PropCo Assets and leasing or licensing such Extended Term Loan Priority PropCo Assets to the Issuers or the Subsidiary Guarantors, and (ii) performing its obligations with respect to the Indebtedness permitted to be incurred under this Indenture (including under the ABL Obligations, the Extended Term Loan Obligations, the Notes Obligations, the 2028 Debentures Obligations, the Third Lien Notes Obligations, the Non-Participating Exchange Term Loan Obligations and the Remaining Unsecured Notes Exchange Obligations and any Permitted Refinancing Indebtedness thereof), (iii) maintaining its legal existence, (iv) issuing Equity Interests to its parent company, (v) making Restricted Payments to its parent company, (vi) participating in tax, accounting and other administrative matters, (vii) providing indemnification to officers and directors, and (viii) activities incidental to the foregoing businesses, activities or operations. While Extended Term Loan PropCo holds Extended Term Loan Priority PropCo Assets, Extended Term Loan PropCo shall not dissolve or liquidate or merge or consolidate with an Issuer or a Restricted Subsidiary.

(c) Notwithstanding anything to the contrary in this Indenture (including permissions by “Subsidiary Guarantors” to incur Indebtedness or provide other Credit Support under Section 3.3), Notes PropCo and Extended Term Loan PropCo shall not Incur or provide Credit Support for any Indebtedness or other related Obligations, other than guarantees of Permitted PropCo Guaranteed Obligations which have the Required PropCo Guarantee Priority.

SECTION 3.13. Compliance Certificate; Statement by Officers as to Default. The Issuer will deliver to the Trustee, within 120 days after the end of each fiscal year of the Issuer ending after the Issue Date, an Officer’s Certificate to the effect that to the best knowledge of the signer thereof on behalf of each of the Issuers, the Issuers are or are not in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Issuers (through its own action or omission or through the action or omission of any Subsidiary Guarantor as applicable) will be in default, specifying all such defaults and the nature and status thereof of which such signer may have knowledge. The individual signing any certificate given by any Person pursuant to this Section 3.13 will be the principal executive, financial or accounting officer of such Person or the direct or indirect parent of such Person, in compliance with TIA § 314(a)(4).

So long as any of the Notes are outstanding, upon any Officer becoming aware of any Default or Event of Default, the Issuers will deliver to the Trustee, within
30 days after the occurrence thereof, an Officer’s Certificate specifying such Default or Event of Default and what action the Issuers are taking or propose to take with respect thereto.

SECTION 3.14. Additional Amounts

(a) All payments made by a Foreign Guarantor in respect of a Guarantee will be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of any jurisdiction in which the relevant Foreign Guarantor is then incorporated or organized or resident for tax purposes, any jurisdiction from or through which payment on behalf of such Foreign Guarantor is made or any political subdivision or governmental authority thereof or therein having power to tax (each, a “Tax Jurisdiction”), will at any time be required to be made from any payments made by or on behalf of the relevant Foreign Guarantor under its Guarantee, including payments of principal, redemption price, purchase price, interest or premium, the relevant Foreign Guarantor will pay such additional amounts (the “Additional Amounts”) as may be necessary in order that the net amounts received in respect of such payments (including payments of principal, redemption price, interest or premium) by each Holder (including Additional Amounts) after such withholding or deduction will equal the respective amounts that would have been received in respect of such payments in the absence of such withholding or deduction; provided, however, that no Additional Amounts will be payable with respect to:

(i) any Taxes that would not have been so imposed but for the existence of any present or former connection between the Holder or the beneficial owner of the Note or Guarantee (or between a fiduciary, settler, beneficiary, partner, member or shareholder of, or possessor of power over the relevant Holder or beneficial owner, if the relevant Holder is an estate, nominee, trust, partnership, limited liability company or corporation) and the relevant Tax Jurisdiction, other than by the mere acquisition or holding of any Note or the enforcement or receipt of payment under or in respect of any Note or Guarantee;

(ii) any Taxes imposed or withheld as a result of the failure of the Holder or beneficial owner of any Note or Guarantee to comply with any written request, made to that Holder or beneficial owner within a reasonable period before any such withholding or deduction would be payable, by an Issuer or a Foreign Guarantor to provide timely or accurate information concerning the nationality, residence or identity of such Holder or beneficial owner or to make any valid or timely declaration or similar claim or satisfy any certification information or other reporting requirements (in each case, to the extent such Holder or beneficial owner is legally eligible to do so), which is required or imposed by a statute, treaty, regulation or administrative practice of the relevant Tax Jurisdiction as a precondition to exemption from, or reduction in the rate of deduction or withholding of such Taxes;
(iii) any Taxes that are imposed or withheld as a result of the presentation of any Note or Guarantee for payment (where presentation is required) more than 30 days after the relevant payment is first made available for payment to the Holder or beneficial owner (except to the extent that the Holder or beneficial owner would have been entitled to Additional Amounts had the Note been presented on the last day of such 30 day period);

(iv) any estate, inheritance, gift, value added, sale, excise, transfer, personal property or similar tax or assessment;

(v) any Tax which is payable otherwise than by deduction or withholding from payments made under or with respect to any Note or Guarantee;

(vi) any Tax imposed on or with respect to any payment by a Foreign Guarantor to the Holder if such Holder is a fiduciary, partnership, limited liability company or person other than the sole beneficial owner of such payment to the extent that Taxes would not have been imposed on such payment had such Holder been the sole beneficial owner of such Note or Guarantee;

(vii) any Taxes that are imposed or withheld as a result of the presentation of any Note or Guarantee for payment by or on behalf of a Holder or beneficial owner of such Notes or Guarantee who would have been able to avoid such withholding or deduction by presenting the relevant Note or Guarantee to, or otherwise accepting payment from, another paying agent;

(viii) any Taxes that are imposed or withheld pursuant to Sections 1471 through 1474 of the Code, any regulations promulgated thereunder, any official interpretations thereof, any similar law or regulation adopted pursuant to an intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing or any agreements entered into pursuant to Section 1471(b)(1) of the Code; or

(ix) any combination of items (i) through (viii) above.

(b) The relevant Foreign Guarantor will pay when due any present or future stamp, transfer, court or documentary taxes or any other excise or property taxes that arise in a Tax Jurisdiction with respect to the initial execution, delivery or registration of the Guarantees or any other document or instrument relating thereto (other than the Notes).

(c) The relevant Foreign Guarantor will use reasonable efforts to furnish to the Trustee and the Holders, within a reasonable period of time after the due date for the payment of any Taxes so deducted or withheld pursuant to applicable law, either certified copies of tax receipts evidencing such payment by such Foreign Guarantor (in such form as provided in the ordinary course by the relevant Tax Jurisdiction and as is reasonably available to the Foreign Guarantor), or, if such receipts are not obtainable, other evidence of such payments by such Foreign Guarantor reasonably satisfactory to the Holders.
SECTION 3.15. Impairment of Security Interest.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take, any action which action or omission might reasonably or would (in the good faith determination of the Issuer), have the result of materially impairing the value of the security interests taken as a whole (including the lien priority with respect thereto) with respect to the Collateral for the benefit of the Notes Collateral Agent and the Holders (including materially impairing the lien priority of the Notes with respect thereto) (it being understood that any release described under Section 11.6 and the incurrence of Permitted Liens shall not be deemed to so materially impair the security interests with respect to the Collateral).

(b) At the direction of the Issuer and without the consent of the Holders, the Notes Collateral Agent (or its agent or designee) shall from time to time enter into one or more amendments, extensions, renewals, restatements, supplements or other modifications or replacements to or of the Security Documents to, but subject in all cases to the Intercreditor Agreements: (i) cure any ambiguity, omission, defect or inconsistency therein that does not adversely affect the interests of the Holders in any material respect, (ii) add to the Collateral or (iii) make any other change thereto that does not adversely affect the Holders in any material respect.

SECTION 3.16. After-Pledged Property.

(a) With respect to After-Pledged Property of the Issuers or any Subsidiary Guarantor, the Issuers or such Subsidiary Guarantor shall execute and deliver such mortgages, deeds of trust, security instruments, financing statements and certificates and opinions of counsel as shall be reasonably necessary to create a Lien on such After-Pledged Property constituting Collateral securing the Notes Obligations as contemplated by the Security Documents and perfect such Liens to the extent required by the Security Documents in favor of the Notes Collateral Agent, and having the Required Collateral Lien Priority, subject only to Permitted Liens, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to apply to such After-Pledged Property to the same extent and with the same force and effect as the then-existing Collateral.

(b) (x) If any Issuer or Subsidiary Guarantor (A)(1) acquires fee simple title in Real Property after the Issue Date or (2) owns fee simple title in Real Property on the date it executes a supplemental indenture to provide a Subsidiary Guarantee pursuant to Section 3.11(c), that, in each case of subclauses (1) and (2) of this clause (A), on the date of such acquisition or the date that such Subsidiary Guarantee is provided, as applicable, has an individual fair market value (as determined customarily and in good faith by an Officer of the Issuer) of $2.5 million or more or (B)(1) acquires a leasehold interest in Real Property after the Issue Date with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center or (2) owns leasehold title in Real Property with respect to a full-line Neiman Marcus store or a warehouse or distribution center on the date it provides a Subsidiary Guarantee or (y) any Non-Mortgageable Lease with respect to a full-line Neiman Marcus
or Bergdorf Goodman store or a warehouse or distribution center ceases to be a Non-Mortgageable Lease hereunder, then in each case of the foregoing clauses (x) and (y) above, within 10 Business Days after the corresponding deadlines for Extended Term Loans (in each case, subject to extension as provided in the Extended Term Loan Agreement):

(i) notify the Notes Collateral Agent thereof;

(ii) cause any such acquired Real Property owned in fee simple that has a fair market value (as determined in good faith by an Officer of the Issuer) of $2.5 million or more to be subjected to a customary mortgage or deed of trust securing the Notes Obligations;

(iii) cause any such acquired or owned leasehold Real Property to be subjected to a customary mortgage or deed of trust securing the Notes Obligations;

(iv) with respect to any such Real Property, to the extent provided to the holders of any other Indebtedness of the Issuer or the Restricted Subsidiaries (or any agent or representative thereof), obtain fully paid American Land Title Association Lender’s Extended Coverage title insurance policies, with endorsements (including a standard survey endorsement or equivalent (only with respect to any such Real Property acquired or owned in fee simple pursuant to Section 3.16(b)(x)) and zoning endorsements where available) and in customary amounts that in no event shall be less than fair market value of such Real Property (the “Mortgage Policies”);

(v) with respect to any such Real Property acquired or owned in fee simple pursuant to Section 3.16(b)(x), to the extent necessary and customary to issue the Mortgage Policies, obtain American Land Title Association/American Congress on Surveying and Mapping form surveys, dated no more than 30 days before the date of their delivery to the Notes Collateral Agent, certified to the Notes Collateral Agent and the issuer of the Mortgage Policies and sufficient for the issuer of the Mortgage Policies to omit as an exception to each title policy the standard printed survey exception relating to such Real Property;

(vi) provide customary evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Notes Collateral Agent as loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks as are reasonably available for similar properties in the same geographical area, including the insurance required by the terms of any mortgage or deed of trust;

(vii) obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Issuers and the Subsidiary Guarantors in the states in which such Real Properties are located; and
(viii) take, or cause the applicable Issuer or Subsidiary Guarantor to take, such actions as shall be necessary or reasonably requested by the Notes Collateral Agent to perfect such Liens.

SECTION 3.17. Covenant Suspension.

(a) If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a “Covenant Suspension Event”), Sections 3.3, 3.4, 3.6, 3.7, 3.8 and 4.1(a)(iv) (collectively, the “Suspended Covenants”) will no longer be applicable to such Notes.

(b) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time pursuant to Section 3.17(a) (any such period, a “Suspension Period”), and on any subsequent date (the “Reversion Date”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events.

(c) Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Asset Sales will be reset at zero.

(d) With respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments since the Issue Date will be calculated as though Section 3.4 had been in effect prior to, but not during, the Suspension Period. In addition, all Indebtedness Incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified as having been Incurred or issued pursuant to Section 3.3(b)(iv). In addition, for purposes of Section 3.8, all agreements and arrangements entered into by the Issuer and any Restricted Subsidiary with an Affiliate of the Issuer during the Suspension Period prior to such Reversion Date will be deemed to have been entered into on or prior to the Issue Date, and for purposes of Section 3.6, all contracts entered into during the Suspension Period prior to such Reversion Date that contain any of the restrictions contemplated by such Section 3.6 will be deemed to have been existing on the Issue Date.

(e) During the Suspension Period, any reference in the definitions of “Permitted Liens” and “Unrestricted Subsidiary” to Section 3.3 or any provision thereof will be construed as if Section 3.3 had remained in effect since the Issue Date and during the Suspension Period.

(f) During the Suspension Period, the obligation to grant further Subsidiary Guarantees will be suspended. Upon the Reversion Date, the obligation to grant Subsidiary Guarantees under Section 3.11 will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was Incurred for purposes of Section 3.11).
Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of any failure to comply with the Suspended Covenants during any Suspension Period, and the Issuer and any Subsidiary of the Issuer will be permitted, following a Reversion Date, without causing a Default or Event of Default or breach of any of the Suspended Covenants (notwithstanding the reinstatement thereof) under this Indenture, to honor, comply with or otherwise perform any contractual commitments or obligations entered into during a Suspension Period following a Reversion Date and to consummate the transactions contemplated thereby.

The Issuer will provide an Officer’s Certificate to the Trustee indicating the occurrence of any Covenant Suspension Event or Reversion Date. The Trustee will have no obligation to (i) independently determine or verify if such events have occurred, (ii) make any determination regarding the impact of actions taken during the Suspension Period on the Issuer and its Restricted Subsidiaries’ future compliance with their covenants or (iii) notify the Holders of any Covenant Suspension Event or Reversion Date.

For the avoidance of doubt, the MYT Limited Guarantees, the MYT Covenants, the MYT Waterfall and the other provisions contained in the MYT Guarantee and Collateral Agreement will remain in place during any Suspension Period.

SECTION 3.18. Stay, Extension and Usury Laws. The Issuers and each of the Subsidiary Guarantors covenant (to the extent that they may lawfully do so) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuers and each of the Subsidiary Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 3.19. Nancy Holdings Corporate Reorganization. Nancy Holdings LLC shall be merged into the Issuer, and the intercompany lease agreements between Nancy Holdings LLC and the LLC Co-Issuer will be terminated, in each case, within 90 days after the Issue Date (or such later date as mutually agreed by the Company Parties and the Extended Term Loan Agent) and, concurrently with such merger, the Issuer, as successor to Nancy Holdings LLC, shall mortgage the owned Real Properties constituting collateral currently held by Nancy Holdings LLC, which mortgages will have the Required Collateral Lien Priority.

SECTION 3.20. Ratings. The Issuers shall use their commercially reasonable efforts to cause, within 60 days after the end of the fiscal quarter ending June 30, 2019, the Notes to receive a rating from S&P or Moody’s, or, if during such time neither of such institutions shall be rating such obligations, an equivalent rating from another
nationally recognized statistical rating agency (as described in Rule 436 under the Securities Act).

ARTICLE IV

Merger: Consolidation or Sale of All or Substantially All Assets

SECTION 4.1. When the Issuers May Merge or Otherwise Dispose of Assets.

(a) No Issuer may consolidate or merge with or into or wind up into (whether or not such Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person (other than the merger or consolidation of one Issuer into another Issuer) unless:

(i) such Issuer is the surviving Person or the Person formed by or surviving any such consolidation, merger or winding up (if other than such Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia (such Issuer or such Person, as the case may be, being herein called the “Successor Company”) and, if such entity is not (A) a corporation, a co-obligor of the Notes is a corporation organized or existing under such laws and (B) organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, a co-obligor of the Notes is organized or existing under such laws;

(ii) the Successor Company (if other than such Issuer) expressly assumes all the obligations of such Issuer under Notes Documents pursuant to a supplemental indenture or other documents or instruments;

(iii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), no Default or Event of Default has occurred and is continuing;

(iv) immediately after giving pro forma effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period, either:

(A) the Successor Company would be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or

(B) the Interest Coverage Ratio for the Issuer (or, if applicable, the Successor Company thereto) and its Restricted Subsidiaries would
be equal to or greater than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(v) each Subsidiary Guarantor, unless it is the other party to the transactions described above, will have by supplemental indenture confirmed that its Guarantee will apply to such Person’s Obligations under Notes Documents; and

(vi) such Issuer will have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each in form and substance reasonably satisfactory to the Trustee and stating that such consolidation, merger or transfer and such supplemental indentures (if any) comply with this Indenture.

The Successor Company will succeed to, and be substituted for, such Issuer under this Indenture, the Notes and the Notes Documents, and such Issuer will automatically be released and discharged from its obligations under this Indenture, the Notes and the Notes Documents.

(b) Notwithstanding the foregoing clauses 4.1(a)(iii) and 4.1(a)(iv):

(i) any of the Issuers or any Subsidiary Guarantor may consolidate with, merge into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to an Issuer or a Subsidiary Guarantor;

(ii) any of the Issuers may merge or consolidate with an Affiliate of such Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Issuer in another state of the United States, the District of Columbia or any territory of the United States so long as the principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby;

(iii) any Restricted Subsidiary may merge with or consolidate into an Issuer, provided that such Issuer is the Successor Company in such merger;

(iv) any Subsidiary Guarantor may dissolve or liquidate to the extent that the assets of such Subsidiary Guarantor are transferred to the Issuers or another Subsidiary Guarantor substantially contemporaneously with such dissolution or liquidation; and

(v) any Restricted Subsidiary that is not a Subsidiary Guarantor may dissolve or liquidate to the extent that the assets of such Restricted Subsidiary that is not a Subsidiary Guarantor are transferred to the Issuers or another Restricted Subsidiary substantially contemporaneously with such dissolution or liquidation.

(c) Subject to Section 10.2 and Section 10.5, each Subsidiary Guarantor will not, and the Issuer will not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or
otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, merger or winding up (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (including by way of liquidation or dissolution of the Subsidiary Guarantor) is a corporation, partnership, limited partnership or limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia (such Subsidiary Guarantor or such Person, as the case may be, being herein called the “Successor Guarantor”);

(A) the Successor Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under the Notes Documents, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents pursuant to a supplemental indenture or other documents or instruments;

(B) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction) no Default or Event of Default will have occurred and be continuing; and

(C) the Successor Guarantor (if other than such Subsidiary Guarantor) will have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; and

(ii) such sale or disposition or consolidation or merger does not violate Section 3.7;

provided that, in the event of a Subsidiary Guarantor liquidating or dissolving, the Person which receives the assets of such Subsidiary Guarantor substantially contemporaneously with such liquidation or dissolution shall be considered the Successor Guarantor for purposes of the above.

(d) Subject to Sections 10.2 and 10.5, the Successor Guarantor will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents, and such Subsidiary Guarantor will automatically be released and discharged from its obligations.
under this Indenture, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents. Notwithstanding the foregoing:

(i) a Subsidiary Guarantor may merge or consolidate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Subsidiary Guarantor in the United States, any state or territory thereof or the District of Columbia, so long as the principal amount of Indebtedness of the Issuer and the Restricted Subsidiaries is not increased thereby;

(ii) a Subsidiary Guarantor may consolidate or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to, an Issuer or Subsidiary Guarantor;

(iii) a Subsidiary Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of a jurisdiction in the United States; and

(iv) any Restricted Subsidiary may merge with or consolidate into any Subsidiary Guarantor; provided that, in the case of this clause (iv), the surviving Person (A) shall be a corporation, partnership, limited partnership or limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia and (B) if not the Subsidiary Guarantor, the surviving Person will become a Subsidiary Guarantor upon the consummation of such merger or consolidation.

(e) For purposes of this Section 4.1, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, will be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

ARTICLE V
Redemption of Notes

SECTION 5.1. Optional Redemption.

(a) The Notes may be redeemed, in whole at any time, or in part from time to time, subject to the conditions and at the redemption prices set forth in Paragraph 7 of the form of Note set forth in Exhibit A hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

(b) On and after the Redemption Date, interest will cease to accrue on the Notes or portions thereof called for redemption so long as the Issuers have deposited with the Paying Agent at least one Business Day prior to the relevant redemption date.
funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on the Notes to be redeemed.

SECTION 5.2. Election to Redeem; Notice to Trustee of Optional Redemptions. If the Issuers elect to redeem Notes pursuant to Section 5.1 or the Issuers are required to redeem Notes pursuant to Section 5.9, the Issuers will furnish to the Trustee, at least five calendar days for Global Notes, and at least 10 calendar days for Definitive Notes before notice of redemption is required to be delivered or caused to be delivered to Holders pursuant to Section 5.4, an Officer’s Certificate setting forth (a) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption will occur, (b) the Redemption Date, (c) the principal amount of the Notes to be redeemed and (d) the redemption price. The Issuers may also include a request in such Officer’s Certificate that the Trustee give the notice of redemption in the Issuers’ name and at their expense and setting forth the information to be stated in such notice as provided in Section 5.4. The Issuers will deliver to the Trustee such documentation and records as will enable the Trustee to select the Notes to be redeemed pursuant to Section 5.3.

SECTION 5.3. Selection by Trustee of Notes to Be Redeemed. If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption on a pro rata basis (or as nearly pro rata as practicable) unless otherwise required by law or the rules of the principal national securities exchange, if any, on which such Notes are listed (but only to the extent that the Trustee has been notified in writing of such listing by the Issuer), in minimum denominations of $2,000.00 and in integral multiples of $1.00 in excess thereof; provided that the selection of Notes for redemption will not result in a Holder owning less than $2,000.00 in aggregate principal amount of Notes, and provided further that if all of the Notes are in global form, interests in the Notes to be redeemed will be selected for redemption by the Depositary in accordance with the Applicable Procedures of the Depositary. If any Note is to be purchased or redeemed in part only, the notice of purchase or redemption relating to such Note will state the portion of the principal amount thereof that has been or is to be purchased or redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Note in accordance with Section 5.7. On and after the Redemption Date, interest will cease to accrue on Notes or portions thereof called for redemption so long as the Issuers have deposited with the Paying Agent funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on the Notes to be redeemed.

The Trustee will promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes will relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Note which has been or is to be redeemed.
SECTION 5.4. Notice of Redemption. In the case of a redemption pursuant to Section 5.1 or 5.9, the Issuers will deliver or cause to be delivered or in the case of Notes in global form, delivered or caused to be delivered electronically in accordance with the Applicable Procedures of the Depositary, a notice of redemption to each Holder whose Notes are to be redeemed not less than 30 nor more than 60 days prior to a date fixed for redemption (a “Redemption Date”); provided, however, that redemption notices may be delivered more than 60 days prior to a Redemption Date if the notice is issued pursuant to Article VIII. In connection with any redemption of Notes, any such redemption may, at the Issuers’ discretion, be subject to one or more conditions precedent, including, but not limited to, the funding of the amounts required to be funded by Calling Lenders in connection with the Call Right Redemption. In addition, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice will state that, in the Issuers’ discretion, the Redemption Date may be delayed until such time as any or all such conditions will be satisfied (or waived by the Issuers in their sole discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Issuers in their sole discretion) by the Redemption Date, or by the Redemption Date so delayed. At the Issuers’ written request, the Trustee may give notice of redemption in the Issuers’ name and at the Issuers’ expense.

All notices of redemption will be prepared by the Issuers and will state:

(a) the Redemption Date,

(b) the redemption price and the amount of accrued interest to, but excluding, the Redemption Date payable as provided in Section 5.6, if any,

(c) if less than all outstanding Notes are to be redeemed, the identification of the particular Notes (or portion thereof) to be redeemed, as well as the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption,

(d) in case any Note is to be redeemed in part only, the notice which relates to such Note will state that on and after the Redemption Date, upon surrender of such Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed,

(e) that on the Redemption Date the redemption price (and accrued interest to, but excluding, the Redemption Date payable as provided in Section 5.6, if any) will become due and payable upon each such Note, or the portion thereof, to be redeemed, and, unless the Issuers default in making the redemption payment, that interest on Notes called for redemption (or the portion thereof) will cease to accrue on and after said date,

(f) the place or places where such Notes are to be surrendered for payment of the redemption price and accrued interest, if any,

(g) the name and address of the Paying Agent,
that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price,

(i) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Notes,

(j) the Section of this Indenture pursuant to which the Notes are to be redeemed, and

(k) a description in reasonable detail of any conditions precedent applicable to such redemption.

At the Issuers’ request, the Trustee will give the notice of redemption in the Issuers’ name and at its expense; provided, however, that the Issuers will have delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officer’s Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph. Such Officer’s Certificate will state that all conditions precedent to the delivery of such notice have been complied with.

SECTION 5.5. Deposit of Redemption Price. Prior to 3:00 p.m. New York City time, on the Business Day Prior to any Redemption Date, the Issuers will deposit with the Trustee or with a Paying Agent (or, if the Issuers are acting as their own Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Notes which are to be redeemed on that date.

SECTION 5.6. Notes Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Notes so to be redeemed will, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to, but excluding, the Redemption Date), and from and after such date (unless the Issuers default in the payment of the redemption price and accrued interest, if any, to, but excluding, the Redemption Date) such Notes will cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note will be paid by the Issuers at the redemption price, together with accrued interest, if any, to, but excluding, the Redemption Date (subject to the rights of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

If any Note called for redemption is not so paid upon surrender thereof for redemption, the principal (and premium, if any) will, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

If a Redemption Date is on or after a Record Date and on or before the related Interest Payment Date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such Record
Date, and no further interest will be payable to Holders whose Notes will be subject to redemption by the Issuers.

SECTION 5.7. Notes Redeemed in Part. Any Note which is to be redeemed only in part (pursuant to the provisions of this Article) will be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3 (with, if the Issuers so require, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers duly executed by, the Holder thereof or such Holder’s attorney duly authorized in writing), and the Issuers will execute, and the Trustee upon receipt of an Authentication Order will authenticate and make available for delivery to the Holder of such Note at the expense of the Issuers, a new Note or Notes, of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered, provided that each such new Note will be in a minimum principal amount of $2,000.00 and integral multiples of $1.00 in excess thereof.

SECTION 5.8. Offer to Repurchase. In the event that, pursuant to Section 3.7, the Issuers are required to commence an offer to all Holders to purchase the Notes (an “Offer to Repurchase”), it will follow the procedures specified below:

(a) The Offer to Repurchase will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the “Offer Period”). No later than five Business Days after the termination of the Offer Period (the “Purchase Date”), the Issuers will apply all Excess Proceeds (the “Offer Amount”), to the purchase of Notes and such Pari Passu Lien Indebtedness, if any (in each instance, on a pro rata basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Offer to Repurchase. Payment for any Notes so purchased will be made pursuant to Section 3.1.

(b) If the Purchase Date is on or after an Interest Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest will be payable to Holders who tender Notes pursuant to the Offer to Repurchase.

(c) Upon the commencement of an Offer to Repurchase, the Issuers will deliver a notice to the Trustee and each of the Holders. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Repurchase. The notice, which will govern the terms of the Offer to Repurchase, will state:

(i) that the Offer to Repurchase is being made pursuant to this Section 5.8 and Section 3.7, and the length of time the Offer to Repurchase will remain open;

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(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment will continue to accrue interest;

(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Offer to Repurchase will cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Offer to Repurchase may elect to have Notes purchased in a minimum amount of $2,000.00 or an integral multiple of $1,000 in excess thereof only;

(vi) that Holders electing to have Notes purchased pursuant to any Offer to Repurchase will be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Notes completed, or transfer by book-entry transfer, to the Issuers, the Depositary, if appointed by the Issuers at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders will be entitled to withdraw their election if the Issuers or the Depositary, as the case may be, receives, not later than on the expiration of the Offer Period, facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount of Notes the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Notes purchased;

(viii) that, if the aggregate principal amount of Notes and, if applicable, Pari Passu Lien Indebtedness, if any, surrendered by Holders thereof exceeds the Offer Amount, the Trustee will select the Notes and, if applicable, the Issuers will select such Pari Passu Lien Indebtedness to be purchased or prepaid, on a pro rata basis based on the principal amount of Notes and Pari Passu Lien Indebtedness, if any, surrendered (with such adjustments as may be deemed appropriate by the Issuers so that only Notes in minimum denominations of $2,000.00 or integral multiples of $1.00 in excess thereof are redeemed); and

(ix) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

(d) On or before the Purchase Date, the Issuers will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Offer to Repurchase, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer’s Certificate stating that such Notes or portions thereof were accepted for payment by the Issuers in accordance with the terms of this Section 5.8. The Issuers or the Depositary, as the case may be, will promptly (but in any case not later than five days after the Purchase Date)
SECTION 5.9. Call Right Redemption.

(a) Lenders under the Extended Term Loan Agreement (the “Calling Lenders”) may exercise the Call Right by complying with the procedures provided therefor in the Extended Term Loan Agreement and delivering (or causing the agent under the Extended Term Loan Agreement to deliver) to the Trustee and the Issuers the notice of redemption set forth in Exhibit E hereto (the “Call Notice”). In the event that less than $200.0 million in principal amount of Third Lien Notes are outstanding at the time of exercise of the Call Right, an aggregate principal amount of Notes equal to (i) $200.0 million in principal amount less (ii) the amount of Third Lien Notes outstanding on such date (the “Called Notes”) shall be redeemed in accordance with the terms of clauses (b) and (c) below.

(b) Upon (1) receipt by the Trustee and the Issuers of the Call Notice with respect to the Call Right and (2) compliance with the Call Right Procedures provided for in the Extended Term Loan Agreement, the Issuers shall redeem the Called Notes at a price equal to the principal amount of Called Notes plus accrued but unpaid interest to, but not including, the date of redemption provided for in the Call Notice, which date shall be not more than 30 Business Days and not fewer than five Business Days following delivery of the Call Notice. Such redemption shall be conditioned upon and subject to the provision by the Calling Lenders to the Issuers of Immediately available funds in cash in an amount equal to the principal amount of Called Notes.

(c) Except as expressly set forth above in this Section 5.9, the provisions of Sections 5.1 through 5.7 shall apply mutatis mutandis to a redemption of Notes pursuant to the Call Right.

ARTICLE VI

Defaults and Remedies

SECTION 6.1. Events of Default. The occurrence of each of the following events, for so long as such event is continuing, is an “Event of Default”:

(a) a default in any payment of interest on any Note when due continued for five Business Days;
(b) a default in the payment of principal or premium, if any, of any Note when due at its Stated Maturity, upon optional or mandatory redemption, upon required purchase, upon acceleration or otherwise;

(c) the failure by the Issuer or any Restricted Subsidiary to comply for 30 days after receipt of written notice referred to below with any of its obligations, covenants or agreements (other than a default pursuant to Section 6.1(a) or this Section 6.1(b)) contained in the Notes Documents;

(d) the failure by the Issuer or any Restricted Subsidiary to pay the principal amount of any Indebtedness for borrowed money (other than Indebtedness for borrowed money owing to Issuer or a Restricted Subsidiary) within any applicable grace period upon the final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid at final maturity or accelerated exceeds $50.0 million or its foreign currency equivalent;

(e) an Issuer or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
   
   (i) files a petition for relief, commences a voluntary case or commences proceedings to be adjudicated bankrupt or insolvent under any Bankruptcy Law;

   (ii) consents to the entry of an order for relief against it in an involuntary case or to the institution of bankruptcy or insolvency proceedings against it;

   (iii) files an answer, response or consent in an involuntary case seeking or consenting to reorganization, liquidation or other relief under applicable Bankruptcy Law;

   (iv) generally is not paying its debts as they become due;

   (v) consents to the appointment of a Custodian of it or for any substantial part of its property;

   (vi) makes a general assignment for the benefit of its creditors; or

   (vii) takes any comparable action under any domestic or foreign laws relating to insolvency;

(f) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

   (i) is for relief against an Issuer or any Significant Subsidiary in an involuntary case, or adjudicates an Issuer or any Significant Subsidiary bankrupt or insolvent in any involuntary case, or any similar relief is granted under any domestic or foreign laws;
(ii) appoints a Custodian of an Issuer or any Significant Subsidiary or for any substantial part of an Issuer’s or any of the Significant Subsidiary’s property, or any similar relief is granted under any domestic or foreign laws; or

(iii) orders the winding up or liquidation of an Issuer or any Significant Subsidiary, or any similar relief is granted under any domestic or foreign laws;

and in each of the foregoing cases, the order or decree remains unstayed, undismissed or undischarged and in effect for 60 consecutive days;

(g) failure by any Issuer or any Significant Subsidiary to pay final and non-appealable judgments aggregating in excess of $50.0 million or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent insurance companies), which judgments are not discharged, waived or stayed for a period of 60 days after such judgment becomes final and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(h) the Subsidiary Guarantee of a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms thereof or of this Indenture), or any Subsidiary Guarantor that is a Significant Subsidiary (or any Officer thereof with authority to act on behalf of such Subsidiary Guarantor with respect to such matters) denies in writing that it has any further liability under its Subsidiary Guarantee or gives written notice to such effect, other than by reason of the termination or discharge of this Indenture or the release of any such Subsidiary Guarantee in accordance with this Indenture, and such Default continues for five days;

(i) the Liens created by the Security Documents securing the Notes or Guarantees shall at any time not constitute perfected Liens on any portion of the Collateral intended to be covered thereby (to the extent perfection is required by this Indenture or such Security Documents) other than in accordance with the terms of such relevant Security Document and this Indenture and other than the satisfaction in full of all Obligations under this Indenture or release or amendment of any such Lien in accordance with the terms of this Indenture or such Security Documents, or (ii) except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture and such relevant Security Document, any such Security Document shall for whatever reason be terminated or cease to be in full force and effect, if, in each case, such default occurs with respect to a portion of the Collateral exceeding $50.0 million in fair market value;

(j) the MYT Limited Guarantee of any MYT Guarantor Entity ceases to be in full force and effect (except as contemplated by the terms thereof or of this Indenture) or any MYT Guarantor Entity (or any Officer thereof with authority to act on behalf of such MYT Guarantor Entity with respect to such matters) denies in writing that it has any further liability under its MYT Limited Guarantee or gives written notice to such effect, other than by reason of the termination or discharge of this Indenture or the
release of any such MYT Limited Guarantee in accordance with this Indenture, and such Default continues for five days;

(k)           (i) the Liens created by the MYT Guarantee and Collateral Agreement and related security documents with respect to the assets securing the MYT Limited Guarantees shall at any time not constitute perfected Liens on any portion of the MYT Limited Guarantee Collateral or the MYT Account intended to be covered thereby (to the extent perfection is required by this Indenture or such security documents) other than in accordance with the terms of the MYT Guarantee and Collateral Agreement, such relevant security document and this Indenture and other than the satisfaction in full of all Notes Obligations or release or amendment of any such Lien in accordance with the terms of the MYT Guarantee and Collateral Agreement, this Indenture or such security documents, or (ii) except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture, the MYT Guarantee and Collateral Agreement and such relevant security document, any such security document shall for whatever reason be terminated or cease to be in full force and effect, if, in each case, such default occurs with respect to the MYT Account or a portion of the MYT Limited Guarantee Collateral exceeding $12.5 million in fair market value;

(l)            the failure by MYT Parent or any of the MYT Entities to comply with or cause compliance with the terms of the MYT Waterfall; or

(m)          prior to the earlier of (a) a MYT Deposit Event and (b) the provision of the MYT Alternate Security, the failure by any of the MYT Entities to comply for 30 days after receipt of written notice referred to below with any of the MYT Covenants.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

However, a default under Section 6.1(c) will not constitute an Event of Default until either the Trustee notifies in writing the Issuers or the Holders of at least 25.0% in principal amount of outstanding Notes notify in writing the Issuers and the Trustee of the default and such default is not cured within the time specified in Section 6.1(c) after receipt of such notice.

SECTION 6.2.  Acceleration.  If an Event of Default (other than an Event of Default specified in Section 6.1(e) or Section 6.1(f) above with respect to an Issuer) occurs and is continuing, either the Trustee, by written notice to the Issuers, or the Holders of at least 25.0% in principal amount of the outstanding Notes, by written notice to the Issuers and the Trustee, may declare the Contractual Performance Amount to be due and payable.  Upon such a declaration, such Contractual Performance Amount will be due and payable immediately.  If an Event of Default arising from Section 6.1(e) or Section 6.1(f) of an Issuer occurs, the Contractual Performance Amount shall be due and
payable as of immediately prior to the occurrence of such Event of Default without any declaration or other act on the part of the Trustee or any Holder.

The Issuers and the Subsidiary Guarantors agree and acknowledge that the excess of the Contractual Performance Amount over the sum of the principal amount of the then outstanding Notes plus accrued and unpaid interest (the “Liquidated Damages Amount”) constitutes liquidated damages and not unmatured interest or a penalty, and the actual amount of damages to the Holders as a result of the relevant Event of Default would be impracticable and extremely difficult to ascertain. Accordingly, the Liquidated Damages Amount is provided by mutual agreement of the Issuers, the Subsidiary Guarantors and the Trustee (on behalf of the Holders) as a reasonable estimation and calculation of such actual lost profits and other actual damages of the Holders. Each Holder, by accepting a Note (or a beneficial interest therein), shall be deemed to have directed the Trustee to make such agreement on its behalf.

SECTION 6.3. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy (including a lawsuit for breach of contract) to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture (including sums owed to the Trustee, the Agents and their agents and counsel) and the Guarantees.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.4. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of the Holders of all of the Notes, waive, rescind or cancel any declaration of an existing or past Default or Event of Default and its consequences (including acceleration) under this Indenture if such waiver, rescission or cancellation would not conflict with any judgment or decree, except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes (other than such nonpayment of principal or interest that has become due as a result of such acceleration). Upon any such waiver, such Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured for every purpose of this Indenture; but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

In the event of any Event of Default arising from Section 6.1(d), such Event of Default and all consequences thereof (excluding, however, any payment default on the Notes Obligations resulting from acceleration of the Notes) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if prior to 20 days after such Event of Default arose, the Issuer delivers an
Officer’s Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has otherwise been cured.

SECTION 6.5. Control by Majority. The Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee and the Notes Collateral Agent, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee or the Notes Collateral Agent, as applicable, determines is unduly prejudicial to the rights of any other Holder (it being understood that neither the Trustee nor the Notes Collateral Agent has an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders) or that would involve the Trustee in personal liability unless such Holders have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense. Prior to taking any action under this Indenture, the Trustee will be entitled to security or indemnification reasonably satisfactory to it in its reasonable discretion against all losses, liabilities and expenses that may be caused by taking or not taking such action.

SECTION 6.6. Limitation on Suits. In case an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest, when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(a) such Holder has previously given the Trustee written notice that an Event of Default is continuing or will occur upon notice and/or passage of time;

(b) Holders of at least 25.0% in principal amount of the outstanding Notes have requested (the “Requesting Holders”) in writing the Trustee to pursue the remedy, which pursuit of the requested remedy may be conditioned upon the occurrence of an Event of Default in the future;

(c) such Requesting Holders have offered the Trustee security or indemnity in respect of any loss, liability or expense (which security or indemnity is reasonably acceptable to the Trustee, such acceptance not to be unreasonably withheld or delayed);

(d) the Trustee has not complied with, or indicated in writing to the Requesting Holders that it will comply with, such request within 10 days after the receipt of the request and the offer of security or indemnity; and
the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a written direction inconsistent with such request within such 10-day period.

SECTION 6.7. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of, premium, if any, or interest on the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, will not be impaired or affected without the consent of such Holder.

SECTION 6.8. Collection Suit by Trustee. If an Event of Default specified in Section 6.1(a) or Section 6.1(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.6.

SECTION 6.9. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuers, their Subsidiaries or their respective creditors or properties and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders (pursuant to the written direction of Holders of a majority in principal amount of the then outstanding Notes) in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee will consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.6. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in such proceeding.

SECTION 6.10. Priorities. The Trustee will pay out any money or property received by it in the following order:

First: to the Trustee and the Agents for amounts due under Section 7.6;

Second: to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and
Third: to the Issuers or, to the extent the Trustee receives any amount for any Subsidiary Guarantor, to such Guarantor as a court of competent jurisdiction will direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Issuers (or Trustee) will deliver to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. **Undertaking for Costs.** In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys’ fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10.0% in outstanding principal amount of the Notes.

**ARTICLE VII**

**Trustee**

SECTION 7.1. **Duties of Trustee.**

(a) If an Event of Default has occurred and is continuing, the Trustee will, in the exercise of its rights and powers under this Indenture, use the same degree of care and skill in its exercise of such rights and powers as a prudent Person would exercise or use under the circumstances in the conduct of such Person’s own affairs, subject to the provisions of clause (h) below.

(b) Except during the continuance of an Event of Default of which a Trust Officer has actual knowledge, the Trustee:

(i) undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence or bad faith on its part, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee under this Indenture, the Notes and the Guarantees, as applicable. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee will examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture, the Notes and the Guarantees as the case may be (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).
(c) The Trustee will not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this Section 7.1(c) does not limit the effect of Section 7.1(b);

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Trust Officer or Trust Officers unless it is proved in a final non-appealable decision of a court of competent jurisdiction that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.

(d) The Trustee and the Agents will not be liable for interest on any money received by it and such money shall be held uninvested except as the Trustee and the Agents may agree in writing with the Issuers.

(e) Money held in trust by the Trustee or an Agent need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture, the Notes or the Guarantees will require the Trustee or an Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it will have reasonable grounds to believe that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee will be subject to the provisions of this Section 7.1.

(h) The Trustee and the Notes Collateral Agent will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders will have offered to the Trustee, security, prefunding or indemnity reasonably satisfactory to it in its reasonable discretion against any loss, liability or expenses (including reasonable attorneys’ fees and expenses) that might be incurred by it in compliance with such request or direction.

SECTION 7.2. Rights of Trustee.

(a) The Trustee and the Agents may conclusively rely and will be protected in acting upon any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or any other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper Person or Persons. The Trustee and the Agents need not investigate any fact or matter stated in the document.
(b) Before the Trustee acts or refrains from acting, it may require an Officer’s Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on an Officer’s Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys, custodians, nominees and agents and will not be responsible for the misconduct or negligence of or for the supervision of any agent, custodians, nominees or attorney appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that the Trustee’s conduct does not constitute willful misconduct or negligence as determined in a final non-appealable decision of a court of competent jurisdiction.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture, the Notes and the Guarantees will be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder or under the Notes and the Guarantees in good faith and in reliance on the advice or opinion of such counsel.

(f) The Trustee and the Agents will not be bound to make any investigation into any statement, warranty or representation, or the facts or matters stated in any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or other paper or document made or in connection with this Indenture; moreover, the Trustee and the Agents will not be bound to make any investigation into (i) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture or any other agreement, instrument or document, or (iii) the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note other evidence of indebtedness or other paper or document, but the Trustee or an Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee or an Agent, as applicable, determines to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney and will incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(g) The Trustee will not be deemed to have knowledge of any Default or Event of Default except any Default or Event of Default of which a Trust Officer will have (i) received written notification from the Issuers or a Holder at the Corporate Trust Office of the Trustee and such notice references the Notes and this Indenture or (ii) obtained “actual knowledge.” “Actual knowledge” will mean the actual fact or statement of knowing by a Trust Officer without independent investigation with respect thereto.
(h) In no event will the Trustee or an Agent be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee or Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and each agent (including the Agents), custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee and the Agents will not have any duty (i) to see to any recording, filing, or depositing of this Indenture or any agreement referred to herein, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, re-filing or redepositing of any thereof or (ii) to see to any insurance.

(l) The right of the Trustee or an Agent to perform any discretionary act enumerated in this Indenture will not be construed as a duty.

SECTION 7.3. Individual Rights of Trustee. Subject to the TIA, the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuers, the Subsidiary Guarantors or their Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Section 7.9. In addition, the Trustee will be permitted to engage in transactions with the Issuers; provided, however, that if the Trustee acquires any conflicting interest (as such term is used in the TIA) the Trustee must (a) eliminate such conflict within 90 days of acquiring such conflicting interest, (b) apply to the SEC for permission to continue acting as Trustee or (c) resign.

SECTION 7.4. Disclaimer. Neither the Trustee nor any Agent will be responsible for and none of them makes any representation as to the validity or adequacy of this Indenture, the Notes or the Guarantees, none of them will be accountable for the Issuers’ use of the Notes or the proceeds from the Notes, and none of them will be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee’s certificate of authentication or for the use or application of any funds received by any Paying Agent other than the Trustee.

SECTION 7.5. Notice of Defaults. If a Default occurs and is continuing and is actually known to the Trustee, the Trustee will provide to each Holder notice of the Default within 90 days after it is actually known to the Trustee. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Note, the
Trustee may withhold notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of the Holders.

SECTION 7.6. Compensation and Indemnity. The Issuers will pay to the Trustee and the Agents from time to time such compensation for their services as the parties agree in writing from time to time. The Trustee’s compensation will not be limited by any law on compensation of a trustee of an express trust. The Issuers will reimburse the Trustee and the Agents upon request for all reasonable out-of-pocket expenses incurred or made by it, including, but not limited to, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and reasonable costs of counsel, in addition to the compensation for its services. Such expenses will include the reasonable compensation and expenses, disbursements and advances of the Trustee’s agents, counsel, accountants and experts. The Issuers will indemnify the Trustee or any predecessor Trustee in each of its capacities hereunder (including Paying Agent, and Registrar), and each of their officers, directors, employees, counsel and agents, against any and all loss, liability or expense (including, but not limited to, reasonable attorneys’ fees and expenses) incurred by it in connection with the administration of this trust and the performance of their duties hereunder and under the Notes Documents, including the Notes and the Guarantees, including the costs and expenses of enforcing this Indenture (including this Section 7.6), the Notes Documents, including the Notes and the Guarantees and of defending itself against any claims (whether asserted by any Holder, the Issuers or otherwise). The Trustee and the Agents will notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee or an Agent to so notify the Issuers will not relieve the Issuers of their obligations hereunder. If so required by the Trustee or the Agents, the Issuers will defend the claim and the Trustee and the Agents may have separate counsel and the Issuers will pay the reasonable fees and expenses of such counsel. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or an Agent as a result of its own willful misconduct, gross negligence or bad faith as determined by a final non-appealable judgment of a court of competent jurisdiction.

To secure the Issuers’ payment obligations in this Section, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The right of the Trustee to receive payment of any amounts due under this Section 7.6 will not be subordinate to any other liability or indebtedness of the Issuers.

The Issuers’ obligations pursuant to this Section and any lien arising hereunder will survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee or an Agent. When the Trustee or an Agent incurs expenses after the occurrence of a Default specified in Section 6.1(e) or (f) with respect to the Issuers, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

Pursuant to Section 10.1, the obligations of the Issuers hereunder are jointly and severally guaranteed by the Subsidiary Guarantors.
SECTION 7.7. Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Issuers. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee upon written notice to the Issuers and the Trustee and may appoint a successor Trustee. The Issuers will remove the Trustee if:

(i) the Trustee fails to comply with Section 7.9;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuers or by the Holders of a majority in aggregate principal amount of the then outstanding Notes and such Holders do not within 30 days thereafter appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers will promptly appoint a successor Trustee.

(c) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will deliver a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.6. All costs reasonably incurred in connection with any resignation or removal hereunder will be borne by the Issuers.

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of at least 10.0% in principal amount of the Notes may petition, at the Issuers’ expense, any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.9, unless the Trustee’s duty to resign is stayed, any Holder may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.7, the Issuers’ obligations under this Indenture will continue for the benefit of the retiring Trustee.

SECTION 7.8. Successor Trustee by Merger. If the Trustee, consolidates with, merges or converts into, or transfers all or substantially all its corporate trust
business or assets to another corporation or banking association, the resulting, surviving or transferee corporation without any further act will be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee will succeed to the trusts created by this Indenture, any of the Notes will have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes will not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates will have the full force which it is anywhere in the Notes or in this Indenture provided.

SECTION 7.9. Eligibility; Disqualification. The Trustee will have a combined capital and surplus of at least $150,000 as set forth in its most recent filed annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.10. Limitation on Duty of Trustee. The Trustee will not have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Notes and the Guarantees by the Issuers, the Subsidiary Guarantors or any other Person.

SECTION 7.11. Preferential Collection of Claims Against the Issuers. The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed will be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12. Reports by Trustee to Holders. Within 60 days after each October 15, beginning with October 15, 2019, the Trustee will provide to the Holders a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA § 313(b). The Trustee will also provide all reports as required by TIA § 313(c). The Trustee shall promptly provide, upon written request by a Holder (including an owner of beneficial interest in a Note) a true and complete copy of each and any Notes Document (including schedules and exhibits thereto).

The Issuers will promptly notify the Trustee in writing when any Notes are listed on any stock exchange and of any delisting thereof.
ARTICLE VIII

Discharge of Indenture; Defeasance

SECTION 8.1. Discharge of Liability on Notes; Defeasance.

(a) This Indenture will be discharged and will cease to be of further effect (except as to rights, indemnities and immunities of the Trustee and to surviving rights of registration or transfer or exchange of Notes, as expressly provided for in this Indenture) as to all outstanding Notes, and the Liens, if any, on the Collateral securing the Notes and the Note Guarantees will be released, in each case when:

(i) either (A) all the Notes theretofore authenticated and delivered (other than Notes which have been replaced or paid pursuant to Section 2.7 and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuers and thereafter repaid to the Issuers or discharged from such trust) have been delivered to the Trustee for cancellation or (B) all of the Notes not previously delivered to the Trustee for cancellation (1) have become due and payable, (2) will become due and payable at their Stated Maturity within one year or (3) if redeemable at the option of the Issuers, have been called for redemption or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers, and any of the Issuers or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee funds in cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest on the Notes to the date of deposit together with irrevocable instructions from the Issuers directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(ii) the Issuers and/or the Subsidiary Guarantors have paid all other sums payable under this Indenture; and

(iii) Issuer has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(b) Subject to Section 8.1(c) and Section 8.2, the Issuers at any time may terminate (i) all of their obligations under the Notes and this Indenture (with respect to such Notes) and have each Subsidiary Guarantor’s obligation discharged with respect to its Subsidiary Guarantee and have Liens, if any, on the Collateral securing the Notes and the Note Guarantees released and cure any then-existing Events of Default (“legal defeasance option”) or (ii) its obligations under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.14, 3.15, 3.16, 3.19 and 3.20 and the operation of Section 4.1 (other than Sections 4.1(a)(i), (ii) and (vi)) and Sections 6.1(c) (with respect to any Default under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.14, 3.15, 3.16, 3.19 and 3.20, 6.1(d), 6.1(e) (with respect to Significant Subsidiaries of the Issuers)
only), 6.1(f) (with respect to Significant Subsidiaries of the Issuers only) 6.1(g), 6.1(h), 6.1(i), 6.1(j), 6.1(k) and 6.1(m) and have Liens, if any, on the Collateral securing the Notes and the Note Guarantees released ("covenant defeasance option"). The Issuers may exercise their legal defeasance option notwithstanding their prior exercise of the covenant defeasance option. In the event that the Issuers terminate all of their obligations under the Notes and this Indenture (with respect to such Notes) by exercising the legal defeasance option or the covenant defeasance option, the obligations of each Subsidiary Guarantor under its Subsidiary Guarantee of such Notes will be terminated simultaneously with the termination of such obligations.

(c) If the Issuers exercise their legal defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default specified in Section 6.1(c) (with respect to any Default by the Issuer or any of its Restricted Subsidiaries with any of their obligations under Article III other than Sections 3.1, 3.11, 3.13, 3.17, 6.1(d), 6.1(e) (with respect to Significant Subsidiaries of the Issuers only), 6.1(f) (with respect to Significant Subsidiaries of the Issuers only)), 6.1(g), 6.1(h), 6.1(i), 6.1(j), 6.1(k) or 6.1(m).

(d) Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee will acknowledge in writing the discharge of those obligations that the Issuers terminate.

(e) Notwithstanding clauses (a) and (b) above, the Issuers’ obligations in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 7.6, 7.7 and in this Article VIII will survive until the Notes have been paid in full. Thereafter, the Issuers’ obligations in Sections 7.6, 8.5 and 8.6 will survive such satisfaction and discharge.

SECTION 8.2. Conditions to Defeasance.

(a) The Issuers may exercise their legal defeasance option or their covenant defeasance option only if:

(i) the Issuers irrevocably deposit or cause to be deposited in trust with the Trustee cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient to pay the principal of, and premium (if any) and interest on the applicable Notes when due at maturity or redemption, as the case may be; provided that if such redemption is made pursuant to Paragraph 7(b) of the form of Note set forth in Exhibit A hereto (or any corresponding paragraph of a Global Note or a Definitive Note), then: (A) the amount of money or U.S. Government Obligations that the Issuers must irrevocably deposit or cause to be deposited will be determined using an assumed Applicable Premium calculated as of the date of such deposit, as calculated by the Issuers in good faith; and (B) the Issuers must irrevocably deposit or cause to be deposited additional money in trust on the redemption date as necessary to pay the Applicable Premium as determined on such date;
(ii) the Issuers deliver to the Trustee a certificate from a nationally recognized certified public accounting firm expressing
their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any
deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest
when due on all the Notes to maturity or redemption, as the case may be;

(iii) the Issuers deliver to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not
constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(iv) the Issuers shall have delivered to the Trustee an Officer’s Certificate stating that the deposit was not made by the Issuers
with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuers or any Subsidiary Guarantor or others;

(v) in the case of the legal defeasance option, the Issuers will have delivered to the Trustee an Opinion of Counsel stating
that (A) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has
been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the
holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S.
federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not
occurred;

(vi) in the case of the covenant defeasance option, the Issuers will have delivered to the Trustee an Opinion of Counsel to the
effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be
subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance
had not occurred; and

(vii) the Issuers deliver to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that all conditions
precedent to the defeasance and discharge of the Notes to be so defeased and discharged as contemplated by this Article VIII have been complied with.

(b) Before or after a deposit, the Issuers may make arrangements satisfactory to the Trustee for the redemption of such Notes at a
future date in accordance with Article V.

SECTION 8.3. Application of Trust Money. The Trustee will hold in trust money or U.S. Government Obligations deposited with it
pursuant to this Article VIII. It will apply the deposited money and the money from U.S. Government Obligations
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SECTION 8.4. **Repayment to Issuers.** Anything herein to the contrary notwithstanding, the Trustee will deliver or pay to the Issuers from time to time upon Company Order any money or U.S. Government Obligations held by it as provided in this Article VIII which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect legal defeasance option or covenant defeasance option, as applicable, *provided* that the Trustee will not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this Section 8.4.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent will pay to the Issuers upon written request any money held by them for the payment of principal of or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuers for payment as general creditors.

SECTION 8.5. **Indemnity for U.S. Government Obligations.** The Issuers and the Subsidiary Guarantors, jointly and severally, will pay and will indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.6. **Reinstatement.** If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuers and each Subsidiary Guarantor under this Indenture, the Notes and the Guarantees will be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; *provided, however,* that, if any of the Issuers or the Subsidiary Guarantors has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Issuers or any Subsidiary Guarantor, as the case may be, will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

**Amendments**

SECTION 9.1. **Without Consent of Holders.** Notwithstanding Section 9.2, the Notes Documents may be amended or supplemented by the Issuers, any Subsidiary Guarantor (with respect to this Indenture or a Subsidiary Guarantee to which it is a party), MYT Parent or the MYT Guarantor Entities (in respect of the MYT Limited Guarantee or
any related security documents), the Trustee and the Notes Collateral Agent, as applicable, without notice to or consent of any Holder:

(a) to cure any ambiguity, omission, mistake, defect or inconsistency identified in an Officer’s Certificate of the Issuer, which states that such cure is a good faith attempt by the Issuer to reflect the intention of the parties to this Indenture, delivered to the Trustee and the Notes Collateral Agent;

(b) to conform the text of the Notes Documents (including any supplemental indenture or other instrument pursuant to which Additional Notes are issued) to the “Description of Notes” in the Offering Circular or, with respect to any Additional Notes and any supplemental indenture or other instrument pursuant to which such Additional Notes are issued, to the “Description of Notes” relating to the issuance of such Additional Notes, solely to the extent that such “Description of Notes” provides for terms of such Additional Notes that differ from the terms of the Initial Notes, as contemplated by Section 2.2;

(c) to comply with Section 4.1;

(d) to provide for the assumption by a successor Person of the obligations of an Issuer or any Subsidiary Guarantor under and in accordance with this Indenture and the Notes or Subsidiary Guarantee, as the case may be;

(e) to provide for uncertificated Notes in addition to or in place of certificated Notes; provided, however, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(f) to add or release Subsidiary Guarantees in accordance with the terms of the Notes Documents;

(g) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Notes Collateral Agent for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the Notes Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Notes Collateral Agent pursuant to the Notes Documents or otherwise;

(h) to add to the covenants of the Issuers for the benefit of the Holders or to surrender any right or power herein conferred upon the Issuers, any Subsidiary Guarantor, MYT Parent or any MYT Entity;

(i) to make any change that does not adversely affect the rights of any Holder upon delivery to the Trustee of an Officer’s Certificate of the Issuer certifying the absence of such adverse effect;

(j) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA;
to make any amendment to the provisions of the Notes Documents relating to the transfer and legending of Notes as permitted by this Indenture, including to facilitate the issuance and administration of the Notes; provided, however, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(l) to evidence and provide for the acceptance of appointment by a successor Trustee, provided that the successor Trustee is otherwise qualified and eligible to act as such under the terms of this Indenture;

(m) to provide for or confirm the issuance of Additional Notes in accordance with this Indenture;

(n) to provide for the accession of any parties to the Security Documents or the Intercreditor Agreements, as applicable (and other amendments to such documents that in either case are administrative or ministerial in nature) in connection with an incurrence of additional Indebtedness to the extent permitted by the Notes Documents;

(o) to provide for the release of the Collateral from the Liens in accordance with the terms of this Indenture; or

(p) to enter into a Customary Intercreditor Agreement in connection with the incurrence of Junior Lien Indebtedness or Pari Passu Lien Indebtedness permitted by this Indenture;

provided that, for the avoidance of doubt, no co-obligor or co-issuer may be added (directly or indirectly) to the Notes without the consent of a majority in principal amount of the Notes then outstanding.

SECTION 9.2. With Consent of Holders.

(a) This Indenture and the Notes Documents, including the Notes, the Guarantees and the Security Documents may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and any existing or past Default or compliance with any provisions of such documents may be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). However, without the consent of each Holder of a Note affected (including, for the avoidance of doubt, any Notes held by Affiliates), no amendment, supplement or waiver may (with respect to any Notes held by a non-consenting Holder):

(i) reduce the percentage of the aggregate principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;
(ii) reduce the rate of or extend the time for payment of interest on any Note;

(iii) reduce the principal of or change the Stated Maturity of any Note;

(iv) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration;

(v) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed as described under Section 5.1;

(vi) make any Note payable in money other than that stated in such Note;

(vii) impair the right of any Holder to receive payment of principal of, premium, if any, or interest on such Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes;

(viii) make any change in the amendment or waiver provisions of this Indenture that require each Holder’s consent, as described in clauses (i) through (xi);

(ix) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(x) make the Notes or any Guarantee subordinated in right of payment or “waterfall” priority to, in either case, any other Obligations;

(xi) release any Issuer or Subsidiary Guarantor from its Obligations under the Notes Documents, except in accordance with the terms of the Notes Documents; or

(xii) prior to the earlier of (a) a MYT Deposit Event and (b) the provision of MYT Alternate Security, release any MYT Guarantor from its MYT Limited Guarantee, except in accordance with the terms of the Notes Documents.

In addition, without the consent of the Holders of at least 66 2/3% in principal amount of the then outstanding Notes, no amendment, supplement or waiver may modify any Notes Document that would have the effect of (i) releasing all or substantially all of the Collateral from the Liens of the Security Documents (except as permitted by the terms of this Indenture or the Security Documents) or changing or altering the priority of Notes Liens on the Collateral or (ii) releasing all or substantially all of the “Collateral” (as defined in the MYT Guarantee and Collateral Agreement) or changing or altering the
priority of the Liens granted pursuant to the MYT Guarantee and Collateral Agreement (except as permitted by the terms thereof or any other Notes Document).

(b) The consent of the Holders under this Section 9.2 is not necessary to approve the particular form of any proposed amendment, but it will be sufficient if such consent approves the substance thereof.

(c) Additional Notes will be disregarded for purposes of any amendment or waiver relating to a Default or Event of Default that existed (disregarding any applicable notice, cure or grace periods) prior to the time of issuance of such Additional Notes.

(d) After an amendment under this Section 9.2 becomes effective, the Issuers will (or will cause the Trustee, at the expense of and at the written request of the Issuers, to) deliver to the Holders affected thereby a notice briefly describing such amendment. The failure of the Issuers to deliver such notice, or any defect therein, will not in any way impair or affect the validity of an amendment under this Section 9.2.

SECTION 9.3. Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Note will bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder’s Note, even if notation of the consent or waiver is not made on the Note. After an amendment or waiver becomes effective, it will bind every Holder unless it makes a change described in clauses (i) through (ix) of Section 9.2(a), in which case the amendment or waiver or other action will bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder’s Notes. An amendment or waiver made pursuant to Section 9.2 will become effective upon receipt by the Trustee of the requisite number of written consents.

The Issuers may, but will not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, will be entitled to give such consent or to take any such action, whether or not such Persons continue to be Holders after such record date.

SECTION 9.4. Notation on or Exchange of Notes. If an amendment changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuers or the Trustee so determines, the Issuers in exchange for the Note will issue and the Trustee will authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note will not affect the validity of such amendment.

SECTION 9.5. Trustee To Sign Amendments. The Trustee and the Notes Collateral Agent, as the case may be, will sign any amendment, supplement or waiver
authorized pursuant to this Article IX if the amendment, supplement or waiver does not, in the sole determination of the Trustee or the Notes Collateral Agent, as the case may be, adversely affect the rights, duties, liabilities or immunities of the Trustee or the Notes Collateral Agent, as the case may be. If it does, the Trustee may but need not sign it. In signing any amendment, supplement or waiver pursuant to this Article IX, the Trustee and the Notes Collateral Agent, as the case may be, will be entitled to receive, and (subject to Section 7.1 and Section 7.2) will be fully protected in relying upon, an Officer’s Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by or complies with this Indenture, that all conditions precedent to such amendment required by this Indenture have been complied with and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers, enforceable against the Issuers in accordance with its terms, subject to customary exceptions. Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

ARTICLE X

Guarantees

SECTION 10.1. Guarantees.

(a) Subject to the provisions of this Article X, each Subsidiary Guarantor hereby jointly and severally, irrevocably, fully and unconditionally guarantees, on a senior basis, as guarantor and not as a surety, with each other Guarantor, the full and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, all Obligations of the Issuers under this Indenture and the Notes Documents (including interest that, but for the filing of a petition in any bankruptcy or other insolvency proceeding with respect to the Issuers, would have accrued on any Obligation, whether or not a claim is allowed against the Issuers for such interest in the related bankruptcy proceeding) to the Holders, the Trustee and each Agent, whether for payment of principal of, premium, if any, or interest on the Notes, expenses, indemnification or otherwise (all such obligations guaranteed by such Subsidiary Guarantors being herein called the “Guaranteed Obligations”). Each Subsidiary Guarantor agrees (to the extent lawful) that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it will remain bound under this Article X notwithstanding any extension or renewal of any Subsidiary Guarantor Obligation.

(b) Each Subsidiary Guarantor waives (to the extent lawful) presentation to, demand of, payment from and protest to the Issuers of any of the Guaranteed Obligations and also waives (to the extent lawful) notice of protest for nonpayment. Each Subsidiary Guarantor waives (to the extent lawful) notice of any default under the Notes or the Guaranteed Obligations.

(c) Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein constitutes a Guarantee of payment when due (and not a Guarantee of

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collection) and waives any right to require that any resort be had by any Holder to any security held for payment of the Guaranteed Obligations.

(d) Except as set forth in Section 10.2 and Article VIII, the obligations of each Subsidiary Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and will not (to the extent lawful) be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Subsidiary Guarantor herein will not (to the extent lawful) be discharged or impaired or otherwise affected by (i) the failure of any Holder, the Trustee or any Agent to assert any claim or demand or to enforce any right or remedy against the Issuers or any other Person under this Indenture, the Notes or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes, the Notes Collateral Agreement, the MYT Guarantee and Collateral Agreement or any other Notes Document; (iv) the release of any security held by any Holder, the Trustee or any Agent for the Guaranteed Obligations or any of them; (v) the failure of any Holder, the Trustee or any Agent to exercise any right or remedy against any other Guarantor; (vi) any change in the ownership of the Issuers; (vii) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; or (viii) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Subsidiary Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

(e) Each Subsidiary Guarantor agrees that its Subsidiary Guarantee herein will remain in full force and effect until payment in full of all the Guaranteed Obligations or such Subsidiary Guarantor is released from its Subsidiary Guarantee in compliance with Section 4.1, Section 10.2 and Article VIII. Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein will continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of, premium, if any, or interest on any of the Guaranteed Obligations is rescinded or must otherwise be restored by any Holder, the Trustee or any Agent upon the bankruptcy or reorganization of the Issuers or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Holder, the Trustee or any Agent has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Issuers to pay any of the Guaranteed Obligations when and as the same will become due, whether at maturity, by acceleration, by redemption or otherwise, each Subsidiary Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Trustee or the Trustee on behalf of the Holders, the Trustee or any Agent an amount equal to the sum of (i) the unpaid amount of such Guaranteed Obligations then due and owing and (ii) accrued and unpaid interest on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by law) (including

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interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Issuers or any Subsidiary Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

(g) Each Subsidiary Guarantor further agrees that, as between such Subsidiary Guarantor, on the one hand, and the Holders, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed by this Guarantee may be accelerated as provided in this Indenture for the purposes of its Subsidiary Guarantee in this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed by this Guarantee and (ii) in the event of any such declaration of acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purposes of this Subsidiary Guarantee.

(h) Each Subsidiary Guarantor also agrees to pay any and all reasonable costs and expenses (including reasonable attorneys’ fees) incurred by the Trustee or the Holders in enforcing any rights under this Guarantee.

(i) No Issuers or the Subsidiary Guarantors will be required to make a notation on the Notes to reflect any Subsidiary Guarantee or any release, termination or discharge thereof and any such notation will not be a condition to the validity of any Guarantee.

SECTION 10.2. Limitation on Liability; Termination, Release and Discharge.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the obligations of each Subsidiary Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law or the laws of the jurisdiction of organization of such Subsidiary Guarantor and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

(b) A Subsidiary Guarantee by a Subsidiary Guarantor (other than Notes PropCo and Extended Term Loan PropCo) will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of the Capital Stock of such Subsidiary Guarantor to a party that is not an Affiliate of the Issuer, if after such transaction, the Subsidiary Guarantor is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or
(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(c) The Notes PropCo Guarantee will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock of Notes PropCo to a party that is not an Affiliate of the Issuer, if after such transaction, Notes PropCo is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(d) The Extended Term Loan PropCo Guarantee will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock of Extended Term Loan PropCo to a party that is not an Affiliate of the Issuer, if after such transaction, Extended Term Loan PropCo is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(e) In the case of Section 10.2(b), the Issuers will deliver to the Trustee an Officer’s Certificate and Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

(f) The release of a Subsidiary Guarantor from its Subsidiary Guarantee and its obligations under this Indenture in accordance with the provisions of this Section 10.2 will not preclude the future application of Section 3.11 to such Person.

SECTION 10.3. Right of Contribution. Each Subsidiary Guarantor hereby agrees that to the extent that any such Guarantor will have paid more than its proportionate share of any payment made on the obligations under its Guarantee, such Guarantor will be entitled to seek and receive contribution from and against the Issuers or any other Guarantor who have not paid their proportionate share of such payment. The provisions of this Section 10.3 will in no respect limit the obligations and liabilities of each Subsidiary Guarantor to the Trustee and the Holders and each Subsidiary Guarantor will remain liable to the Trustee and the Holders for the full amount guaranteed by such Guarantor hereunder.
SECTION 10.4. **No Subrogation.** Notwithstanding any payment or payments made by each Subsidiary Guarantor hereunder, no Guarantor will be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Issuers or any other Guarantor or any collateral security or guarantee or right of offset held by the Trustee, any Agent or any Holder for the payment of the Guaranteed Obligations, nor will any Subsidiary Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuers or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee, any Agent and the Holders by the Issuers on account of the Guaranteed Obligations are paid in full. If any amount will be paid to any Subsidiary Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations will not have been paid in full, such amount will be held by such Guarantor in trust for the Trustee, any Agent and the Holders, segregated from other funds of such Guarantor, and will, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Guaranteed Obligations.

SECTION 10.5. **Limitations on Merger.** Subject to Section 4.1 and Section 10.2, a Subsidiary Guarantor will not, and the Issuer will not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(a) such Person is a Successor Guarantor;

(b) the Successor Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor’s Guarantee pursuant to a supplemental indenture or other documents or instruments;

(c) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction) no Default or Event of Default will have occurred and be continuing; and

(d) the Successor Guarantor (if other than such Subsidiary Guarantor) will have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; or

(e) such sale or disposition or consolidation or merger does not violate Section 3.7.

The Successor Guarantor will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor’s Guarantee,
and such Subsidiary Guarantor will automatically be released and discharged from its obligations under this Indenture and such Guarantor’s Guarantee. Notwithstanding the foregoing, (1) a Subsidiary Guarantor may merge or consolidate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Guarantor in the United States, any state or territory thereof, the District of Columbia or the jurisdiction of such Guarantor, so long as the principal amount of Indebtedness of the Issuer and the Restricted Subsidiaries is not increased thereby and the Person resulting from such merger or consolidation is or becomes an Issuer or a Subsidiary Guarantor, (2) a Subsidiary Guarantor may consolidate or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to an Issuer or another Subsidiary Guarantor, (3) a Subsidiary Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Guarantor or the laws of a jurisdiction in the United States, so long as such Subsidiary Guarantor remains a Subsidiary Guarantor and (4) any Restricted Subsidiary may merge into any Subsidiary Guarantor, provided that, in the case of this clause (4), the surviving Person will be a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia or the jurisdiction of organization of such Restricted Subsidiary or Subsidiary Guarantor and the surviving Person of such merger (if not the Guarantor) is or will become a Subsidiary Guarantor upon the consummation of such merger.

SECTION 10.6. Subordination of PropCo Guarantees. The guarantee by Extended Term Loan Propco of the Guaranteed Obligations pursuant to this Article X is subordinate in the manner and to the extent set forth in that certain subordination agreement (as amended, supplemented or otherwise modified from time to time) dated as of June 7, 2019 among the Collateral Agent, Extended Term Loan PropCo and the other parties thereto (the “Extended Term Loan PropCo Subordination Agreement”), to the Senior Priority Guarantee Obligations (as defined therein); and each Holder, by its acceptance of a Note or a beneficial interest therein, irrevocably agrees to be bound by the provisions of such subordination agreement.

The guarantee by Notes PropCo of the Guaranteed Obligations pursuant to this Article X is subordinate in the manner and to the extent set forth in that certain subordination agreement (as amended, supplemented or otherwise modified from time to time) dated as of June 7, 2019 among the Collateral Agent, Notes PropCo and the other parties thereto (the “Notes PropCo Subordination Agreement”), to the Senior Priority Guarantee Obligations (as defined therein); and each Holder, by its acceptance of a Note or a beneficial interest therein, irrevocably agrees to be bound by the provisions of such subordination agreement.

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ARTICLE XI

Collateral


The Notes Obligations are secured by the Collateral as provided in the Security Documents with Liens that have the Required Collateral Lien Priority. The Issuer shall, and shall cause each Subsidiary Guarantor to, and each Subsidiary Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) necessary to maintain (at the sole cost and expense of the Issuer and the Subsidiary Guarantors) the security interest created by the Security Documents in the Collateral as a perfected security interest to the extent perfection is required by the Security Documents, subject only to Permitted Liens.

SECTION 11.2. Extended Term Loan Priority Real Estate Collateral and Extended Term Loan PropCo Equity Interests.

(a) On the Issue Date (or within the Initial Post-Closing Period, subject to the Extended Post-Closing Period, in the event that the Extended Term Loan Agent extends such Initial Post-Closing Period for obtaining mortgages or deeds of trust on the Notes Priority Real Estate Collateral or the Extended Term Loan Priority Real Estate Collateral beyond such Initial Post-Closing Period, provided, that, during such Extended Post-Closing Period, no such mortgages or deeds of trust on any Extended Term Loan Priority Real Estate Collateral to secure the Notes Obligations shall be obtained more than 10 days after the corresponding mortgages or deeds of trust on such properties are obtained to secure the Extended Term Loan Obligations), the Notes Collateral Agent shall be granted a second-priority Lien on specified real estate interests which consist of certain owned real properties and real property leases (whether operating leases, ground leases, or otherwise) which constitute collateral for the Extended Term Loan Obligations as of the Issue Date to the extent not constituting Non-Mortgageable Leases (such real estate interests, the “Extended Term Loan Priority Real Estate Collateral”), and a second-priority pledge of the Extended Term Loan PropCo Equity Interests.

(b) Notwithstanding the foregoing, to the extent any real property interests that would otherwise be mortgaged as Extended Term Loan Priority Real Estate Collateral constitute Non-Mortgageable Leases (the “Extended Term Loan Priority PropCo Assets”), such Non-Mortgageable Leases shall be contributed to the Extended Term Loan PropCo, which shall grant a lease or license to the applicable Restricted Subsidiary of the Issuer to use the Extended Term Loan Priority PropCo Assets on terms consistent with Exhibit F in each case within time period described in clause (a).
SECTION 11.3. Notes Priority Real Estate Collateral and Notes PropCo Equity Interests.

(a) On the Issue Date (or within the Initial Post-Closing Period, subject to the Extended Post-Closing Period, in the event that the Extended Term Loan Agent extends such Initial Post-Closing Period for obtaining mortgages or deeds of trust on the Notes Priority Real Estate Collateral or the Extended Term Loan Priority Real Estate Collateral beyond such Initial Post-Closing Period; provided, that, during such Extended Post-Closing Period, no such mortgages or deeds of trust on any Extended Term Loan Priority Real Estate Collateral to secure the Notes Obligations shall be obtained more than 10 days after the corresponding mortgages or deeds of trust on such properties are obtained to secure the Extended Term Loan Obligations), the Notes Collateral Agent, on behalf of the Holders shall be granted a Lien on the Notes Priority Real Estate Collateral and a pledge of the Notes PropCo Equity Interests in each case with the Required Collateral Lien Priority applicable thereto.

(b) Notwithstanding the foregoing, to the extent any real property interests that would otherwise be mortgaged as Notes Priority Real Estate Collateral constitute Non-Mortgageable Leases, then, the Issuer shall cause Notes PropCo to be formed as promptly as practicable, and, in lieu of such mortgages, the applicable Non-Mortgageable Leases (such interests ceasing to be Notes Priority Real Estate Collateral, the "Notes Priority PropCo Assets") shall be contributed to the Notes PropCo. In the event that Notes PropCo is formed, it shall grant a lease or license to the applicable Restricted Subsidiary of the Issuer to use the Notes Priority PropCo Assets on terms consistent with Exhibit F in each case within the time period described in clause (a).

SECTION 11.4. Notes Collateral Agent.

(a) The Notes Collateral Agent shall have all the rights and protections provided in the Security Documents and, additionally, shall have all the rights and protections provided to the “Trustee” under Article VII.

(b) None of the Notes Collateral Agent, Trustee, Paying Agent or Registrar nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, continuation, sufficiency or protection of any Notes Liens, or any defect or deficiency as to any such matters.

(c) Except as required or permitted by the Security Documents and the Intercreditor Agreements, the Holders, by accepting a Note, acknowledge that the Notes Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person, except in accordance with the Security Documents and the Intercreditor Agreements;
(ii) to foreclose upon or otherwise enforce any Lien granted pursuant to the Security Documents; or

(iii) to take any other action whatsoever with regard to any or all of the Notes Liens, Security Documents, Intercreditor Agreements or Collateral.

(d) The Notes Collateral Agent may be removed and replaced in the same manner as the Trustee, as provided in the Notes Collateral Agreement and the MYT Guarantee and Collateral Agreement).

SECTION 11.5. Authorization of Actions to Be Taken.

(a) Each Holder, by its acceptance thereof, consents and agrees to the terms of each Security Document, as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Trustee and Notes Collateral Agent to enter into the Security Documents to which each is a party, authorizes and empowers the Trustee and Notes Collateral Agent to execute and deliver the Intercreditor Agreements and authorizes and empowers the Trustee and Notes Collateral Agent to bind the Holders as set forth in the Security Documents to which each is a party and the Intercreditor Agreements and to perform their respective obligations and exercise their respective rights and powers thereunder.

(b) The Trustee is authorized and empowered to receive for the benefit of the Holders any funds collected or distributed to the Notes Collateral Agent under the Security Documents to which the Trustee is a party and, subject to the terms of the Security Documents, to make further distributions of such funds to the Holders according to the provisions of this Indenture.

(c) Subject to the provisions of Sections 7.1, 7.2, the Intercreditor Agreements and the Security Documents, the Trustee may, in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders, the Notes Collateral Agent to take all actions it deems necessary or appropriate in order to, upon the occurrence and continuance of an Event of Default:

(i) foreclose upon or otherwise enforce any or all of the Liens granted pursuant to the Security Documents;

(ii) enforce any of the terms of the Security Documents to which the Notes Collateral Agent is a party; or

(iii) collect and receive payment of any and all Obligations.

Following an Event of Default, subject to the Intercreditor Agreements and at the Issuer’s sole cost and expense, the Trustee is hereby authorized and empowered by each Holder (by its acceptance thereof) to, subject to Sections 7.1 and 7.2 institute and maintain, or direct the Notes Collateral Agent to institute and maintain, such suits and proceedings as it may deem reasonably expedient to protect or enforce the Liens.
granted under the Security Documents to which the Notes Collateral Agent or Trustee is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of the Security Documents or this Indenture, and such suits and proceedings as the Trustee may deem reasonably expedient, at the Issuer’s sole cost and expense, to preserve or protect its interests and the interests of the Holders in the Collateral, including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Liens granted under the Security Documents or be prejudicial to the interests of Holders or the Trustee.


(a) Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents and the Intercreditor Agreements. In addition, the Issuer and the Subsidiary Guarantors will be entitled to the release of assets included in the Collateral from the Liens securing the Notes, and the Trustee shall (or, if the Trustee is not then the Notes Collateral Agent, shall direct the Notes Collateral Agent to) release the same from such Liens at the Issuer’s sole cost and expense, under any one or more of the following circumstances without the need for any further action by any Person:

   (i) as to any property or assets to enable the Issuers or the Subsidiary Guarantors to consummate the disposition of such property or assets to the extent not prohibited and otherwise in accordance with Section 3.7; provided, however, that if such property or assets, immediately prior thereto, were subject to any Lien securing any Obligations of the Issuers or Subsidiary Guarantors and such property or assets continue after such disposition to be subject to a Lien securing any such Obligations, no such release shall occur with respect to such property or assets;

   (ii) in the case of the property and assets of a Restricted Subsidiary that is a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Subsidiary Guarantee of the Notes;

   (iii) as described under Article IX of this Indenture.

For the avoidance of doubt, the assets of the MYT Guarantor Entities shall not be subject to the foregoing sentence and shall only be released in accordance with the provisions of the MYT Guarantee and Collateral Agreement.

(b) The security interests in all Collateral securing the Notes also will be released upon payment in full of the principal of, together with accrued and unpaid interest on, the Notes and all other Obligations under this Indenture, the Notes, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest are paid, or upon the Issuers’
exercise of a legal defeasance option or covenant defeasance option under this Indenture as described under Article VIII.

(c) Upon the written request of the Issuer pursuant to an Officer’s Certificate and Opinion of Counsel stating that all conditions precedent hereunder and under the Security Documents have been met, and upon receipt of any necessary or proper instruments of termination, satisfaction or release prepared by the Issuer or the Subsidiary Guarantors, as the case may be, the Notes Collateral Agent, without the consent of any Holder or the Trustee and at the expense of the Issuer or the Subsidiary Guarantors, shall execute, deliver or acknowledge such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this or the Security Documents.

SECTION 11.7. Filing, Recording and Opinions.

(a) The Issuer will comply with the provisions of Sections 314(b) and 314(d) of the TIA, in each case following qualification of this Indenture pursuant to the TIA. Any certificate or opinion required by Section 314(d) of the TIA may be made by an Officer of the Issuer except in cases where Section 314(d) of the TIA requires that such certificate or opinion be made by an independent engineer, appraiser or other expert, who shall be reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary herein, the Issuer and the Subsidiary Guarantors will not be required to comply with all or any portion of Section 314(d) of the TIA if they determine, in good faith, after consultation with counsel (which may be internal counsel), that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including “no action” letters or exemptive orders, all or any portion of Section 314(d) of the TIA is inapplicable to the released Collateral. Following such qualification, to the extent the Issuer is required to furnish to the Trustee an Opinion of Counsel pursuant to Section 314(b)(2) of the TIA, the Issuer will furnish such opinion not more than 60 but not less than 30 days prior to each October 15, commencing October 15, 2019.

Any release of Collateral permitted by Section 11.6 and this Section 11.7 will be deemed not to impair the Liens under this Indenture and the Security Documents in contravention thereof and any Person that is required to deliver an Officer’s Certificate or Opinion of Counsel pursuant to Section 314(d) of the TIA, shall be entitled to rely upon the foregoing as a basis for delivery of such certificate or opinion. The Trustee and the Notes Collateral Agent may, to the extent permitted by Section 7.1 and 7.2, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and Opinion of Counsel.

(b) If any Collateral is released in accordance with this Indenture or any Security Document at a time when the Trustee is not itself also the Notes Collateral Agent and if the Issuer has delivered the certificates and documents required by the Security Documents and Section 11.6, the Trustee will deliver all documentation received by it in connection with such release to the Notes Collateral Agent.
SECTION 11.8. Powers Exercisable by Receiver or Trustee. In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article XI upon the Issuer or a Subsidiary Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or a Subsidiary Guarantor or of any officer or officers thereof required by the provisions of this Article XI and if the Trustee or the Notes Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee or the Notes Collateral Agent, as the case may be.

SECTION 11.9. Voting. In connection with any matter under the Security Agreement requiring a vote of holders of Secured Obligations (as defined in the Security Agreement), the holders of such Secured Obligations shall be treated as a single class and the Holders shall cast their votes in accordance with this Indenture. The amount of the Notes to be voted by the Holders will equal the aggregate outstanding principal amount of the Notes. Following and in accordance with the outcome of the applicable vote under this Indenture, the Trustee shall vote the same proportion of the Notes in respect of any vote under the Security Agreement.

SECTION 11.10. Subject to the Intercreditor Agreements. This Indenture is entered into with the benefit of and subject to the terms of the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement. By accepting a Note, each Holder is authorizing the Trustee and the Notes Collateral Agent to enter into the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement on its behalf. Holders will be permitted to take enforcement action with respect to the Collateral only to the extent permitted under and in accordance with the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement.

ARTICLE XII

Mutual Releases

Certain capitalized terms used in this Article XII are specifically defined for purposes of this section and are set forth at the end of this Article XII.

SECTION 12.1. Releases by the Company Releasing Parties. Effective as of the Effective Date, each Company Releasing Party, on behalf of itself, and to the extent a Company Releasing Party is not party to this Indenture, the Issuers or Subsidiary Guarantors on behalf of such Company Releasing Party, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Company Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties, that the Issuers, Subsidiary Guarantors or any of the Company Releasing Parties would have been legally entitled to assert in their or its own right (whether individually or
collectively) or on behalf of the holder of any Claim against, or Equity Security in, a Company Releasing Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Company Releasing Parties set forth above do not release any party or Entity from any post Effective Date obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Company Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding the foregoing, or anything to the contrary in this Indenture, nothing in this Indenture shall or shall be deemed to (or is intended to) limit any of the Company Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under the Bankruptcy Code, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of this Indenture, the Transaction Support Agreement, the Definitive Documents, or any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt, the release by the Company Releasing Parties in this Section 12.1 is granted by or on behalf of each of the Company Releasing Parties in their capacities as Issuers or Subsidiary Guarantors, and on behalf of each of their Related Parties, in each case, in accordance with the terms.
and conditions set forth in this Indenture.

SECTION 12.2. Releases by the Stakeholder Releasing Parties. Effective as of the Effective Date, by accepting the Notes and the benefits of this Indenture, each Stakeholder Releasing Party, solely in its capacity as such, severally and not jointly, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Stakeholder Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties or the Stakeholder Releasing Parties, that the Trustee or any of the Stakeholder Releasing Parties would have been legally entitled to assert in its or their own right (whether individually or collectively) or on behalf of the holders of any Claim against, or Equity Security in, a Company Releasing Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Stakeholder Releasing Parties set forth above do not release any party or Entity from any post Effective Date obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Stakeholder Releasing Party hereby agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding the foregoing or anything to the contrary in this Indenture, nothing in the releases or this Indenture shall or shall be deemed to (or is intended to) limit any of the Stakeholder Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under the Bankruptcy Code, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (x) the
formulation, preparation, dissemination, negotiation, or filing of this Indenture, the Transaction Support Agreement, the Definitive Documents, the
Commitment Letter, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in
connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the administration and
implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt,
the release by the Stakeholder Releasing Parties in this Section 12.2 is hereby granted by or on behalf of each of the Stakeholder Releasing Parties in
accordance with the terms and conditions set forth in this Indenture solely in in their capacities as Holders with respect to Notes that they hold, and on behalf
of their Related Parties, only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party.

SECTION 12.3. No Additional Representations and Warranties. Each Releasing Party hereby agrees and acknowledges that, except as expressly provided in this Indenture and the Definitive Documents, no Released Party, in any capacity, has warranted or otherwise made any representations concerning any Released Claim (including any representation or warranty concerning the existence, non-existence, validity, or invalidity of any Released Claim). Notwithstanding the foregoing, nothing contained in this Indenture is intended to impair or otherwise derogate from any of the representations, warranties, or covenants expressly set forth in this Indenture or any of the Definitive Documents.

SECTION 12.4. Release of Unknown Claims. Each of the Releasing Parties hereby expressly acknowledges that although ordinarily a general release may not extend to any Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, it has carefully considered and taken into account in determining to enter into the releases set forth under Article XII the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Holder, by its holding of a Note, and, on behalf of each Company Releasing Party, the Issuers and Subsidiary Guarantors, expressly waive and relinquish any and all rights such Releasing Party may have or conferred upon it under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provide that a release does not extend to claims which the claimant does not know or suspect to exist in its favor or which such Releasing Party did not know or suspect to exist in such Releasing Party’s favor at the time of providing such releases, which in each case if known by it may have materially affected its settlement with any Released Party, including any rights under Section 1542 of the California Civil Code or any analogous applicable state or federal law or regulation. Each of the Releasing Parties hereby expressly acknowledges that the releases and covenants not to sue contained in this Indenture are effective regardless of whether those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or foreseen or unforeseen.
To the extent that the releases set forth above include releases to which Section 1542 of the California Civil Code or similar provisions of other applicable law applies, it is the intention of each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party that the releases described under Article XII are to be effective as a bar to any and all Claims and Causes of Action of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified in this Indenture. In furtherance of this intention, each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party hereto expressly waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law, which are as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Each Holder (in its capacity as a holder of the Notes), and each Company Releasing Party acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. Thus, notwithstanding the provisions of Section 1542 of the California Civil Code, and for the purpose of implementing a full and complete release and discharge of the Released Parties, each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party expressly acknowledges that this Indenture is intended to include in its effect all of the Claims, Causes of Action and liabilities which the Releasing Parties and each Holder (in its capacity as a holder of the Notes) does not know or suspect to exist in their favor as of the Effective Date, and this Indenture contemplates extinguishment of all such Claims, Causes of Action and liabilities.

SECTION 12.5. Covenant to Refrain from Certain Actions. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS INDENTURE, FROM AND AFTER THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES HEREBY AGREES AND COVENANTS NOT TO, AND SHALL NOT, AND SHALL NOT ASSIST OR OTHERWISE AID ANY OTHER PERSON TO, (A) COMMENCE OR CONTINUE, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION, OR OTHER PROCEEDING; (B) ENFORCE, ATTACH, COLLECT, OR RECOVER IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (C) CREATE, PERFECT, OR ENFORCE ANY LIEN OR ENCUMBRANCE; (D) ASSERT A SETOFF, RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND; (E) COMMENCE OR CONTINUE IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, OR (F) ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF ANY CLAIM OR CAUSE OF ACTION, IN EACH CASE, ON ACCOUNT OF OR WITH RESPECT TO ANY RELEASED CLAIM OR ANY CLAIM OR CAUSE OF ACTION THAT WILL BE A RELEASED CLAIM ON THE EFFECTIVE DATE. NOTHING IN THIS INDENTURE SHALL OR BE DEEMED TO
SECTION 12.6. **Turnover of Subsequently Recovered Assets.** Subject to the occurrence of the Effective Date, in the event that the Trustee, the Issuers, Subsidiary Guarantors or any Releasing Party (including any successor or assignee thereof) receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against Parent or the MYT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), the Trustee, the Notes Collateral Agent, the Issuers, Subsidiary Guarantors or such Releasing Party shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MYT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of Parent, Parent or the applicable MYT Entity. Parent or the applicable MYT Entity shall distribute any such recoveries turned over or assigned to it in accordance with the MYT Waterfall, to the extent applicable. Notwithstanding anything to the contrary contained in this Indenture (but subject to the immediately following paragraph below), Parent shall be entitled to enforce the provisions of this paragraph on behalf of Parent or any MYT Entity. The Releasing Parties, the Issuers and Subsidiary Guarantors, the Trustee and the Notes Collateral Agent will be bound by the provisions set forth under this Section 12.6 notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

Notwithstanding anything to the contrary contained in this Indenture, (i) the immediately foregoing paragraph will only apply to the Stakeholder Releasing Parties in their capacities as Holders with respect to Notes that they hold, the Trustee in its capacity as Trustee, the Notes Collateral Agent in its capacity as Notes Collateral Agent and each of the Company Releasing Parties in their capacities as Issuers or Subsidiary Guarantors, and will not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor in possession or any similar financing and
SECTION 12.7. Definitions. The capitalized terms below shall have the following meanings as used in this Article XII.

“Bankruptcy Code” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Effective Date, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Causes of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

“Claim” means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Commitment Letter” means that certain Backstop Commitment Letter, dated March 25, 2019, by and among the Sponsors and the Ad Hoc Committee of Unsecured Noteholders.
“Company Releasing Party” means each of the Company Parties and, to the maximum extent permitted by law, each of the Company Parties on behalf of its Related Parties.

“Consenting Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions, including (i) the material documents governing the Notes (including this Indenture), (ii) the material documents governing the Third Lien Notes (including the Third Lien Notes Indentures), (iii) the material documents governing the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock (including the applicable Certificates of Designation and material organizational documents), and (iv) the Extended Term Loan Agreement, and (v) all other material customary documents delivered in connection with transactions of this type (including any and all material documents necessary to implement the Recapitalization Transactions).

“Effective Date” means the date of consummation of the Recapitalization Transactions (no later than 11:59 p.m. Eastern Standard Time).

“Entity” means any Person, individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Body or any agency or political subdivision of any Governmental Body, or any other entity, whether acting in an individual, fiduciary, or other capacity.

“Equity Security” means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).

“Governmental Body” means any U.S. or non-U.S. federal, state, municipal, or other government, or other department, commission, board, bureau, agency, public authority, or instrumentality thereof, or any other U.S. or non-U.S. court or arbitrator.

“Holder” means the Person in whose name a Note is registered; provided that it may include the “beneficial owner” of an interest in a Note.

“Nancy Transaction” means, collectively, (a) the formation of Nancy Holdings LLC, a Delaware limited liability company, (b) all designations prior to the
TSA Execution Date by any Company Party or any of its Related Parties of Nancy Holdings LLC as an “unrestricted” subsidiary under the Original Indenture, the Pre-Transactions Term Loan Agreement, or the ABL Credit Agreement (as in effect immediately prior to the Effective Date), (c) all contributions, investments, conveyances, or transfers of any real properties or any interests associated with such real properties by any Company Party or any of its Related Parties in or to Nancy Holdings LLC prior to the TSA Execution Date, (d) all leases of real properties or any interests associated with such real properties between Nancy Holdings LLC as lessor, and any Company Party as lessee, entered into prior to the TSA Execution Date, and (e) all acts or omissions taken prior to the Effective Date by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing.

“Original Indenture” means, with respect to the 8.00% Third Lien Notes, the Indenture, dated as of October 21, 2013, as supplemented by the First Supplemental Indenture, dated October 25, 2013 (as amended, supplemented, waived or otherwise modified) governing the 8.000% Senior Cash Pay Notes due 2021 and, with respect to the 8.75% Third Lien Notes, the 8.750%/9.500% Senior PIK Toggle Notes Indenture, dated as of October 21, 2013 and the 8.000% Senior Cash Pay Notes Indenture, dated as of October 21, 2013, among Mariposa Merger Sub LLC and Borrower, Inc. as issuers, and U.S. Bank National Association, as trustee.

“Recapitalization Transactions” means the consensual recapitalization of certain of the Company Parties’ outstanding indebtedness and equity interests consisting of the entry into the Extended Term Loan Agreement, the consummation of the Exchange Offers, the issuance of the Notes and the Third Lien Notes and the issuance of the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock on terms and conditions consistent with the Transaction Support Agreement.

“Related Parties” means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity. For the avoidance of doubt, the MYT Entities are Related Parties of the Sponsors; provided, however, that any Related Party of a Holder is subject to and bound by the terms of the mutual releases set forth under this Indenture only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party.

“Released Claim” means, with respect to any Releasing Party, any Claim, Cause of Action, or any other debt, obligation, right, suit, damage, judgment, action, remedy, or liability which is released by such Releasing Party described under Article XII.
“Released Party” means, collectively, (a) each of the Company Parties, (b) each of the Consenting Noteholders, (c) the Sponsors, (d) the Trustee, (e) the Notes Collateral Agent and (f) the Related Parties of each of the foregoing Persons in clauses (a), (b) and (c) of this definition.

“Releasing Party” means collectively, (a) the Stakeholder Releasing Parties and (b) the Company Releasing Parties.

“Sponsor” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Stakeholder Releasing Party” means to the maximum extent permitted by law, (i) each Holder (in its capacity as a holder of Notes) and (ii) each of the Sponsors on behalf of their respective Related Parties.

“TSA Execution Date” means March 25, 2019, the date on which the Transaction Support Agreement was executed.

ARTICLE XIII
Miscellaneous


Notices given to Holders by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices from Holders given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices from Holders personally delivered will be deemed given at the time delivered by hand. Notices from Holders given by publication will be deemed given on the first day on which publication is made and notices from Holders given by facsimile will be deemed given when receipt is acknowledged. Notices from Holders given by overnight air courier guaranteeing next day delivery will be deemed given the next Business Day after timely delivery to the courier. Notices from the Issuer or Trustee or Notes Collateral Agent to Holders will be deemed given at the time delivered electronically in accordance with the Applicable Procedures of the Depositary.

Any notice or communication will be in writing and delivered in person, by facsimile or mailed by first-class mail addressed as follows:

if to the Issuers or any Subsidiary Guarantor:

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC

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The Issuers or the Trustee or the Notes Collateral Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder will be mailed to the Holder at the Holder’s address as it appears on the registration books of the Registrar and will be sufficiently given if so mailed within the time prescribed. Any notice or communication will also be so mailed or delivered to any Person described in TIA § 313(c), to the extent required by the TIA.

Failure to deliver a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

The Trustee and the Notes Collateral Agent agree to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee or the Notes Collateral Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee or the Notes Collateral Agent in its discretion elects to act upon such instructions, the Trustee’s or the Notes Collateral Agent’s understanding of such instructions will be deemed controlling. The Trustee and the Notes Collateral Agent will not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s or the Notes Collateral Agent’s reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee or the Notes Collateral Agent, including without limitation the risk of the Trustee or the Notes Collateral Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice will be sufficiently given if delivered or caused to be delivered electronically in accordance with the Applicable Procedures of the Depositary.
SECTION 13.2. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture (except in connection with (x) the original issuance of Notes on the date hereof and (y), with respect to clause (b) below, the execution of any amendment or supplement adding a new Guarantor under this Indenture), the Issuers will furnish to the Trustee:

(a) an Officer’s Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 13.3. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) will comply with the provisions of TIA § 314(e) and also will include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officer’s Certificate or on certificates of public officials.

SECTION 13.4. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 13.5. Days Other than Business Days. If a payment date is not a Business Day, payment will be made on the next succeeding day that is a Business Day, and no interest will accrue for the intervening period. If a regular Record Date is not a Business Day, the Record Date will not be affected.
SECTION 13.6. **Governing Law.** This Indenture, the Notes and the Guarantees will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction.

SECTION 13.7. **Jurisdiction and Service.** In relation to any legal action or proceedings arising out of or in connection with this Indenture, the Notes or the Guarantees, each Subsidiary Guarantor that is organized under laws other than those of the United States or a state or territory thereof or the District of Columbia hereby (a) irrevocably submits to the jurisdiction of the federal and state courts in the Borough of Manhattan in the City, County and State of New York, United States (b) waives, to the fullest extent permitted by law, any objection to any suit, action or proceeding that may be brought in connection with this Indenture, the Notes or the Guarantees in such courts on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum, (c) designates and appoints Issuer as their authorized agent upon which process may be served in any such suit, action or proceeding that may be instituted in any such court, and (d) agrees that service of any process, summons, notice or document by U.S. registered mail addressed to the Issuer, with written notice of said service to such Person at the address of the Issuer set forth in Section 13.1, will be effective service of process for any such legal action or proceeding brought in any such court.

SECTION 13.8. **Waiver of Jury Trial.** EACH OF THE ISSUERS, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTES DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 13.9. **No Recourse Against Others.** No manager, managing director, incorporator, director, officer, employee or holder of any Equity Interests of the Issuer, Corporate Co-Issuer, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Subsidiary Guarantees or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

SECTION 13.10. **Successors.** All agreements of the Issuers and each Subsidiary Guarantor in this Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Indenture will bind its successors.

SECTION 13.11. **Multiple Originals.** The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this

SECTION 13.13. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and will not modify or restrict any of the terms or provisions hereof.

SECTION 13.14. Force Majeure. In no event will the Trustee or any Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee will use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.15. USA Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act the Trustee, the Agents and the Trust Officers, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this agreement agree that they will provide the Trustee, the Agents and the Trust Officers with such information as they may request in order to satisfy the requirements of the USA Patriot Act.

SECTION 13.16. Communication by Holders with Other Holders. Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Registrar and anyone else will have the protection of TIA § 312(c).

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NEIMAN MARCUS GROUP LTD LLC,
as the Issuer

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

MARIPOSA BORROWER, INC.,
as Corporate Co-Issuer

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President and Secretary

THE NMG SUBSIDIARY LLC,
as New Co-Issuer Subsidiary

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President and Secretary

THE NEIMAN MARCUS GROUP LLC,
as LLC Co-Issuer

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

[Signature Page to Second Lien Notes Indenture]
GUARANTORS

BERGDORF GOODMAN INC.
BERGDORF GRAPHICS, INC.
BG PRODUCTIONS, INC.
NM BERMUDA, LLC
NM FINANCIAL SERVICES, INC.
NM NEVADA TRUST
NMGP, LLC
WORTH AVENUE LEASING COMPANY

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NMG GLOBAL MOBILITY, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President, General Counsel and Secretary

NEMA BEVERAGE CORPORATION
NEMA BEVERAGE HOLDING CORPORATION
NEMA BEVERAGE PARENT CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to Second Lien Notes Indenture]
GUARANTORS

NMG CALIFORNIA SALON LLC
NMG FLORIDA SALON LLC
NMG SALONS LLC
NMG TEXAS SALON LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Chief Executive Officer and President

[Signature Page to Second Lien Notes Indenture]
GUARANTORS

NMG TERM LOAN PROPCO LLC
NMG NOTES PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Lien Notes Indenture]
NM ENTITIES

MYT PARENT CO.
MYT HOLDING CO.
MYT INTERMEDIATE HOLDING CO.

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President and Secretary

[Signature Page to Second Lien Notes Indenture]
ANKURA TRUST COMPANY, LLC,
as Trustee and Notes Collateral Agent

By:  /s/ Lisa Price

Name:  Lisa Price

Title:  Managing Director

[Signature Page to Second Lien Notes Indenture]
[FORM OF FACE OF NOTE]

Global Note Legend, if applicable
Guarantor Legend, if applicable
Private Placement Legend, if applicable
Temporary Regulation S Legend, if applicable
OID Legend, if applicable

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Neiman Marcus Group LTD LLC, a Delaware limited liability company, The Neiman Marcus Group LLC, a Delaware limited liability company, Mariposa Borrower, Inc., a Delaware corporation, and The NMG Subsidiary LLC, a Delaware limited liability company promise to pay to Cede & Co., or registered assigns, the initial principal amount set forth on the Schedule of Increases or Decreases in the Global Note attached hereto, as revised by the Schedule of Increases or Decreases in the Global Note attached hereto, on April 25, 2024.

Interest Payment Dates: April 15 and October 15.

Record Dates: April 1 and October 1.

Additional provisions of this Note are set forth on the other side of this Note.

(2) Insert on Global Notes only

(3) 144A —
    Reg S —

(4) Once known, include net amount.

A-2
THE NEIMAN MARCUS GROUP LTD LLC, as the Issuer

By:
Name:
Title:

MARIPOSA BORROWER, INC., as Corporate Co-Issuer

By:
Name:
Title:

THE NMG SUBSIDIARY LLC, as New Co-Issuer Subsidiary

By:
Name:
Title:

THE NEIMAN MARCUS GROUP LLC, as LLC Co-Issuer

By:
Name:
Title:

A-3
TRUSTEE’S CERTIFICATE OF AUTHENTICATION

ANKURA TRUST COMPANY, LLC

as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: 
Title: Authorized Signatory
Date:

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1. **Interest**

   Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer and their successors and assigns under the Indenture hereinafter referred to, the “Co-Issuers” and, together with the Issuer, the “Issuers”) promise to pay interest on the principal amount of this Note at the rate per annum shown above. The Issuers will pay interest semiannually on April 15 and October 15 of each year, with the first interest payment to be made on October 15, 2019. Interest on the Notes will accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from June 7, 2019. Interest on the Notes will accrue at (1) an annual rate of 8.00% payable in cash (“Cash Interest”), plus (2) an annual rate of 6.00% (the “PIK Interest”) payable by increasing the principal amount of the outstanding Notes represented by one or more book entry Notes or Global Notes or, with respect to Notes represented by individual certificates, if any, by issuing additional notes (each, a “PIK Interest Note”), in certificated form, in each case by rounding down to the nearest $1.00. The Issuers will pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Notes to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Issuers will pay interest on overdue principal at 2.0% per annum in excess of the above rate and will pay interest on overdue installments of interest at such higher rate to the extent lawful.

2. **Method of Payment**

   By no later than 3:00 p.m. (New York City time) on the Business Day prior to the date on which any principal of, premium, if any, or interest on any Note is due and payable, the Issuers will irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Holders at the close of business on the April 1 and October 1 next preceding the Interest Payment Date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuers will pay principal, premium, if any, and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by the Paying Agent by the transfer

   (5) With respect to the Initial Notes.

   (6) With respect to the Initial Notes.
of immediately available funds to the accounts specified by the Depositary. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, provided that payment by wire transfer of immediately available funds will be required with respect to principal of, interest and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Paying Agent by no later than the record date for such payment. The Issuers will make all payments in respect of a Definitive Note (including principal, premium, if any, and interest) through the Paying Agent by mailing a check to the registered address of each Holder thereof.

3. **Paying Agent and Registrar**

Initially, Ankura Trust Company, LLC, duly organized and existing under the laws of the State of Delaware and having a Corporate Trust Office at 140 Sherman Street, Fourth Floor, Fairfield, CT 06824 (“Trustee”), will act as Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Holder. The Issuers or any of their Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. **Indenture**

The Issuers issued the Notes under an Indenture dated as of June 7, 2019 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”), among the Issuers and the Trustee. The terms of the Notes include those stated in the Indenture. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

The Notes are senior unsubordinated obligations of the Issuers. This Note is one of the 14.0% Second Lien Notes due 2024 referred to in the Indenture.

5. **Guarantee**

To guarantee the due and punctual payment of the principal, premium, if any, and interest (including post-filing or post-petition interest) on the Notes and all other Guaranteed Obligations when and as the same will be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Subsidiary Guarantors will unconditionally Guarantee, jointly and severally, such Guaranteed Obligations pursuant to and subject to the limitations described in Article X of the Indenture.

6. **Security**

The Indenture Obligations of the Issuers and the Guarantors are secured by Liens on the Collateral pursuant to the terms of the Security Documents. The actions of the Trustee, the Notes Collateral Agent and the Holders and the application of A-6
proceeds from the enforcement of any remedies with respect to such Collateral are limited pursuant to the terms of the Security Documents and the Intercreditor Agreements.

7. **Optional Redemption**

   (a) On and after the First Call Date, the Issuers may redeem the Notes, at their option, in whole at any time or in part from time to time, upon notice as described in Section 5.4 of the Indenture, at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest, if any, to (but not including) the Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on June 7 of the years set forth below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>107.000%</td>
</tr>
<tr>
<td>2022 and thereafter</td>
<td>100.000%</td>
</tr>
</tbody>
</table>

   (b) In addition, prior to the First Call Date, the Issuers may redeem the Notes at their option, in whole at any time or in part from time to time, upon notice as described under Section 5.4 of the Indenture at a redemption price equal to 100.0% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to (but not including) the applicable redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

   (c) The Notes will be subject to the Call Right Redemption pursuant to Section 5.9 of the Indenture.

   (d) In connection with any redemption of Notes, any such redemption may, at the Issuers’ discretion, be subject to one or more conditions precedent as provided in Section 5.4 of the Indenture.

   (d) Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable Redemption Date.

   (e) Any redemption pursuant to this paragraph 7 will be made pursuant to the provisions of Article V of the Indenture.

(7) With respect to the Initial Notes.
8. **Change of Control; Asset Sales**

(a) If a Change of Control occurs, Holders of the Notes may have the right to cause the Company to offer to repurchase the Notes as provided in Section 3.9 of the Indenture.

(b) In the event of an Asset Sale, Holders of the Notes may have the right to cause the Company to offer to repurchase the Notes as provided in Sections 3.7 and 5.8 of the Indenture.

9. **Intercreditor Agreements**

By accepting a Note, each Holder is authorizing the Trustee and the Notes Collateral Agent to enter into the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement on its behalf. Holders will be permitted to take enforcement action with respect to the Collateral only to the extent permitted under and in accordance with the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement.

10. **Denominations; Transfer; Exchange**

The Notes will be issuable only in minimum denominations of $2,000.00 and integral multiples of $1.00 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes for a period beginning on the Record Date immediately preceding an Interest Payment Date and ending on such Interest Payment Date.

11. **Persons Deemed Owners**

The registered Holder of this Note may be treated as the owner of it for all purposes, provided that, notwithstanding anything to the contrary in this Note, solely for purposes of determining whether any notice, direction, action to be taken or consent to be given under the Indenture is authorized, provided or given (as the case may be) by a sufficient aggregate principal amount of Notes, an owner of a beneficial interest in a Global Note shall be treated as a Holder, and the Trustee shall accept reasonable evidence of such beneficial interest provided by such owner (which may be in the form of “screenshots” of such owner’s position).

12. **Unclaimed Money**

If money for the payment of the principal of or premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Issuers at their request unless an abandoned property law designates another person. After any such payment, Holders entitled to the money must look only to the Issuers and not to the Trustee for payment.
13. **Discharge and Defeasance**

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Notes and the Indenture if the Issuers irrevocably deposit in trust with the Trustee money or U.S. Government Obligations (sufficient, without reinvestment, in the opinion of a nationally-recognized certified public accounting firm) for the payment of principal, premium (if any) and interest on the Notes to redemption or maturity, as the case may be.

14. **Amendment, Waiver**

The Indenture and the Notes may be amended or waived as set forth in Article IX of the Indenture.

15. **Defaults and Remedies**

Events of Default will be as set forth in Article VI of the Indenture.

Holders may only enforce the Indenture or the Notes as provided in the Indenture.

16. **Trustee Dealings with the Issuers**

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

17. **No Recourse Against Others**

No manager, managing director, director, officer, employee, incorporator or Holder of any Equity Interests in the Issuers, any Subsidiary or any Parent Entity, as such, will not have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Indenture or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release will be part of the consideration for the issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

18. **Authentication**

This Note will not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.
19. **Abbreviations**

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

20. **CUSIP Numbers**

Pursuant to a recommendation promulgated by the Committee on Uniform Note Identification Procedures the Issuers have caused CUSIP numbers to be printed on the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers placed thereon.

21. **Successor Entity**

When a successor entity assumes, in accordance with the Indenture, all the obligations of its predecessor under the Notes and the Indenture, and immediately before and thereafter no Default or Event of Default exists and all other conditions of the Indenture are satisfied, the predecessor entity will be released from those obligations.

22. **Governing Law**

This Note will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction that would indicate the applicability of the law of any other jurisdiction.
To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_________________________________________________________
(Print or type assignee’s name, address and zip code)

_________________________________________________________
(Insert assignee’s soc. sec. or tax I.D. No.)

and irrevocably appoint agent to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: ____________________________  Your Signature: ____________________________

Signature Guarantee: ____________________________  (Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

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The initial principal amount of the Note will be $[ ]. The following increases or decreases in this Global Note have been made:

<table>
<thead>
<tr>
<th>Date of Exchange</th>
<th>Amount of decrease in Principal Amount of this Global Note</th>
<th>Amount in increase in Principal amount of this Global Note</th>
<th>Principal amount of this Global Note following such decrease or increase</th>
<th>Signature of authorized signatory of Trustee or Notes Custodian</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 3.7 or 3.9 of the Indenture, check the box:

☐ 3.7
☐ 3.9

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 3.7 or 3.9 of the Indenture, state the amount in principal amount (must be in denominations of $2,000.00 or integral multiples of $1.00 in excess thereof): $

Date: ____________________________  Your Signature: ____________________________
(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: ____________________________
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.
FORM OF CERTIFICATE OF TRANSFER

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: []
Attention: []

Ankura Trust Company, LLC
140 Sherman Street, Fourth Floor
Fairfield, CT 06824
Facsimile: []
Attention: Lisa Price

Re: % Second Lien Notes due 2024
(CUSIP )

Reference is hereby made to the Indenture, dated as of June 7, 2019, as amended or supplemented from time to time (this “Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), and ANKURA TRUST COMPANY, LLC, as trustee (in such capacity, the “Trustee”) and as collateral agent (in such capacity, the “Notes Collateral Agent”). Capitalized terms used but not defined herein will have the meanings given to them in the Indenture.

( the “Transferor”) owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $ in such Note[s] or interests (the “Transfer”), to (the “Transferee”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. o Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note pursuant to Rule 144A.
   The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the

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("Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2. ☐ Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3. ☐ Check and complete if Transferee will take delivery of a beneficial interest in the Unrestricted Global Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any
applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Issuers or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

4. ☐ Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.

(a) ☐ Check if Transfer is pursuant to Rule 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ Check if Transfer is pursuant to Regulation S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or

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Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ Check if Transfer is pursuant to other exemption. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

[Insert Name of Transferor]

By:

Name:
Title:

Dated:

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1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:
   (i) ☐ 144A Global Note (CUSIP [    ]), or
   (ii) ☐ Regulation S Global Note (CUSIP [    ]), or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:
   (i) ☐ 144A Global Note (CUSIP [    ]), or
   (ii) ☐ Regulation S Global Note (CUSIP [    ]), or
   (iii) ☐ Unrestricted Global Note (CUSIP [    ]), or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.
FORM OF CERTIFICATE OF EXCHANGE

Ankura Trust Company, LLC140 Sherman Street, Fourth Floor
Fairfield, CT 06824

Re: % Second Lien Notes due 2024

(CUSIP )

Reference is hereby made to the Indenture, dated as of June 7, 2019, as amended or supplemented from time to time (this “Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), and ANKURA TRUST COMPANY, LLC, as trustee (in such capacity, the “Trustee”) and as collateral agent (in such capacity, the “Notes Collateral Agent”). Capitalized terms used but not defined herein will have the meanings given to them in the Indenture.

The (the “Owner”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $ in such Note[s] or interests (the “Exchange”). In connection with the Exchange, the Owner hereby certifies that:

1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note**

   (a) ☐ Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note. In connection with the Exchange of the Owner’s beneficial

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interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the “Securities Act”), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b)  ☐ Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note. In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c)  ☐ Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note. In connection with the Owner’s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d)  ☐ Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note. In connection with the Owner’s Exchange of a Restricted Definitive Note for an Unrestricted

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Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes.

(a) ☐ Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note. In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner’s own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) ☐ Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note. In connection with the Exchange of the Owner’s Restricted Definitive Note for a beneficial interest in the [CHECK ONE] _ 144A Global Note, _ Regulation S Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

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This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

__________________________
[Insert Name of Transferor]

By:

__________________________
Name:
Title:

Dated:

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THIS [-] SUPPLEMENTAL INDENTURE, dated as of [-], 20[-] (this “Supplemental Indenture”), is by and among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), and ANKURA TRUST COMPANY, LLC, as trustee (in such capacity, the “Trustee”) and as collateral agent (in such capacity, the “Notes Collateral Agent”).

W I T N E S S E T H

WHEREAS, the Issuers and the Trustee are parties to an indenture dated as of June 7, 2019 (the “Indenture”), providing for the issuance of the Issuers’ 6% Second Lien Notes due 2024 (the “Notes”);

WHEREAS, Section 3.11 (Additional Guarantors) of the Indenture provides that under certain circumstances the New Guarantors will execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantors will unconditionally guarantee all of the Issuers’ obligations under the Notes and the Indenture on the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 9.1 (Amendments Without Consent of Holders) of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuers, the New Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of themselves and the Holders as follows:

1. **Capitalized Terms.** Capitalized terms used herein without definition will have the meanings assigned to them in the Indenture.

2. **Agreements to Become Guarantors.** Each of the New Guarantors hereby unconditionally guarantees the Issuers’ obligations for the due and punctual payment of the principal of, premium, if any, and interest on all the Notes, for all payment obligations under the Indenture and the performance and observance of each other obligation and covenant set forth in the Indenture to be performed or observed on the part of the Issuers, on the terms and subject to the conditions set forth in Article X (Guarantees) of the Indenture and agrees to be bound by all other provisions of the Indenture and the Notes applicable to a Subsidiary Guarantor therein.
3. **Ratification of Indenture; Supplemental Indenture Part of Indenture.** Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof will remain in full force and effect. This Supplemental Indenture will form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered will be bound hereby.

4. **No Recourse Against Others.** No manager, managing director, director, officer, employee, incorporator or holder of any Equity Interests in the Issuers, any Subsidiary or any Parent Entity, as such, will have any liability for any obligations of the Issuers or the New Guarantors under the Notes, the Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder, by accepting a Note, waives and releases all such liability. This waiver and release are part of the consideration for issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

5. **Notices.** For purposes of Section 13.1 (Notices) of the Indenture, the address for notices to each of the New Guarantors will be:

   Neiman Marcus Group LTD LLC
   One Marcus Square
   1618 Main Street
   Dallas, TX 75201
   Facsimile: (214) 743-7611
   Attention to: Tracy M. Preston

6. **Governing Law.** This Supplemental Indenture will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction.

7. **Counterparts.** The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a “pdf” or “tif”) will be effective as delivery of a manually executed counterpart thereof.

8. **Effect of Headings.** The section headings herein are for convenience only and will not affect the construction hereof.

9. **The Trustee and Notes Collateral Agent.** Neither the Trustee nor the Notes Collateral Agent will be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by each of the New Guarantors.
IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

THE NEIMAN MARCUS GROUP LTD LLC, as the Issuer

By:

Name: [ ]
Title: [ ]

MARIPOSA BORROWER, INC., as Corporate Co-Issuer

By:

Name: [ ]
Title: [ ]

THE NMG SUBSIDIARY LLC, as New Co-Issuer Subsidiary

By:

Name: [ ]
Title: [ ]

THE NEIMAN MARCUS GROUP LLC, as LLC Co-Issuer

By:

Name: [ ]
Title: [ ]

[ ], as a New Guarantor

By:

Name: [ ]
Title: [ ]
Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: []
Attention: []

Ankura Trust Company, LLC
140 Sherman Street, Fourth Floor
Fairfield, CT 06824
Facsimile: []
Attention: Lisa Price
Facsimile: []
Attention: []

Re: Exercise of Call Right under the Second Lien Notes Indenture with respect to 14.0% Second Lien Notes due 2024

Reference is hereby made to (i) that certain Credit Agreement, dated as of October 25, 2013 (as amended by (a) that certain Refinancing Amendment, dated as of March 13, 2014 and (b) that certain Extension Amendment and Amendment No. 2 to the Credit Agreement, dated as of June 7, 2019, and as further amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Amended Credit Agreement”), by and among Mariposa Intermediate Holdings LLC, Neiman Marcus Group LTD LLC, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent and (ii) that certain indenture, dated as of June 7, 2019, among Ankura Trust Company, LLC, the issuers party thereto and the guarantors party thereto from time to time (as amended, restated, supplemented or otherwise modified from time to time, the “Second Lien Notes Indenture”). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Amended Credit Agreement, the Amendment, and the Second Lien Notes Indenture, as applicable.

The undersigned 2019 Extending Term Lenders (the “Calling Lenders”) hereby exercise the Call Right pursuant to Section 2.18 of the Amended Credit Agreement and in accordance with Section 5.9 of the Second Lien Notes Indenture, which Call Right shall be consummated on [ ], 20 or such other date as the Calling Lenders and the Borrowers may agree, subject to the terms of the Amended Credit Agreement and the Second Lien Notes Indenture (the “Call Date”).
[NAME OF LENDER](8)

By: 

Name: 

Title: 

(8) To be signed by Calling Lenders or a representative thereof.

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THIS SUBLEASE (this “Sublease”) is made and entered into as of the day of , 2019, by and between [NMG NOTES PROPCO LLC] (9)/[NMG TERM LOAN PROPCO LLC](10), a Delaware limited liability company (hereinafter called “Sublandlord”), and , a (hereinafter called “Subtenant”);

W I T N E S S E T H:

WHEREAS, Sublandlord is a wholly-owned subsidiary of Subtenant;

WHEREAS, Subtenant was party as tenant to that certain [lease, sublease or sub-sublease], dated [ ] with , a as landlord (“Landlord”), as more particularly described on Exhibit A annexed hereto and made a part hereof (hereinafter called the “Prime Lease”);

WHEREAS, Subtenant, as the prior tenant under the Prime Lease, leased the demised premises located at (the “Leased Premises”);

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant, the Leased Premises, of which Subtenant is currently in possession and on which Subtenant is currently operating a [Neiman Marcus] [Bergdorf Goodman] store (hereinafter, the “Store”), all upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. Demise; Use. Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord the Leased Premises for the term and rental and upon the other terms and conditions hereinafter set forth, to be used solely for the purposes permitted under the Prime Lease, including operating the Store in accordance with all operating covenants and requirements (including with respect to trade name) of the Prime Lease.

2. Term. The term (the “Term”) of this Sublease shall commence on , 2019 (the “Commencement Date”) and, unless sooner terminated pursuant
to the provisions hereof, shall terminate on the earlier of the one-year anniversary of the Commencement Date (such date, and each applicable subsequent anniversary following an extension pursuant to the proviso to this sentence, the “Scheduled Expiry Date”) and the prior termination of the term of the Prime Lease for any reason whatsoever; provided, the Term shall automatically be extended by an additional year after the Scheduled Expiry Date (subject to prior termination of the Prime Lease) if neither party has delivered to the other written notice of its intent to terminate this Sublease at least ten (10) business days prior to the Scheduled Expiry Date.

3. **Base Rent.**

   (a) Subtenant shall pay to Landlord directly on behalf of Sublandlord annual fixed rental (hereinafter called “Base Rent”) for the Leased Premises equal to the [Base Rent] (as defined in the Prime Lease) payable by Sublandlord to Landlord under the Prime Lease. Base Rent shall be due and payable pursuant to the terms and provisions of the Prime Lease.

   (b) All Base Rent and Additional Rent (as defined below) shall be paid directly to Landlord at the address designated under the Prime Lease or by notice from Landlord or at such other place as Sublandlord may designate by notice to Subtenant.

4. **Additional Rent; Payments; Interest.**

   (a) In addition to Base Rent, Subtenant shall also pay to Sublandlord all other charges, costs, expenses, fees and other amounts, including real property taxes and assessments, sewer rents, utilities, common area charges, and percentage or contingent rent, including late payments, interest, and costs and fees of collection, including attorney fees (collectively “Additional Rent”) payable by Sublandlord under the Prime Lease. Without limiting the foregoing, Subtenant shall maintain and provide to Landlord all reports and accountings with respect to rent, issues and profits and percentage rent of Subtenant with respect to the Leased Premises required under the Prime Lease.

   (b) Each amount due pursuant to Subsection 4(a) above and each other amount payable by Subtenant hereunder, unless a date for payment of such amount is provided for elsewhere in this Sublease, shall be due and payable no later than the date on which any such amount is due and payable under the Prime Lease.

   (c) All amounts other than Base Rent payable to, or on behalf of, Sublandlord under this Sublease shall be deemed to be additional rent due under this Sublease. All past due installments of Base Rent and additional rent shall bear interest from the date that is the earlier of the date provided in the Prime Lease for the applicable payment or five (5) business days following receipt of written notice thereof from Sublandlord until paid at the rate per annum equal to the greater of the rate provided in the Prime Lease or three percent (3%) in excess of the Prime Rate (as hereinafter defined) (the “Default Rate”) in effect from time to time, which rate shall change from time to time as of the effective date of each change in the Prime Rate, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged. For the purposes of this Sublease, the term “Prime Rate” shall mean the base rate on corporate
loans at large U.S. money centers or commercial banks as published from time to time by the Wall Street Journal.

(d) As and to the extent provided in the Prime Lease or as Landlord and Subtenant may otherwise agree, Subtenant shall pay Landlord on the due dates as provided in the Prime Lease or as otherwise agreed by the parties, for all services requested by Subtenant which are billed by Landlord directly to Subtenant rather than Sublandlord, all of which shall constitute Additional Rent.

5. **Condition of Leased Premises.** Subtenant, as the present occupant and operator of the Leased Premises, acknowledges and agrees that it takes the Leased Premises “as is”, “where is” and “with all faults”, and that Sublandlord does not make any warranties, representations or promises with respect to the Leased Premises or the Prime Lease of any kind whatsoever, express or implied, including without limitation with respect to state of title, physical condition or environmental condition, or fitness for any particular use. Subtenant’s taking possession of the Leased Premises pursuant to this Sublease shall be conclusive evidence as against Subtenant that the Leased Premises were in good order and satisfactory condition when Subtenant took possession. No promise of Sublandlord to alter, remodel or improve the Leased Premises, except as may be expressly provided herein, and no representation respecting the condition of the Leased Premises have been made by Sublandlord to Subtenant. Upon the expiration of the term hereof, or upon any earlier termination of the term hereof or of Subtenant’s right to possession (including any rejection of this Sublease in bankruptcy), Subtenant shall surrender the Leased Premises in the condition required pursuant to the Prime Lease (including environmental matters).

6. **The Prime Lease.**

(a) This Sublease and all rights, privileges and interests of Subtenant hereunder and with respect to the Leased Premises are subject to all of the terms, conditions, covenants, warranties, representations and provisions of the Prime Lease. Notwithstanding any provision to the contrary in the Assignment, as between Sublandlord and Subtenant, Subtenant hereby assumes and agrees to perform faithfully and be bound by, with respect to the Leased Premises, all of Sublandlord’s obligations, warranties, representations, covenants, agreements, provisions and liabilities under the Prime Lease and all terms, conditions, provisions and restrictions contained in the Prime Lease. Without limitation of the foregoing:

(i) Subtenant shall not make any changes, alterations or additions in or to the Leased Premises except as otherwise expressly provided in the Prime Lease or herein;

(ii) If Subtenant desires to take any other action and the Prime Lease would require that Sublandlord obtain the consent of Landlord before undertaking any action of the same kind, Subtenant shall not undertake the same without the prior written consent of Landlord and Sublandlord. Sublandlord may condition its consent on the consent of Landlord being obtained and may require Subtenant to contact Landlord directly for such consent. All such consents shall be at the sole cost and expense of Subtenant;

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Sublandlord shall have the right during all normal business hours upon reasonable prior notice to Subtenant to enter upon and inspect the Leased Premises. Without limiting the foregoing, all rights given to Landlord and its agents and representatives by the Prime Lease to enter and/or inspect the Leased Premises shall inure to the benefit of Sublandlord and their respective agents and representatives with respect to the Leased Premises;

Sublandlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Landlord under the Prime Lease;

Subtenant shall maintain insurance of the kinds and in the amounts required to be maintained by Sublandlord under the Prime Lease; and

Subtenant shall not do anything or suffer or permit anything to be done which could result in a default or breach under the Prime Lease or permit the Prime Lease, with the passage of time or the service of notice or both, to be cancelled or terminated (or which could limit or prohibit Sublandlord from exercising any option or right of renewal, first negotiation, first refusal or right of expansion under the Prime Lease).

In addition to the other covenants and obligations under this Sublease and the Prime Lease as incorporated herein, and without limitation of the foregoing, Sublandlord agrees as follows, subject in each case to the due and punctual performance and observance of all covenants and obligations of Subtenant hereunder:

Sublandlord shall not do anything which could reasonably be expected to result in a default under the Prime Lease; provided, however, that Sublandlord shall not be in default of this covenant to the extent the default under the Prime Lease is caused or attributable (in whole or in part) by Subtenant, its shareholders, partners, members, directors, officers, employees, agents, customers or invitees.

Sublandlord shall not amend, modify or terminate the Prime Lease, without the prior written consent of Subtenant, which may be withheld in its sole discretion to the extent the same could increase Subtenant’s liabilities or obligations under this Sublease.

If any action to be taken by Subtenant or any other matter would require the consent or approval of Sublandlord under this Sublease, but not Landlord under the Prime Lease, Sublandlord’s consent or approval shall not be unreasonably withheld, conditioned or delayed. If any action to be taken by Subtenant or any other matter would require the consent or approval of Landlord under the Prime Lease, (i) Sublandlord shall be deemed to have consented to or approved such request if Landlord consents to or approves the same, and (ii) Sublandlord shall be deemed not to have consented to or approved such request if Landlord does not consent to or approve the same.
(c) Notwithstanding anything contained herein or in the Prime Lease which may appear to be to the contrary, Sublandlord and Subtenant hereby agree as follows:

(i) Subtenant shall not assign, mortgage, pledge, hypothecate, or otherwise transfer or permit the transfer of this Sublease or any interest of Subtenant in this Sublease, directly or indirectly, by operation of law or otherwise, or permit the use of the Leased Premises or any part thereof by any persons other than Subtenant and Subtenant’s employees, or sublet the Leased Premises or any part thereof;

(ii) in the event of any condemnation or casualty damage or destruction of the Leased Premises, Sublandlord shall have no obligation to restore the Leased Premises, all such obligations (if any) of Sublandlord as the tenant under the Prime Lease (if any) to be performed by Subtenant; provided that neither rental nor additional rent or other payments hereunder shall abate or be suspended by reason of any condemnation, damage to or destruction of the Leased Premises or any part thereof, unless, and then only to the extent that, rental and additional rent and such other payments actually abate under the Prime Lease with respect to the Leased Premises on account of such event;

(iii) Subtenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Leased Premises;

(iv) Subtenant shall not have any right to exercise or have Sublandlord exercise any option under the Prime Lease, including, without limitation, any option or right of first refusal, first negotiation or first offer to extend the term of the Prime Lease or lease additional space; and

(v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of the Prime Lease shall, in all instances, govern and control.

(d) It is expressly understood and agreed that Sublandlord does not assume and shall not have any of the obligations or liabilities of Landlord under the Prime Lease and that Sublandlord is not making the representations or warranties, inducements, rent or other concessions or abatements, allowances, tenant improvements or landlord’s work, if any, made by Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Landlord under the Prime Lease, Sublandlord’s sole obligation with respect thereto shall be to request the same, upon written request from Subtenant, and to use reasonable efforts to obtain the same from
Landlord. Sublandlord shall not be liable in any respect, in damages or otherwise, nor shall rent abate hereunder, for or on account of any failure by Landlord to perform the obligations and duties imposed on it under the Prime Lease.

(e) Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Landlord, unless Subtenant attorns to Landlord by written instrument.

(f) Nothing contained in this Sublease shall be construed to release the Sublandlord of any of its obligations or liabilities owed to Landlord under the Prime Lease.

7. **Default by Subtenant**

(a) Upon the happening of any of the following:

(i) Subtenant fails to pay any Base Rent or Additional Rent within five (5) days after the date it is due;

(ii) Subtenant fails to pay any other amount due from Subtenant hereunder and such failure continues for five (5) business days after notice thereof from Sublandlord to Subtenant;

(iii) Subtenant fails to perform or observe any other covenant, obligation or agreement set forth in this Sublease and such failure continues until the earlier of (1) ten (10) business days after notice thereof from Sublandlord to Subtenant or (2) any earlier date specified for default under the Prime Lease, any Superior Interest or any Ancillary Document, as the case may be; or

(iv) any other event occurs which involves Subtenant or the Leased Premises or any part thereof and which would constitute a default under the Prime Lease if it involved Sublandlord (or any agent, representative, officer, director, manager or shareholder of Subtenant) or the Leased Premises, subject to any notice and cure periods thereunder;

Subtenant shall be deemed to be in default hereunder, and Sublandlord may exercise, without any further demand or notice, and without limitation of any other rights and remedies available to it hereunder or at law or in equity, all of which rights are hereby expressly reserved, any and all of the equivalent rights and remedies of Landlord set forth in the Prime Lease with respect to the Leased Premises in the event of a default by Sublandlord thereunder (including without limitation the right to terminate this Sublease and recover possession of the Leased Premises free of all rights and interests of Subtenant).

(b) In the event Subtenant fails or refuses to make any payment or perform any covenant, obligation or agreement to be performed hereunder by Subtenant, Sublandlord may make such payment or undertake to perform such covenant, obligation or agreement (but shall not have any obligation to Subtenant to do so). In such event, all amounts so paid and all amounts expended in undertaking such performance, together with all costs,
expenses and reasonable attorneys' fees incurred by Sublandlord or Landlord in connection therewith, together with interest at the Default Rate, shall be additional rent hereunder.

8. **Nonwaiver.** Failure of Sublandlord to declare any default or delay in taking any action, or partial exercise of any rights or remedies, in connection therewith shall not waive such default. No receipt of moneys or performance of obligations by Sublandlord from Subtenant after the termination in any way of the term or of Subtenant’s right of possession hereunder or after the giving of any notice of termination or eviction shall reinstate, continue or extend the term or Subtenant’s right of occupancy or possession or affect any notice given to Subtenant or any suit commenced or judgment entered prior to receipt of such moneys or performance of obligations.

9. **Cumulative Rights and Remedies.** All rights and remedies of Sublandlord under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

10. **Waiver of Claims and Indemnity.**

   (a) Subtenant hereby releases and waives any and all claims against Landlord and Sublandlord and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Leased Premises by Subtenant other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under applicable law.

   (b) Subtenant agrees to indemnify, defend and hold harmless Landlord and its beneficiaries, Sublandlord and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, liabilities, costs and expenses of every kind and nature, including reasonable attorneys’ fees and litigation expenses, arising out of or with respect to or from Subtenant’s use, possession or occupancy (or rights thereto) of the Leased Premises (including such use, possession or occupancy by Subtenant prior to the commencement of the Term in its capacity as prior tenant under the Prime Lease), or any events or occurrences on, under, or about the Leased Premises, Subtenant’s construction or authorization of any work or leasehold improvements in the Leased Premises or from any breach or default on the part of Subtenant in the performance of any agreement, covenant, obligation, warranty or representation of Subtenant to be performed or performed under this Sublease or pursuant to the terms of this Sublease, or from any act or neglect of Subtenant or its agents, officers, employees, guests, servants, invitees or customers in or about the Leased Premises, other than by reason of gross negligence or willful misconduct on the part of any of the foregoing indemnitees. In case any action or proceeding is brought against any of said indemnified parties, Subtenant covenants, if requested by Sublandlord, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Sublandlord (and, if provided in the Prime Lease, by Landlord).

   (c) Subtenant acknowledges that prior to the assignment to, and assumption by, Sublandlord of the Prime Lease, Subtenant was the tenant under the Prime Lease, and agrees that all of Subtenant’s liabilities and obligations under this Sublease, including,
without limitation, Subtenant’s indemnification obligations under Section 10(b), shall apply to the extent such liabilities or obligations arise from any matter first arising or accruing during Subtenant’s tenancy and occupancy of the Leased Premises under the Prime Lease (the “Subtenant Occupancy Period”). Sublandlord acknowledges and agrees that such obligations of Subtenant shall not apply to any matter first arising or accruing during the period of time (i) prior to the Subtenant Occupancy Period, or (ii) after the expiration or earlier termination of the Term of this Sublease, except to the extent such liabilities or obligations expressly survive such expiration or termination.

11. Waiver of Subrogation. Anything in this Sublease to the contrary notwithstanding, Sublandlord and Subtenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Subtenant hereby waives any and all rights of recovery, claims, actions or causes of action against Landlord and its agents and employees for any loss or damage that may occur to the Leased Premises, or any improvements thereto, or any personal property of any person therein, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies.

12. Successors and Assigns. This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublandlord and shall be binding upon and inure to the benefit of the successors of Subtenant and, to the extent any such assignment may be approved, Subtenant’s assigns. The provisions of Subsection 6(e) and Sections 10 and 11 hereof shall inure to the benefit of the successors and assigns of Landlord.

13. Entire Agreement. This Sublease contains all the terms, covenants, conditions and agreements between Sublandlord and Subtenant relating in any manner to the rental, use and occupancy of the Leased Premises. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublandlord and Subtenant.


(a) In the event any notice from the Landlord or otherwise relating to the Prime Lease is delivered to the Leased Premises or is otherwise received by Subtenant, Subtenant shall, as soon thereafter as possible deliver such notice to Sublandlord if such notice is written or advise Sublandlord thereof by telephone if such notice is oral.

(b) Notices and demands required or permitted to be given by either party to the other with respect hereto or to the Leased Premises shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided, however, that all
notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:

if to Sublandlord:  [ ]
One Marcus Square
1618 Main Street
Dallas, Texas 75201
Attention: Tracy M. Preston, Esq.
Facsimile: (214) 743-7611

if to Subtenant:  [ ]
One Marcus Square
1618 Main Street
Dallas, Texas 75201
Attention: Tracy M. Preston, Esq.
Facsimile: (214) 743-7611

Notices and demands shall be deemed to have been given two (2) days after mailing, if mailed, or, if made by personal delivery or by overnight air courier service, then upon such delivery. Either party may change its address for receipt of notices by giving notice to the other party.

15. **Electronic Transmission; Counterparts.** Sublandlord and Subtenant may deliver executed signature page(s) to this Sublease by electronic transmission to the other party, which electronic copy shall be deemed to be an original executed signature page. This Sublease may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

16. **Superior Interests; Ancillary Documents.** Except as expressly provided herein to the contrary, Subtenant acknowledges and agrees that this Sublease is expressly subject and subordinate to, and Subtenant shall observe and perform, Sublandlord’s obligations with respect to, (a) all superior fee, leasehold and mortgage or security interests affecting the Leased Premises (collectively, “Superior Interests”) existing as of the date hereof until such time as such Superior Interests are terminated or released, (b) all future Superior Interests to the extent expressly provided in Superior Interests existing as of the date hereof until such time as such future Superior Interests are terminated or released, and (c) all ancillary agreements and documents (including, without limitation, reciprocal easement and/or operating agreements affecting the Lease Premises as of the date hereof (including any of the same identified on Exhibit A, collectively, the “Ancillary Documents”)), as all such Superior Interests and Ancillary Documents may hereinafter be amended or supplemented from time to time.

[Signature Pages Follow]

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IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

SUBLANDLORD: [NMG NOTES PROPCO LLC] / [NMG TERM LOAN PROPCO LLC]

By: ________________________________
    Its: ________________________________

SUBTENANT: ________________________________

By: ________________________________
    Its: ________________________________

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Exhibit A
Ancillary Documents
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SECOND LIEN NOTES COLLATERAL AGREEMENT,
 dated as of June 7, 2019,

among

each Grantor party hereto

and

ANKURA TRUST COMPANY, LLC,
as Trustee and as Collateral Agent

Reference is made to the ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “ABL/Term Loan/Notes Intercreditor Agreement”), among Deutsche Bank AG New York Branch as ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Term Loan Agent (as defined therein), Ankura Trust Company, LLC, as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings (as defined therein), the Issuers and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement, the provisions of the ABL/Term Loan/Notes Intercreditor Agreement shall control.

Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder are subject to the provisions of the Junior Lien Intercreditor Agreement, dated as of June 7, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Junior Lien Intercreditor Agreement”), among CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Initial First Lien Representative, CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Initial First Lien Collateral Agent, ANKURA TRUST COMPANY, LLC, as Initial Second Lien Representative, ANKURA TRUST COMPANY, LLC, as Initial Second Lien Collateral Agent, WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.000% Notes Representative, WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.750% Notes Representative, WILMINGTON TRUST, NATIONAL ASSOCIATION, as Initial Third Lien Collateral Agent and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Junior Lien Intercreditor Agreement and this Agreement, the terms of the Junior Lien Intercreditor Agreement shall govern and control.
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SECOND LIEN NOTES COLLATERAL AGREEMENT dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “Grantor” and, collectively, the “Grantors”) and ANKURA TRUST COMPANY, LLC, as Trustee (in such capacity, the “Trustee”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “Collateral Agent”).

RECITALS

(1) Reference is made to that certain Indenture, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time and the Trustee, governing the 14.00% Second Lien Notes due 2024 (the “Notes”) of the Issuers.

(2) The Grantors will derive substantial benefits from the issuance and sale of such notes pursuant to the Indenture and in consideration thereof has agreed to secure its obligations under the Notes Documents, as set forth herein.

AGREEMENT

Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Indenture.

(a) Unless otherwise defined herein, terms defined in the Indenture and used herein have the meanings assigned to them in the Indenture, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, As-Extracted Collateral, Authenticate, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Deposit Account, Documents, Electronic Chattel Paper, Entitlement Order, Equipment, Farm Products, Financial Asset, Fixtures, Goods, Health-Care-Insurance Receivable, Instruments, Inventory, Letter of Credit Rights, Manufactured Homes, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) The rules of construction specified in Section 1.3 of the Indenture also apply, mutatis mutandis, to this Agreement.
SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Agreement” has the meaning assigned to such term in the introductory paragraph hereto.

“Article 9 Collateral” has the meaning assigned to such term in Section 4.01(1).

“Collateral” means the collective reference to Article 9 Collateral and Pledged Collateral.

“Collateral Agent” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Consignment Inventory” means any Inventory held by a Grantor on a consignment basis, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Grantors and their Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the applicable Grantor identifies such proceeds as such through a method of tracing.

“Control” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“Copyrights” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

(1) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;
all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;

all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“DDA” means any checking or other demand deposit account maintained by the Grantors.

“Event of Default” means an “Event of Default” as defined in the Indenture.

“Excluded Accounts” means any DDA, Securities Account, Commodity Account or any other Deposit Account of any Grantor (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of $500,000, or in the aggregate with each other account described in this clause (1), in excess of $5.0 million; (2) the balance of which is swept at the end of each Business Day into a Deposit Account, Securities Account or Commodity Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account, Securities Account or Commodity Account is swept into another Deposit Account, Securities Account or Commodity Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account (as defined in the ABL Credit Agreement) or Designated Disbursement Account (as defined in the ABL Credit Agreement); or (4) to the extent that it is cash collateral for letters of credit to the extent permitted under Section 3.5 of the Indenture; provided, in no event shall any Controlled Account be an Excluded Account.

“Federal Securities Laws” has the meaning assigned to such term in Section 5.03.

“Grantor” and “Grantors” have the meanings assigned to such terms in the introductory paragraph to this Agreement. For the avoidance of doubt, “Grantors” shall not include Extended Term Loan PropCo or Notes PropCo.

“Indenture” has the meaning assigned to such term in the recitals to this Agreement.

“Intellectual Property” means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.
“Intellectual Property Collateral” has the meaning assigned to such term in Section 4.02(8).

“Intellectual Property Security Agreement” means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.

“Intercreditor Agreement” means each of the ABL/ABL/Notes Intercreditor Agreement and the Junior Lien Intercreditor Agreement.

“IP Agreements” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including the agreements set forth on Schedule II hereto.

“Leased-Department Inventory” means any Inventory relating to a leased department within one of the Grantors’ retail stores, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Grantors and their Subsidiaries prepared in accordance with GAAP).

“Leased-Department Proceeds” means any proceeds from the sale of any Leased-Department Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Leased-Department Inventory and that the Grantor identifies such proceeds as such through a method of tracing.

“Material Adverse Effect” means a material adverse effect on:

1. the business, financial condition or results of operations, in each case, of the Note Parties and their Restricted Subsidiaries (taken as a whole);
2. the ability of the Note Parties (taken as a whole) to perform their payment obligations under the Notes Documents; or
3. the rights and remedies of the Trustee and the Holders (taken as a whole) under the Notes Documents.

“Patent License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.

“Patents” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

1. all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all
applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II:

(2) all provisional, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Pledged Collateral” has the meaning assigned to such term in Section 3.01(5).

“Pledged Debt Securities” has the meaning assigned to such term in Section 3.01.

“Pledged Securities” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Pledged Stock” has the meaning assigned to such term in Section 3.01.

“Secured Obligations” means the “Note Obligations” as defined in the Indenture.

“Secured Parties” means the Trustee, the Collateral Agent, the other Agents and the Holders.

“Security Interest” has the meaning assigned to such term in Section 4.01(1).

“Termination Date” means the date on which the principal of and interest on the Notes, all fees and all other expenses or amounts payable under the Notes Documents have been paid in full (other than in respect of contingent indemnification and expense reimbursement claims not then due).

“Trademark License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

“Trademarks” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

(1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature,
now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for "intent-to-use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an "intent-to-use" application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II:

(2) all goodwill associated therewith or symbolized thereby;

(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

"Trust Account" means any accounts or trusts used solely to hold Trust Funds.

"Trust Funds" means cash, cash equivalents or other assets comprised of:

(1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Grantor’s employees;

(2) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer’s share thereof)); and

(3) any other funds which a Grantor or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary.

"Trustee" has the meaning assigned to such term in the introductory paragraph to this Agreement.

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.
ARTICLE II
[RESERVED]

ARTICLE III
PLEDGE OF SECURITIES

SECTION 3.01. Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

(1) the Equity Interests (a) directly owned by such Grantor as of the Issue Date and (b) obtained by such Grantor after the Issue Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Stock”);

(2) the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Issue Date and (b) issued to such Grantor after the Issue Date, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Debt Securities”);

(3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);

(4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and

(5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.01, collectively, the “Pledged Collateral”).

Notwithstanding anything to the contrary in this Agreement or any other Notes Document, none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Indenture.
SECTION 3.02. Delivery of the Pledged Collateral.

(1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.

(2) Each Grantor will use its commercially reasonable efforts to cause (x) any Indebtedness for borrowed money having an aggregate principal amount in excess of $5.0 million owed to such Grantor by any Person and (y) accrued intellectual property royalties and other amounts owing to NM Nevada Trust (regardless of whether classified as current), to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof; provided that the foregoing requirement will not apply to intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Issuers and their Subsidiaries. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

(3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement will be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor. Each delivery of Pledged Securities will be accompanied by a schedule describing the securities, which schedule will be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided that failure to attach any such schedule hereto will not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered will supplement any prior schedules so delivered.

(4) Notwithstanding anything to the contrary in this Agreement or any other Notes Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

SECTION 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants and covenants to and with the Collateral Agent, for the benefit of the Secured Parties that:

(1) Schedule I correctly sets forth, as of the Issue Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments
evidencing Indebtedness required to be pledged pursuant to the terms of the Indenture on the Issue Date;

(2) the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Issuer or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Issuer or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

(3) except for the security interests granted hereunder, each Grantor:

   (a) is and, subject to any transfers made in compliance with the Indenture, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;

   (b) holds the same free and clear of all Liens, other than Permitted Liens;

   (c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Indenture and other than Permitted Liens; and

   (d) subject to the rights of such Grantor under the Notes Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all Persons;

(4) other than as set forth in the Indenture or the schedules thereto, and except for restrictions and limitations imposed by the Notes Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Indenture, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Issue Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect
the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(6) other than as set forth in the Indenture or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(7) as of the Issue Date, this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof;

(8) as of the Issue Date, none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction; and

(9) the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary of any Grantor whose Equity Interests are, or are required to be, Collateral hereunder in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Grantor shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby to maintain the security interest of the Collateral Agent therein as a valid, perfected security interest with the Required Collateral Lien Priority, and subject to the relative priorities set forth in the Intercreditor Agreements.

SECTION 3.04. Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 3.05. Voting Rights; Dividends and Interest, Etc..

(1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder:
(a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Indenture and the other Notes Documents; provided that, except as permitted under the Indenture, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Indenture or any other Notes Document or the ability of the Secured Parties to exercise the same;

(b) the Collateral Agent will, at the cost and expense of the requesting Grantor, promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and

(c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Indenture, the other Notes Documents and applicable laws; provided that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent).

(2) Upon the occurrence and during the continuance of an Event of Default and after at least one (1) Business Day’s prior written notice by the Collateral Agent to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent,
which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; provided, however, that even after the occurrence and during the continuance of an Event of Default and such one (1) Business Day’s prior written notice, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclause (b)(vi)(A), subclause (b)(vi)(C) and subclause (b)(vi)(E) of Section 3.4 of the Indenture.

(3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (3), subject to the Intercreditor Agreements, will be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and will be applied in accordance with the provisions of Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.

(4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to the Intercreditor Agreements); provided that the Collateral Agent will have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

ARTICLE IV
SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

SECTION 4.01. Security Interest.

(1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors.
and permitted assigns, for the benefit of the Secured Parties, a security interest (the “Security Interest”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Article 9 Collateral”):

(a) all Accounts;
(b) all Chattel Paper;
(c) all cash and Deposit Accounts;
(d) all Documents;
(e) all Equipment;
(f) all General Intangibles;
(g) all Instruments;
(h) all Inventory;
(i) all Investment Property;
(j) all Letter of Credit Rights;
(k) all Intellectual Property;
(l) all Commercial Tort Claims, including those described on Schedule IV hereto;
(m) each of the following:
   (i) Securities Accounts;
   (ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;
   (iii) all cash held in any Securities Account or Deposit Account; and
   (iv) all other Money in the possession of the Collateral Agent;
   (v) all books and Records pertaining to the Article 9 Collateral; and
   (vi) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Notes Document, the Article 9 Collateral will not include, this Agreement will not constitute a grant of a
security interest in and the security interest granted hereunder will not attach to, any Excluded Asset.

(2) Each Grantor hereby agrees to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:

(a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;
(b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and
(c) a description of collateral that describes such property in any other manner as is reasonably necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide stamped copies of such filings to the Collateral Agent promptly following such filings.

(3) The Grantor will also file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Grantor.

(4) Notwithstanding anything to the contrary in this Agreement or any other Notes Document (but subject to Section 4.03(11) hereof), no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.

(5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(6) Notwithstanding anything to the contrary in any Notes Document, no Grantor will be required:

(a) subject to clause (b) below, to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):

(i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;

(iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of $5.0 million; provided that such delivery shall not be required with respect to:

(A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;

(B) checks received in the ordinary course of business; and

(C) notes and debt securities issued in connection with the extension of trade credit by a Grantor in each case with a duration of not more than 364 days;

(iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral; and

(v) entering or causing to be entered into any Control Agreements or similar arrangements with respect to any Controlled Accounts;

and (b) except as set forth in Section 4.03(11) hereof to take any actions outside the United States to create or perfect any security interests in any Collateral (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction except as contemplated by Section 4.03(11) hereof).

SECTION 4.02. Representations and Warranties. Each Grantor represents and warrants to the Collateral Agent and the Secured Parties that:

(1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Indenture.

(2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Grantors for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Issue Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.
Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Issue Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Issue Date for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.

The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest has and shall have the Required Collateral Lien Priority on any of the Article 9 Collateral subject to Permitted Liens.

The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Issue Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.

None of the Grantors holds any Commercial Tort Claim individually in excess of $5.0 million as of the Issue Date except as indicated on Schedule IV.

The names of the obligors, amounts owing, due dates and other information with respect to each Grantor’s Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Collateral Agent by such Grantor from time to time.

As to itself and its Article 9 Collateral consisting of Intellectual Property (the “Intellectual Property Collateral”), to each Grantor’s knowledge, as of the Issue Date:
The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, registered Trademarks and registered Copyrights owned by such Grantor as of the date hereof (including all such registered with the United States Patent and Trademark Office or United States Copyright Office);

The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;

Such Grantor has made or performed in the ordinary course of Grantor’s business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.

Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

SECTION 4.03. Covenants.

(1) Each Grantor agrees to furnish to the Collateral Agent five Business Days prior written notice of any change in such Grantor’s:

(a) corporate or organization name;

(b) organizational structure;
(d) organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number.

No Grantor will effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Grantor.

(2) Subject to the rights of such Grantor under the Notes Documents to dispose of Collateral and except as would otherwise be permitted by the Indenture, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent, for the benefit of the Secured Parties, in the Article 9 Collateral and the Required Collateral Lien Priority thereof against any Lien that is not a Permitted Lien.

(3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as may from time to time be reasonably necessary to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.

(4) If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of $5.0 million is or becomes evidenced by any promissory note or other instrument, such note or instrument, subject to the Intercreditor Agreements, will be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed to the Collateral Agent.

(5) After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.

(6) After the occurrence of an Event of Default and during the continuance thereof, none of the Grantors will, without the Collateral Agent’s prior written consent, acting at the direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes, grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount
thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with prudent business practices or as otherwise permitted under the Indenture.

(7) At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Indenture or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Notes Documents.

(8) Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.

(9) Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor’s true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

(10) In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Indenture or to pay any premium in whole or part relating thereto, the Collateral Agent may, after the occurrence and during the continuance of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys’ fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

(11) Notwithstanding anything herein to the contrary, no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside
of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case, other than with respect to (1) debt or Equity Interests acquired pursuant to a Permitted Acquisition and (2) Foreign Subsidiaries that are or will become Subsidiary Guarantors; provided, however, that (i) in the event an Officer of a Grantor (reasonably and in good faith) and the Extended Term Loan Agent mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking perfections steps in any such foreign jurisdictions outweighs the benefit afforded thereby to the Secured Parties or obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security Documents nor creation or the taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Grantor and (ii) notwithstanding anything to the contrary contained herein or in any other Notes Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this Section 4.03(11), the Grantors shall prepare Security Documents and/or make filings or take perfection actions or steps in accordance with the “Agreed Security Principles” and on a reasonable and customary timeline agreed between an Officer of a Grantor (reasonably and in good faith) and the Extended Term Loan Agent, and taking into account the Required Collateral Lien Priority; provided that the deadlines to enter into such Security Documents and/or make such filings or take such perfection actions or steps shall be 10 calendar days after the corresponding deadlines for Extended Term Loans (in each case subject to extension by the Collateral Agent, acting at the direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes).

SECTION 4.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, for the benefit of the Secured Parties, the Collateral Agent’s security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor’s own expense, to take the following actions with respect to the following Article 9 Collateral:

1. **Instruments and Tangible Chattel Paper.** If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of $5.0 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements), accompanied by instruments of transfer or assignment duly executed in blank.

2. **Investment Property.** Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements), accompanied by instruments of transfer or assignment duly executed in blank. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof,
such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall pursuant to an agreement, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) as to such security, without further consent of any Grantor or such nominee or (b) cause the issuer to register the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) as the registered owner of such security.

(3) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim with an asserted or nominal value in excess of $5.0 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement.

SECTION 4.05. Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by the Indenture:

(1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor’s business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.

(2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor’s business:

(a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
(b) maintain the quality of products and services offered under such Trademark;
(c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
(d) not knowingly use or knowingly permit its licensees’ use of such Trademark in violation of any third-party rights.

(3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.
Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, regarding such Grantor’s ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.

Each Grantor, either itself or through any agent, employee, licensee or designee, will execute and deliver any and all agreements, instruments, documents and papers (and substantially equivalent agreements, documents and papers as are executed and delivered with respect to any Credit Agreement) reasonably necessary to evidence the Collateral Agent’s security interest in each Patent, Trademark, or Copyright listed in a list of new Patents, Trademarks or Copyrights which shall be furnished to the Collateral Agent at the same time as the annual financial statements provided pursuant to Section 3.2(a) of the Indenture.

Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor’s business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor’s reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

SECTION 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent’s rights and remedies hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and the Junior Lien Intercreditor Agreement, (2) prior to the Discharge of ABL Claims, any obligation hereunder to physically deliver any ABL Priority Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the ABL Collateral Agent, acting as gratuitous bailee for the Collateral Agent in accordance with the ABL/Term Loan/Notes Intercreditor Agreement and (3) any obligation hereunder to physically deliver any Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the Senior Priority Collateral Agent (as defined in the Junior Lien Intercreditor Agreement), acting as gratuitous bailee for the Collateral Agent in accordance with the Junior Lien Intercreditor Agreement. The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights.
and remedies hereunder (as a result of the terms of the Intercreditor Agreements or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement regarding the relative priorities of the ABL Collateral Agent, the Collateral Agent, the New Second Lien Notes Agent and the New Third Lien Notes Agent in the Collateral, the terms of the ABL/Term Loan/Notes Intercreditor Agreement shall govern and control. In the event of any conflict or inconsistency between the terms of the Junior Lien Intercreditor Agreement and this Agreement regarding the relative priorities of the Collateral Agent, the Initial Second Lien Representative and the Initial Third Lien Representative in the Collateral, the terms of the Junior Lien Intercreditor Agreement shall govern and control. Terms used but not defined in this Section 4.06 shall be as defined in the applicable Intercreditor Agreement.

ARTICLE V

REMEDIES

SECTION 5.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law, to take any of or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker’s board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to Persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay,
The Collateral Agent shall give the applicable Grantors ten Business Days’ written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent’s intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker’s board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels in the Collateral Agent’s own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Article V hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially

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Without limiting any other rights of the Collateral Agent granted pursuant to this Agreement, each Grantor hereby grants to the Collateral Agent, and the representatives and independent contractors of the Collateral Agent, a royalty free, non-exclusive, irrevocable license (such license to be effective upon the occurrence and during the continuance of any Event of Default), to use, apply, and affix any Trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent’s enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

SECTION 5.02. Application of Proceeds.

(1) Subject to the terms of the Intercreditor Agreements, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the following order of priority:

(a) first, to all amounts owing to the Collateral Agent or the Trustee pursuant to any of the Notes Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in the Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Notes Documents;

(b) second, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to the Trustee, the Collateral Agent or any other Agent pursuant to any of the Notes Documents in its capacity as such;

(c) third, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the Secured Obligations with each Secured Party receiving an amount equal to its outstanding Secured Obligations or, if the proceeds are insufficient to pay in full all such Secured Obligations, its pro rata share of the amount remaining to be distributed; and

(d) fourth, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Grantor, their successors or assigns, or as a court of competent jurisdiction may otherwise direct or as otherwise required by the Intercreditor Agreement.

(2) If any payment to any Secured Party pursuant to this Section 5.02 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other Secured Parties, with each Secured Party whose Secured Obligations have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Secured Obligations of such Secured Party and the denominator of which is the unpaid Secured Obligations of all Secured Parties entitled to such distribution.
All payments required to be made hereunder shall be made to the Trustee for the account of such Secured Parties or as the Trustee may otherwise direct in accordance with the Notes Documents.

Subject to the other limitations (if any) set forth herein and in the other Notes Documents, it is understood that the Note Parties will remain liable (as and to the extent set forth in herein except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s gross negligence or willful misconduct) to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations of the Note Parties.

It is understood and agreed by each Note Party that the Collateral Agent will have no liability for any determinations made by it in this Section 5.02 except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s own gross negligence, bad faith or willful misconduct. Each Note Party also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof and of each Intercreditor Agreement, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.

The parties hereto agree that the provisions of this Article V shall apply to distributions and/or realizations on account of all assets securing the Secured Obligations, including assets not defined as Collateral hereunder (including, for the avoidance of doubt, all Real Property of the Grantors mortgaged to the Collateral Agent for the benefit of some or all of the Secured Parties).

SECTION 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might
result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE VI

[RESERVED]

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 13.1 of the Indenture. All communications and notices hereunder to any Grantor will be given to it in care of the Issuer, with such notice to be given as provided in Section 13.1 of the Indenture.

SECTION 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

(1) any lack of validity or enforceability of the Indenture, any other Notes Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;

(2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any other Notes Document or any other agreement or instrument;

(3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or

(4) subject only to termination or release of a Grantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

SECTION 7.03. Limitation By Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to
SECTION 7.04. Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Indenture. This Agreement will be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

SECTION 7.05. Successors and Assigns; Replacement of Collateral Agent; Successor Collateral Agent by Merger.

(1) Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

(2) The Collateral Agent may resign at any time by so notifying the Issuers. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Collateral Agent upon written notice to the Issuers, the Trustee and the Collateral Agent, and may appoint a successor Collateral Agent. The Issuers will remove the Collateral Agent if:

(a) [reserved];
(b) the Collateral Agent is adjudged bankrupt or insolvent;
(c) a receiver or other public officer takes charge of the Collateral Agent or its property; or
(d) the Collateral Agent otherwise becomes incapable of acting.

(3) If the Collateral Agent resigns or is removed by the Issuers or by the Holders of a majority in aggregate principal amount of the then outstanding Notes and such Holders do not within 30 days thereafter appoint a successor Collateral Agent, or if a vacancy exists in the office of Collateral Agent for any reason (the Collateral Agent in such event being
referred to herein as the retiring Collateral Agent), the Issuers will promptly appoint a successor Collateral Agent.

(4) A successor Collateral Agent will deliver a written acceptance of its appointment to the retiring Collateral Agent and to the Issuers. Thereupon the resignation or removal of the retiring Collateral Agent will become effective, and the successor Collateral Agent will have all the rights, powers and duties of the Collateral Agent under this Agreement and the other Notes Documents. The Trustee will deliver a notice of the successor Collateral Agent’s succession to the Holders. The retiring Collateral Agent will promptly transfer all property held by it as Collateral Agent to the successor Collateral Agent, subject to the liens provided for in Section 7.6 of the Indenture. All costs reasonably incurred in connection with any resignation or removal hereunder will be borne by the Issuers.

(5) If a successor Collateral Agent does not take office within 30 days after the retiring Collateral Agent resigns or is removed, the retiring Collateral Agent or the Holders of at least 10.0% in principal amount of the Notes may petition, at the Issuers’ expense, any court of competent jurisdiction for the appointment of a successor Collateral Agent.

(6) [reserved].

(7) Notwithstanding the replacement of the Collateral Agent pursuant to this Section 7.05, the Issuers’ obligations under this Agreement will continue for the benefit of the retiring Collateral Agent.

(8) If the Collateral Agent, consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act will be the successor Collateral Agent.

SECTION 7.06. Collateral Agent’s Fees and Expenses; Indemnification.

The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 7.6 of the Indenture and the provisions of Section 7.6 of the Indenture shall be incorporated by reference herein and apply to each Grantor mutatis mutandis.

SECTION 7.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent’s name or in the name of such Grantor, to:

(1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;
demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;

ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;

sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;

send verifications of Accounts to any Account Debtor;

commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;

settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;

notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and

use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

provided that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7.09. Waivers; Amendment.

(1) No failure or delay by the Collateral Agent or any other Secured Party in exercising any right, power or remedy hereunder or under any other Notes Document will operate as a
waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce
such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers
and remedies of the Collateral Agent and the Holders hereunder and under the other Notes Documents are cumulative and are not exclusive of any
rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any
Grantor therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent
will be effective only in the specific instance and for the purpose for which given.

(2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing
entered into by the Collateral Agent and the Grantors with respect to which such waiver, amendment or modification is to apply, subject to any
consent required in accordance with Article IX of the Indenture.

SECTION 7.10. WAIVER OF JURY TRIAL. The provisions of Section 13.8 of the Indenture shall be incorporated by reference herein and
apply to each party hereto.

SECTION 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or
unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected
or impaired thereby.

SECTION 7.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all
of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed
counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

SECTION 7.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not
part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 7.14. Jurisdiction; Consent to Service of Process. The provisions of Section 13.7 of the Indenture shall be incorporated by
reference herein and apply to each party hereto.

SECTION 7.15. Termination or Release.

(1) This Agreement, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate upon the occurrence of
the Termination Date.

(2) A Grantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such
Grantor shall be automatically released upon the consummation of any transaction permitted by the Indenture as a result of which such Grantor
ceases to be a Guarantor; provided that such portion of the Holders as are required by the terms of the Indenture to consent to such transaction shall
have consented thereto; provided, further, to the extent the ABL Security Documents, Second
Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) or the Third Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) is released under such ABL Security Documents, Second Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (2).

(3) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Indenture to any person that is not a Grantor, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Article IX of the Indenture or pursuant to Section 5.1 of the ABL/Term Loan/Notes Intercreditor Agreement or Sections 5.1 or 5.2 of the Junior Lien Intercreditor Agreement, the security interest in such Collateral shall be automatically released; provided to the extent the ABL Security Documents, Second Lien Notes Collateral Documents or the Third Lien Notes Collateral Documents are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) is released under such ABL Security Documents, Second Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (3).

(4) In connection with any termination or release pursuant to paragraph (1) through (3) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor’s expense, all documents that such Grantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor such of the Pledged Collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; provided that the Collateral Agent will not be required to take any action under this Section 7.15(6) unless such Grantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of a Responsible Officer of the Issuer certifying that the transaction giving rise to such termination or release is permitted by the Indenture and was or is consummated in compliance with the Notes Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.

SECTION 7.16. Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by Section 3.11 of the Indenture of a supplement in substantially the form of Exhibit I hereto, such Subsidiary will become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

SECTION 7.17. Rights of the Collateral Agent; No Duties. The permissive rights of the Collateral Agent enumerated herein (i) are granted for its benefit and (ii) shall not be constituted as duties or obligations. The duties of the Collateral Agent are solely as set forth in the Indenture and no implied duties or obligations will be read into this Agreement against the Collateral Agent.
In the acceptance, execution, delivery and performance of this Agreement, the Collateral Agent shall have the benefit of all exculpatory provisions, indemnities, protections, benefits, rights and immunities granted to it in the Indenture, as though fully set forth herein.

SECTION 7.18. Recitals. Neither the Trustee nor the Collateral Agent will be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Agreement or for or in respect of the recitals contained herein, all of which recitals are made solely by each of the Grantors.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

GRANTORS:

NEIMAN MARCUS GROUP LTD LLC

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Senior Vice President, General Counsel and Chief Compliance Officer

THE NEIMAN MARCUS GROUP LLC

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President and Secretary

THE NMG SUBSIDIARY LLC

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President and Secretary

BERGDORF GOODMAN INC.

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President and Secretary

BERGDORF GRAPHICS, INC.

By: /s/ Tracy M. Preston
    Name: Tracy M. Preston
    Title: Vice President and Secretary

[Signature Page to Second Lien Collateral Agreement]
BG PRODUCTIONS, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

MARIPOSA BORROWER, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NEMA BEVERAGE CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NEMA BEVERAGE HOLDING CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NEMA BEVERAGE PARENT CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to Second Lien Collateral Agreement]
NM BERMUDA, LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President and Secretary

NM FINANCIAL SERVICES, INC.

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President and Secretary

NM NEVADA TRUST

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President and Secretary

NMG CALIFORNIA SALON LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Senior Vice President and General Counsel

NMG FLORIDA SALON LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Senior Vice President and General Counsel

[Signature Page to Second Lien Collateral Agreement]
NMG GLOBAL MOBILITY, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President, General Counsel and Secretary

NMG SALONS LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Chief Executive Officer and President

NMG TEXAS SALON LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMGP, LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Lien Collateral Agreement]
WORTH AVENUE LEASING COMPANY

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Lien Collateral Agreement]
ANKURA TRUST COMPANY, LLC, as Trustee and Collateral Agent

By: /s/ Lisa J. Price
Name: Lisa J. Price
Title: Managing Director

[Signature Page to Second Lien Collateral Agreement]
SUPPLEMENT NO. dated as of (this “Supplement”), to the Second Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Second Lien Notes Collateral Agreement”), among each of the Grantors party thereto, and Ankura Trust Company, LLC, as Trustee (in such capacity, the “Trustee”) and as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “Collateral Agent”).

(1) Reference is made to that certain (i) Indenture dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers”) and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time, the Trustee and the Collateral Agent, pursuant to which the Issuer has agreed to issue and sell notes from time to time upon the terms and subject to the conditions set forth therein and (ii) the Second Lien Notes Collateral Agreement.

(2) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indenture and the Second Lien Notes Collateral Agreement.

(3) The Grantors have entered into the Second Lien Notes Collateral Agreement in order to induce the Holders to purchase the Notes under the Indenture. Section 7.16 of the Second Lien Notes Collateral Agreement provides that additional entities may become Grantors under the Second Lien Notes Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Indenture to become a Grantor under the Second Lien Notes Collateral Agreement.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

SECTION 1.

(a) In accordance with Section 7.16 of the Second Lien Notes Collateral Agreement, the New Subsidiary by its signature below becomes a Grantor under the Second Lien Notes Collateral Agreement with the same force and effect as if originally named therein as a Grantor, and the New Subsidiary hereby (1) agrees to all the terms and provisions of the Second Lien Notes Collateral Agreement applicable to it as a Grantor thereunder and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects, on and as of the date hereof. In furtherance
of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Second Lien Notes Collateral Agreement), does hereby create and grant to the Collateral Agent, for the benefit of the applicable Secured Parties, a security interest in and Lien on all the New Subsidiary’s right, title and interest in and to the Collateral (as defined in and to the extent required by the Second Lien Notes Collateral Agreement) of the New Subsidiary. Each reference to a “Grantor” in the Second Lien Notes Collateral Agreement shall be deemed to include the New Subsidiary. The Second Lien Notes Collateral Agreement is hereby incorporated herein by reference.

(b) In accordance with Section 9.3 of the ABL/Term Loan/Notes Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the ABL/Term Loan/Notes Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future ABL Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement), all existing and future Term Loan Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) and all existing and future Existing Noteholders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the ABL/Term Loan/Notes Intercreditor Agreement as fully as if the undersigned had executed and delivered the ABL/Term Loan/Notes Intercreditor Agreement as of the date thereof. This Supplement shall constitute an Intercreditor Agreement Joinder under (and as defined in) the ABL/Term Loan/Notes Intercreditor Agreement.

(c) In accordance with Section 8.20 of the Junior Lien Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the Junior Lien Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future all existing and future First Lien Secured Parties (as defined in the Junior Lien Intercreditor Agreement) and all existing and future Junior Lien Secured Parties (as defined in the Junior Lien Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the Junior Lien Intercreditor Agreement as fully as if the undersigned had executed and delivered the Junior Lien Intercreditor Agreement as of the date thereof. This Supplement shall constitute an intercreditor agreement joinder under the Junior Lien Intercreditor Agreement.

SECTION 2. The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one

Exhibit I-2
SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

1. set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof;

2. set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, registered Trademarks and registered Copyrights of the New Subsidiary as of the date hereof;

3. set forth on Schedule III attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of $5.0 million as of the date hereof; and

4. set forth on Schedule IV attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Second Lien Notes Collateral Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER NOTES DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, in the Second Lien Notes Collateral Agreement and in the Intercreditor Agreements will not in any way be affected or impaired thereby. The parties will endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Second Lien Notes Collateral Agreement. The address of each of the New Subsidiaries for purposes of all notices and other communications under the Intercreditor Agreements is: [ ].

SECTION 9. The New Subsidiary agrees to reimburse the Trustee and the Collateral Agent for their reasonable out-of-pocket expenses in connection with this Supplement,

Exhibit I-3
including the reasonable fees, disbursements and other charges of counsel for the Trustee and for the Collateral Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Agents have duly executed this Supplement to the Second Lien Notes Collateral Agreement and to the Intercreditor Agreements as of the day and year first above written.

[Name of New Subsidiary]

By:

Name: __________________________
Title: __________________________

Exhibit I-4
ANKURA TRUST COMPANY, LLC, as Trustee and Collateral Agent

By: 

Name: 
Title: 

Exhibit I-5
### Pledged Securities of the New Subsidiary

#### EQUITY INTERESTS

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<th>Number of Issuer Certificate</th>
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<th>Number and Class of Equity Interest</th>
<th>Percentage of Equity Interests</th>
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#### DEBT SECURITIES

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Scheduel I-1
PATENTS, TRADEMARKS AND COPYRIGHTS

Schedule II-1
<table>
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<th>COMMERCIAL TORT CLAIMS</th>
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<tbody>
<tr>
<td>Schedule III-1</td>
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</table>
LEGAL NAME, JURISDICTION OF FORMATION
AND LOCATION OF CHIEF EXECUTIVE OFFICE

Schedule IV-1
FORM OF TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT is dated as of [ ], by [*] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor Ankura Trust Company, LLC, in its capacity as collateral agent under the Security Agreement referred to below (in such capacity, the “Collateral Agent”).

W I T N E S S E T H:

Whereas, the Grantors are party to that certain Second Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”):

(a) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such

Exhibit II-1
filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule I:

(b) all goodwill associated therewith or symbolized thereby;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]

Exhibit II-2
IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[          ],
as Grantor

By:  
Name:  
Title:  

Exhibit II-3
Acknowledged and Accepted:

ANKURA TRUST COMPANY, LLC,
as Collateral Agent

By: ________________________________
Name: ______________________________
Title: ______________________________

Exhibit II-4
SCHEDULE I
to
TRADEMARK SECURITY AGREEMENT

TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

Exhibit II-5
FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Ankura Trust Company, LLC, in its capacity as collateral agent under the Security Agreement referred to below (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Second Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”):

(a) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I;

(b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

(c) all claims for, and rights to sue for, past or future infringements of any of the

Exhibit III-1
foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[          ],
as Grantor

By:
Name: ____________________________
Title: ____________________________

Exhibit III-3
Acknowledged and Accepted:

ANKURA TRUST COMPANY, LLC,
as Collateral Agent

By:  
Name:  
Title:  

Exhibit III-4
SCHEDULE I

to

PATENT SECURITY AGREEMENT

PATENTS AND PATENT APPLICATIONS

Exhibit III-5
FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT is dated as of [ ], by [•] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Ankura Trust Company, LLC, in its capacity as collateral agent under the Security Agreement referred to below (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Second Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”):

(a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

(b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule I;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with
Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

Section 4. Recordation. This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office. Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

Section 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[ ],
as Grantor

By: ____________________________
Name: __________________________
Title: __________________________

Exhibit IV-3
Acknowledged and Accepted:
ANKURA TRUST COMPANY, LLC,
as Collateral Agent

By: __________________________________________
Name: 
Title: 

Exhibit IV-4
SCHEDULE I

to
COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

Exhibit IV-5
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<th>Grantor</th>
<th>Issuer</th>
<th>Type of Organization</th>
<th>Jurisdiction of Organization / Formation</th>
<th># of Shares Owned</th>
<th>Total Shares Outstanding</th>
<th>% of Interest Pledged</th>
<th>Certificate No.</th>
<th>Par Value</th>
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<td>200</td>
<td>200</td>
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<td>100%</td>
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DEBT SECURITIES

1. That certain Intercompany Note, dated as of June 7, 2019, by and among each Payor (as defined therein) and each Maker (as defined therein).

2. Intercompany receivable held by NM Nevada Trust from The Neiman Marcus Group LLC, which was approximately $2,880,299,470 as of May 31, 2019.
3. Intercompany receivable held by NM Nevada Trust from Bergdorf Goodman Inc., which was approximately $473,027,518 as of May 31, 2019.
## U.S. COPYRIGHTS

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<td>1. Another perspective / from Horchow.</td>
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<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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(1) Assignment from The Neiman Marcus Group, Inc. to NM Nevada Trust to be filed with Japanese Trademark Office.
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## Filing Jurisdictions

**Legal Names, Filing Jurisdictions and Locations of Chief Executive Office**

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COMMERCIAL TORT CLAIMS

Reference is made to the class action settlement involving Visa and Mastercard, who separately and together with certain banks, engaged with certain actions that resulted in merchants paying excessive interchange fees when accepting Visa and Mastercard credit and debit cards in connection with store and online purchases. Under the settlement, Visa, Mastercard and other bank defendants have agreed to provide approximately $6.24 billion in class settlement funds. The net class settlement fund will be used to pay valid claims of merchants that accepted Visa and Mastercard credit or debit cards between January 1, 2004 through January 25, 2019.

The Court has given preliminary approval to this settlement. A Court hearing is set for November 7, 2019 for the Court to officially approve of the settlement.

Merchants have until July 23, 2019 to decide if they will stay in the settlement and wait to file a claim, object to the settlement and file a notice to appear with the Court, or to opt out and make a separate claim.

The Company is in the process of evaluating the potential recovery on its portion of the claims and believes there is a reasonable chance such recovery will exceed $2.5 million.
Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, INC.
The NMG Subsidiary LLC
as Issuers

and

the Subsidiary Guarantors party hereto

8.000% Third Lien Senior Secured Notes due 2024

INDENTURE
Dated as of June 7, 2019

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
As Notes Collateral Agent
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INDENTURE, dated as of June 7, 2019 as amended or supplemented from time to time (this “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), and THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), and THE NMG SUBSIDIARY LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party hereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (in such capacity, the “Trustee”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of the Notes (as defined herein):

ARTICLE I
Definitions and Incorporation by Reference

SECTION 1.1. Definitions.

“144A Global Note” means a global note substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

“2028 Debentures” means the 7.125% senior debentures due 2028 issued by The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) pursuant to the 2028 Debentures Indenture.

“2028 Debentures Collateral” means (i) the Extended Term Loan Priority Real Estate Collateral, (ii) the Original Term Loan Priority Collateral, (iii) the Notes Priority Real Estate Collateral, (iv) the Notes PropCo Equity Interests and (v) the Extended Term Loan PropCo Equity Interests, in each of case (i) to (v), consisting solely of assets if and to the extent required by the 2028 Debentures Letter Agreement in effect on the Issue Date and/or the “equal and ratable clause” set forth in the 2028 Debentures Indenture in effect on the Issue Date.

“2028 Debentures Indenture” means the indenture dated as of May 27, 1998, by and between The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) and Wilmington Savings Fund Society, FSB, as trustee, as supplemented and/or otherwise modified from time to time, including on or about the date hereof.

“2028 Debentures Letter Agreement” means that certain Letter Agreement, dated as of April 10, 2019, by and among TNMG LLC and certain holders of the 2028 Debentures signatory thereto.
“2028 Debentures Liens” means Liens on the 2028 Debentures Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the 2028 Debentures Obligations.

“2028 Debentures Obligations” means the Indebtedness and the related Obligations under the 2028 Debentures and the other Indebtedness Documents related to the 2028 Debentures.

“8.750% Third Lien Notes” means $497,849,150 aggregate principal amount of the Issuers’ 8.750% Third Lien Notes due 2024 issued on the Issue Date.

“8.750% Third Lien Indenture” means the indenture governing the 8.750% Third Lien Notes.

“A BL Agent” means Deutsche Bank AG New York Branch as Administrative Agent under the ABL Credit Agreement, together with its successors and assigns, and any subsequent or successor administrative agent under the A BL Credit Agreement.

“ABL Availability” means, as of any time, the amount available for borrowing by the Issuers and the Subsidiary Guarantors under the ABL Credit Agreement then in effect.

“ABL Credit Agreement” means that certain Revolving Credit Agreement, dated as of October 25, 2013 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time), as amended by a certain Fourth Amendment on the Issue Date (the “Issue Date ABL Credit Agreement”) among the Issuer, the Corporate Co-Issuer, the guarantors from time to time party thereto, the financial institutions named therein and the ABL Agent, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder (to the extent permitted under Section 3.3) or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders. Notwithstanding the foregoing, in order for any instrument (other than the Issue Date ABL Credit Agreement, as amended, supplemented, modified or waived from time to time) to be an “ABL Credit Agreement” under this Indenture, the Issuer shall designate such instrument in writing to the Trustee as an “ABL Credit Agreement.”
“ABL Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement, dated as of the Issue Date, among the Notes Collateral Agent, on behalf of the holders of Third Lien Notes, the Extended Term Loan Agent, the ABL Agent and the Second Lien Notes Collateral Agent, on behalf of the holders of the Second Lien Notes, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“ABL Liens” means Liens on the Collateral having the Required Collateral Lien Priority for Liens securing the ABL Obligations.

“ABL Obligations” means the Indebtedness and the related Obligations under the ABL Credit Agreement and the other Indebtedness Documents related to the ABL Credit Agreement.

“ABL Priority Collateral” means all of the following Collateral:

1. all accounts, but excluding rights to payment for any property that, but for this clause (1), would constitute Term/Notes Priority Collateral that has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

2. all chattel paper (including tangible chattel paper and electronic chattel paper) to the extent evidencing, governing, securing or otherwise related to accounts or inventory;

3. (x) all deposit accounts and money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein and (y) all securities, security entitlements and securities accounts, in each case, to the extent constituting cash or Cash Equivalents or representing a claim to Cash Equivalents; provided that the foregoing shall not include (A) the asset sale proceeds account and all cash, checks and other property held therein or credited thereto and (B) any money, cash, checks other negotiable instruments, funds and other evidences of payment that, but for this clause (3), constitute identifiable Term/Notes Priority Proceeds;

4. all inventory;

5. to the extent involving or governing any of the items referred to in the preceding clauses (1) through (4), all documents, general intangibles (including all payment intangibles but excluding intellectual property), instruments (including promissory notes), commercial tort claims (it being understood that a commercial tort claim does not “involve” or “govern” any of clauses (1) through (4) solely because a claim for money damages is made) and letter-of-credit rights;

6. to the extent evidencing or governing any of the items referred to in the preceding clauses (1) through (5), all supporting obligations;

7. all books and records relating to the foregoing (including all books, databases, customer lists, engineer drawings, and records, whether tangible or electronic, which contain any information relating to any of the foregoing); and
all collateral security and guarantees with respect to any of the foregoing and all cash, money, instruments, securities, financial assets, deposit accounts and insurance payments directly received as proceeds of any ABL Priority Collateral ("ABL Priority Proceeds"); provided, however, that no proceeds of ABL Priority Proceeds will constitute ABL Priority Collateral unless such proceeds of ABL Priority Proceeds would otherwise constitute ABL Priority Collateral.

“Acquired Indebtedness” means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is Incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Ad Hoc Committee of Unsecured Noteholders” means that certain ad hoc committee of Consenting Pre-Transactions Unsecured Noteholders represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and Houlihan Lokey.

“Additional Notes” means additional Notes (other than the Initial Notes) issued from time to time under this Indenture in accordance with this Indenture, it being understood that any Notes issued in exchange for or in replacement of any Initial Notes shall not be Additional Notes.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For the avoidance of doubt, (i) no holder of MYT Holdco Series A Preferred Stock shall be deemed to be an Affiliate of the Issuers or the Subsidiary Guarantors solely due to its holdings of MYT Holdco Series A Preferred Stock and (ii) no holder of the Third Lien Notes shall be deemed to be an Affiliate of the Issuers or the Subsidiary Guarantors solely due to the pledge of the MYT Holdco Common Equity (or the exercise of remedies with respect to such pledge).

“After-Pledged Property” means any property (other than property that constitutes the Collateral as of the Issue Date) of an Issuer and any Subsidiary Guarantor that is required under the Notes Documents to be pledged as Collateral to secure the Notes Obligations.

“Agents” means Notes Collateral Agent, Paying Agent and Registrar.
“Applicable Procedures” means, with respect to any transfer, exchange, payment, redemption, offer, communications delivered or other activity of the Depositary, Euroclear and Clearstream on behalf of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer, exchange, payment, redemption, offer, communications delivered or other activity.

“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets of the Issuer or any Restricted Subsidiary; or

(2) the issuance or sale of Equity Interests (other than preferred stock of Restricted Subsidiaries issued in compliance with Section 3.3 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Issuer or another Restricted Subsidiary) (whether in a single transaction or a series of related transactions),

(each of the foregoing referred to in this definition as a “disposition”).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the Issuer and its Restricted Subsidiaries (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

(2) the sale, conveyance, lease or other disposition of all or substantially all of the assets of the Issuers in compliance with Section 4.1 or any disposition that constitutes a Change of Control;

(3) any Restricted Payment that is permitted to be made, and is made, under Section 3.4 or any Permitted Investment;

(4) dispositions of assets or issuances or sales of Equity Interests of any Restricted Subsidiary with an aggregate Fair Market Value in any calendar year of less than $15.0 million;

(5) any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Restricted Subsidiary to the Issuer or by the Issuer or a Restricted Subsidiary to another Restricted Subsidiary;
the creation of any Lien permitted under this Indenture;

(7) [Reserved];

(8) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

(9) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(10) [Reserved];

(11) [Reserved];

(12) any exchange of assets for Related Business Assets (including a combination of Related Business Assets and a de minimis amount of cash or Cash Equivalents) of comparable or greater market value, as determined in good faith by the Issuer;

(13) (a) non-exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles; and

(b) exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the ordinary course of business of the Issuer and the Restricted Subsidiaries;

(14) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(15) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events and (except for purposes of calculating Net Cash Proceeds of any Asset Sale under Section 3.7(b) and Section 3.7(c)) dispositions necessary or advisable (as determined by the Issuer in good faith) in order to consummate any acquisition of any Person, business or assets;

(16) [Reserved]; and

(17) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business,
provided that to the extent the property being transferred constitutes Term/Notes Priority Collateral, such replacement property will constitute Term/Notes Priority Collateral.

For the avoidance of doubt, the unwinding of Hedge Agreements will not be deemed to constitute an Asset Sale.


“Bankruptcy Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, examinership, insolvency, reorganization, administration, compromise, scheme of arrangement, voluntary arrangement, or similar federal, state or foreign law for the relief of debtors, adjustment of debts or affecting the rights of creditors generally.

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “Beneficial Ownership,” “Beneficially Owns” and “Beneficially Owned” have a corresponding meaning.

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or the place of payment are authorized or required by law to close.

“Call Right” means the right of the lenders under the Extended Term Loan Agreement to finance and cause the redemption by the Issuers of the Third Lien Obligations (or, if less than $200.0 million principal amount of Third Lien Obligations are then outstanding, the Second Lien Obligations, following the redemption in full of the Third Lien Obligations), at par, in cash, in an aggregate principal amount equal to $200.0 million, upon the occurrence and during the continuance of an event of default under the Extended Term Loan Agreement, which $200.0 million shall be treated under such Extended Term Loan Agreement as additional Extended Term Loans, including by being secured ratably with all other Extended Term Loans by the same assets and with the same Required Collateral Lien Priority; provided that such additional Extended Term Loans shall have a “first-out” right relative to the other Extended Term Loans, with respect to claims in respect of the Notes Priority Real Estate Collateral and Notes PropCo Equity Interests.
“Call Right Cap Recovery” has the meaning assigned to such term in the Junior Lien Intercreditor Agreement.

“Call Right Collateral” means the Notes Priority Real Estate Collateral and the Notes PropCo Equity Interests.

“Capital Stock” means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Lease Obligation” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance or capital leases on a balance sheet of such Person under GAAP (as in effect on the Issue Date, notwithstanding any modification or interpretative change thereto after the Issue Date and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Cash Equivalents” means:

(1) dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local national currencies held by it from time to time in the ordinary course of business and not for speculation;

(2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;

(3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any
commercial bank having capital, surplus and undivided profits of not less than $250.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;

(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons (other than the Sponsors) with a rating of at least “A-2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “A-2” or “P-2” from either S&P or Moody’s (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in national currencies other than those set forth in clause (1) above; provided that such amounts are converted into any currency listed in clause (1) above as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.
“Cash Management Obligations” means obligations owed by any Issuer or any Subsidiary Guarantor to any other Person in respect of or in connection with Cash Management Services.

“Cash Management Services” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“Change of Control” means the occurrence of any of the following events:

(a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more of the Permitted Holders, acquires Beneficial Ownership of Voting Stock of the Issuer representing more than 50% of the aggregate ordinary voting power for the election of directors of the Issuer (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested); or

(b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Issuer and its Restricted Subsidiaries, taken as a whole, to any Person other than one or more of the Permitted Holders.

“Clearstream” means Clearstream Banking, Société Anonyme.


“Collateral” means Extended Term Loan Priority Real Estate Collateral, the Extended Term Loan PropCo Equity Interests, the Original Term Loan Priority Collateral, the ABL Priority Collateral, the Notes Priority Real Estate Collateral, the Notes PropCo Equity Interests and 50.0% of the MYT Holdco Common Equity (pledged pursuant to the MYT Third Lien Notes Pledge Agreement). The Collateral does not include any Excluded Assets.

“Collateral Asset Sale” means an Asset Sale of (i) any Collateral or (ii) any assets of Notes PropCo or Extended Term Loan PropCo.

“Company Order” means a written request or order signed in the name of the Issuers by any Officer of each of the Issuers.

“Company Parties” means, collectively, Neiman Marcus Group, Inc. and each of its Subsidiaries that has executed and delivered the Transaction Support Agreement.

“Consignment Inventory” means any Inventory (as defined in the UCC) held by a grantor on a consignment basis, which Inventory is not owned by a grantor (and
would not be reflected on a consolidated balance sheet of Issuers and their Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the Issuer, acting in good faith, identifies such proceeds as such in writing to the Notes Collateral Agent.

“Consolidated EBITDA” means, with respect to the Issuer for any period, the Consolidated Net Income of the Issuer for such period:

(1) increased, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:

(a) provision for Tax Distributions based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes, paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of Tax Distributions actually made to the holders of Equity Interests of the Issuer or any Parent Entity in respect of such period (in each case, to the extent attributable to the operations of the Issuer and its Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Issuer; plus

(b) Consolidated Interest Expense; plus

(c) cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Issuer or any Restricted Subsidiary; plus

(d) all depreciation and amortization charges and expenses; plus

(e) all:

(i) losses, charges, fees, costs and expenses relating to the Transactions;

(ii) transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Indenture, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the Incurrence, modification or repayment of Indebtedness permitted to be Incurred under this Indenture (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions; and
(iii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period; plus

(f) any expense or deduction attributable to minority equity interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Issuer; plus

(g) the amount of indemnities, fees, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 3.8; plus

(h) earn-out obligations incurred in connection with any acquisition of any business, assets or Person in accordance with the terms of this Indenture or other Investment; plus

(i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of the Issuer and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of the Issuer or any Permitted Parent in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; plus

(j) all non-cash losses, charges and expenses, including any write-offs or write-downs; provided that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period:

(i) the Issuer may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated; and

(ii) to the extent the Issuer does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; plus

(k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; and

(2) decreased, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Issue Date). For the avoidance of doubt, amortization of tenant and developer allowances will not be deducted pursuant to this clause (2).
“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

1. the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capitalized Lease Obligations and net payments and receipts (if any) pursuant to Hedging Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, any expenses resulting from the discounting of the 2028 Debentures as a result of the purchase accounting treatment of the Original Transactions (as defined in the Extended Term Loan Agreement) and the Transactions and all discounts, commissions, fees and other charges associated with any receivables facility), plus

2. consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued, plus

3. any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been guaranteed by the referent Person, less

4. interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Issue Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Issue Date by 365 and then dividing such product by the number of days from and including the Issue Date to and including the last day of such period.

For purposes of this definition, interest on Capitalized Lease Obligations will be deemed to accrue at the interest rate reasonably determined by the Issuer to be the rate of interest implicit in such Capitalized Lease Obligations in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP and before any deduction for preferred stock dividends; provided that:

1. all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, consolidation, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up
or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments (including any transition-related expenses incurred before, on or after the Issue Date), will be excluded;

(2) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded;

(3) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by an Officer of the Issuer) will be excluded;

(4) all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded;

(5) all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded;

(6) (a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof;

(7) the cumulative effect of a change in accounting principles during such period will be excluded;

(8) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to any acquisition consummated before or after the Issue Date, and the amortization, write-down or write-off of any amounts thereof, net of Taxes, will be excluded;

(9) all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded;

(10) all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit
plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

(11) any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

(12) accruals and reserves for liabilities or expenses that are established or adjusted as a result of the Transactions within 12 months after the Issue Date will be excluded;

(13) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

(14) any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(15) (a) the non-cash portion of “straight-line” rent expense will be excluded and (b) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(16) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount:

(a) has not been denied by the applicable carrier in writing; and

(b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period);

provided that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

(17) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);
(18) (a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities in an aggregate amount not to exceed $20.0 million for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded; and

(b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded; and

(19) non-cash charges for deferred tax asset valuation allowances will be excluded.

“Consolidated Total Assets” means, as of any date, the total assets of the Issuer and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“Contractual Performance Amount” means, with respect to an Event of Default, an amount equal to the redemption price of all then outstanding Notes, calculated in accordance with Paragraph 7 of the form of Note set forth in Exhibit A hereto (including accrued and unpaid interest thereon), as if the date such Event of Default occurred was a redemption date for purposes thereof.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Notes Collateral Agent (or other bailee for perfection pursuant to the Intercreditor Agreements) with control of any such accounts, in form and substance reasonably satisfactory to the Notes Collateral Agent, and such other parties thereto in accordance with the Intercreditor Agreements.

“Corporate Co-Issuer” has the meaning set forth in the preamble hereto.

“Corporate Trust Office” will be at the address of the Trustee specified in Section 13.1 or such other address as to which the Trustee may give notice to the Issuers or Holders pursuant to the procedures set forth in Section 13.1.

“Credit Agreement” means:

(1) the Extended Term Loan Agreement; and

(2) whether or not the Extended Term Loan Agreement remains outstanding, if designated by the Issuer in writing to the Trustee to be included in the definition of “Credit Agreement,” one or more:
(a) debt facilities, indenitures or commercial paper facilities providing for revolving credit loans, term loans, notes, debentures, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit;

(b) debt securities, notes, mortgages, guarantees, collateral documents, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances); or

(c) instruments or agreements evidencing any other Indebtedness, including Capitalized Lease Obligations, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased (provided that such increase in borrowings is permitted under this Indenture), replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors,

in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased (provided that such increase in borrowings is permitted under this Indenture), replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors.

“Credit Support” means, with respect to any Person and any Indebtedness or other Obligations, (i) such Person’s guarantee of or becoming a direct or indirect obligor with respect to, such Indebtedness or other Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Obligations (including by means of a “keepwell” or other similar commitment).

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Customary Intercreditor Agreement” means (a) to the extent executed in connection with the incurrence of Pari Passu Lien Indebtedness, a customary intercreditor agreement in form and substance reasonably acceptable to the Notes Collateral Agent and the Issuer, which agreement shall provide that the Liens on the Collateral securing such Pari Passu Lien Indebtedness shall be Pari Passu Liens, and (b) to the extent executed in connection with the incurrence of Junior Lien Indebtedness, a customary intercreditor agreement in form and substance reasonably acceptable to the Notes Collateral Agent and the Issuer, which agreement shall provide that the Liens on the Collateral securing such Junior Lien Indebtedness shall be Junior Liens.

“Default” means any event which, but for the giving of notice, lapse of time or both, would be, an Event of Default.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.6, substantially in the form of Exhibit A hereto except that such Note will not bear the Global Note Legend and will not have the “Schedule of Exchanges of Interests in the Global Note” attached there to.
“Depositary” means, with respect to the Global Notes, The Depository Trust Company and any successor thereto.

“Designated Non-cash Consideration” means the Fair Market Value of non-cash consideration received by the Issuer or any Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate of the Issuer, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Issuer or any Parent Entity, as applicable (other than Excluded Equity), that is issued after the Issue Date for cash and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate of the Issuer, on the issuance date thereof, the cash proceeds of which are contributed to the capital of the Issuer (if issued by Parent or any other Parent Entity).

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is puttable, redeemable or exchangeable), in each case, at the option of the holder thereof or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; provided that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Equity Interests than the asset sale and change of control provisions applicable to the Notes and any purchase requirement triggered thereby may not become operative until compliance with the asset sale and change of control provisions applicable to the Notes (including the purchase of any Notes tendered pursuant thereto)), or

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock, or

(3) is redeemable at the option of the holder thereof, in whole or in part,

in each case prior to the date that is 91 days after the earlier of the maturity date of the Notes and the date the Notes are no longer outstanding; provided that only the portion of Equity Interests that so mature or are mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; and provided, further, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and provided, further, that any class of Equity Interests of such Person that by its terms
authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“Domestic Subsidiary” means any Restricted Subsidiary that is not a Foreign Subsidiary.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear system.

“Event of Default” has the meaning ascribed in Section 6.1.


“Exchange Offers” means the offers to exchange the Third Lien Notes for Unsecured Notes as described in the Exchange Offering Memorandum.

“Excluded Assets” means:

(a) all Excluded Equity Interests;
(b) all leasehold Real Property interests that do not constitute the Issuer’s or its Subsidiaries’ interests in full line stores, Bergdorf Goodman store real properties or warehouse or distributions centers;
(c) all fee simple Real Property interests acquired after the Issue Date with a fair market value (as determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement)) of less than or equal to $2.5 million on a per property basis;
(d) assets of any Foreign Subsidiary that is existing as of the Issue Date to the extent such Foreign Subsidiary is not required to become a Subsidiary Guarantor;
(e) assets of any Foreign Subsidiaries or FSHCO, in each case, that is created or acquired after the Issue Date (“Exempted Future Foreign Assets”) with respect to which the grant of Liens thereon securing the Notes Obligations, the Extended Term
Loan Obligations or the Non-Participating Term Loan Exchange Obligations would result in materially adverse tax consequences or materially adverse regulatory consequences (in each case, “Material Adverse Consequences”), in each case, as reasonably determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement) (it being understood for purposes of the foregoing that any asset may be deemed an Exempted Future Foreign Asset due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019);

(f) any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;

(g) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;

(h) any Excluded Account (as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(i) vehicles and any other assets subject to certificates of title;

(j) any letter of credit rights to the extent not perfected as supporting obligations by the filing of a UCC financing statement on the primary Collateral;

(k) any Issuer’s or Subsidiary Guarantor’s right, title or interest in any lease, license, contract or agreement to which such entity is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than the Issuer or any Subsidiary), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity);

(l) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained);

(m) any Commercial Tort Claim (as defined in the UCC) with an asserted or nominal value not in excess of $5.0 million;
any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Issuer and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement);

(o) any assets and proceeds thereof subject to a Lien permitted under clause (3) of the definition of “Permitted Liens” to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Notes Collateral Agent or (b) any assets subject to a Lien permitted by clause (7) of the definition of “Permitted Liens” so long as the documents providing for such Lien do not permit such assets to be pledged to the Notes Collateral Agent;

(p) the Specified Credit Card Receivables, any Specified Credit Card Payments and any Specified In-Store Credit Card Payments (in each case, as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(q) the Capital One Credit Card Receivables Accounts (as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(r) any Consignment Inventory and any Consignment Proceeds; or

(s) any Leased-Department Inventory and any Leased-Department Proceeds (in each case, as defined on the Issue Date in the Extended Term Loan Collateral Agreement).

In the event any asset described above (1) is an asset described in clauses (a) through (g) or clauses (i) through (n) above and is pledged for the benefit of creditors under any Obligations (other than the Notes Obligations), or (2) is an asset described in clause (h) or clauses (p) through (s) above and is pledged for the benefit of any Obligation listed in the Required Collateral Lien Priority table (other than the Notes Obligations), in each case of clause (1) and (2), such asset shall be pledged as After-Pledged Property with respect to the Notes with the Required Collateral Lien Priority; provided, however, in the case of clause (1), any such asset pledged for the benefit of a third-party creditor under any Obligations (other than an Obligation listed in the Required Collateral Lien Priority table) may be pledged on a first-priority basis to such third-party creditor, followed by subordinated Liens in favor of the Notes Obligations otherwise in accordance with the Required Collateral Lien Priority, but reducing the priority of each Lien described in such Required Collateral Lien Priority table by one level of Lien priority and giving effect to the first-priority Liens of such third-party creditor on such subject asset).

An Officer of the Issuer shall evaluate whether the Material Adverse Consequences still apply to any Exempted Future Foreign Assets pursuant to clause (e) above on no less than a quarterly basis. An Exempted Future Foreign Asset shall no longer be an Excluded Asset under clause (e) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences
no longer apply to such Exempted Future Foreign Asset and (B) the date a Lien on such Exempted Future Foreign Asset is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors.

“Excluded Equity” means:

(a) Disqualified Stock;

(b) any Equity Interests issued or sold to a Restricted Subsidiary or any employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries (to the extent such employee stock ownership plan or trust has been funded by the Issuers or any Restricted Subsidiaries); and

(c) any Equity Interest that has already been used or designated (x) as (or the proceeds of which have been used or designated as) Designated Preferred Stock, or (y) to increase the amount available under clause (15) of the definition of “Permitted Investments.”

“Excluded Equity Interests” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

(a) interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of a pledge to secure the Notes Obligations);

(b) Equity Interests in not-for-profit subsidiaries;

(c) to the extent applicable law requires that a Subsidiary of such pledging Issuer or Subsidiary Guarantor issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by Persons other than the such Issuer or Subsidiary Guarantor, such qualifying shares, nominee shares or similar shares held by Persons other than the Issuer or Subsidiary Guarantor, as applicable;

(d) any Equity Interests (including Equity Interests in captive insurance subsidiaries) if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); provided that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or

(e) any Equity Interests of Foreign Subsidiaries or FSHCOs (“Excluded Foreign Equity Interests”) in each case with respect to which the grant of Liens thereon securing the Notes Obligations, the Extended Term Loan Obligations or the Non-Participating Term Loan Exchange Obligations would result in Material Adverse
Consequences, in each case, as reasonably determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement) (it being understood for purposes of the foregoing that any Equity Interests may be deemed to be Excluded Foreign Equity Interests due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019).

An Officer of the Issuer shall re-evaluate whether the Material Adverse Consequences still apply to any Excluded Foreign Equity Interests pursuant to clause (e) above on no less than a quarterly basis. An Excluded Foreign Equity Interest shall no longer be an Excluded Foreign Equity Interest under clause (e) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences no longer apply to such Excluded Foreign Equity Interest and (B) the date a Lien on such Excluded Foreign Equity Interest is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors.

“Excluded Subsidiary” means any:

(a) (i) Unrestricted Subsidiary, (ii) captive insurance Subsidiary, and (iii) not-for-profit Subsidiary;

(b) Subsidiary that is not a Wholly Owned Subsidiary of the Issuer, only to the extent such Subsidiary was created, formed or acquired in connection with a Permitted Acquisition;

(c) Foreign Subsidiary or FSHCO acquired or created after the Issue Date and with respect to which (i) an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent have determined that making such Subsidiary a Subsidiary Guarantor is not practicable (including as a result of local law in the jurisdiction in which such Subsidiary is organized or other applicable law, rule or regulation), or (ii) an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent determine that the burden or cost (including as a result of any adverse changes in applicable tax laws) of providing a guarantee from such Subsidiary outweigh the benefit of the guaranty afforded thereby (it being understood for purposes of each of the foregoing that any such Subsidiary Guarantee may be released due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019); and

(d) Subsidiary if acting as a Subsidiary Guarantor, or its Guarantee, would (i) be prohibited by law or regulation or (ii) require a governmental or third-party consent, approval, license or authorization;
in each case, unless the Issuer determines in its sole discretion, upon written notice to the Notes Collateral Agent, that any of the foregoing Persons should not be an Excluded Subsidiary until the date on which the Issuer has informed the Notes Collateral Agent that it elects to have such Person be an Excluded Subsidiary; provided that the Subsidiary Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

With respect to any Foreign Subsidiary or FSHCO that is an Excluded Subsidiary under clause (c) above, an Officer of the Issuer shall re-evaluate whether the conditions described in sub clause (i) or (ii) that caused such Foreign Subsidiary or FSHCO to be an Excluded Subsidiary under clause (c) above (the “Exclusion Conditions”) still are applicable to such Foreign Subsidiary or FSHCO no less than quarterly. A Foreign Subsidiary or FSHCO shall no longer be an Excluded Subsidiary under clause (c) above upon the earliest to occur of (A) the tenth Business Day after an Officer determines that the Exclusion Conditions no longer apply to such Foreign Subsidiary or FSHCO, (B) the date a Lien on such Foreign Subsidiary or FSHCO is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors and (C) the date such Foreign Subsidiary or FSHCO provides Credit Support for any Indebtedness of the Issuers or any Subsidiary Guarantors.

“Extended Post-Closing Period” means the Initial Post-Closing Period automatically extended by an additional 30 days.

“Extended Term Loan Agent” means Credit Suisse AG, as Administrative Agent under the Extended Term Loan Agreement, together with its successors or assigns, and any subsequent administrative agent under the Extended Term Loan Agreement.

“Extended Term Loan Agreement” means the amended or amended and restated credit agreement to be entered into on or around the Issue Date (the “Issue Date Extended Term Loan Agreement”) among the Issuer, the LLC Co-Issuer, the New Co-Issuer Subsidiary, the financial institutions named therein and the Extended Term Loan Agent, amending or amending and restating in its entirety the Pre-Transactions Term Loan Agreement, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, in each case as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder permitted under Section 3.3 or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders. Notwithstanding the foregoing, in order for any instrument (other than the Issue Date Extended Term Loan Agreement, as amended, supplemented, modified or
waived from time to time) to be an “Extended Term Loan Agreement” under this Indenture, the Issuer shall designate such instrument in writing to the Trustee as an “Extended Term Loan Agreement.”

“Extended Term Loan Liens” means Liens on the Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the Extended Term Loan Obligations.

“Extended Term Loan Obligations” means the Indebtedness and related Obligations under the Extended Term Loan Agreement and the Obligations under other Indebtedness Documents related to the Extended Term Loans (but not including, for the avoidance of doubt, Non-Participating Term Loan Obligations and Non-Participating Term Loan Exchange Obligations).

“Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Issuer formed to hold the Extended Term Loan Priority PropCo Assets.

“Extended Term Loan PropCo Equity Interests” means the Equity Interests of Extended Term Loan PropCo.

“Extended Term Loans” means the term loans extended by the lenders under the Extended Term Loan Agreement beyond the maturity date contemplated by the Pre-Transactions Term Loan Agreement (but not including, for the avoidance of doubt, Non-Participating Term Loans and Non-Participating Term Loan Exchange Indebtedness).

“Fair Market Value” means, with respect to any asset or property, the price that could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction (as determined in good faith by the senior management or the Board of Directors of the Issuer, whose determination will be conclusive for all purposes under this Indenture and the Notes).

“First Lien” means, with respect to any Collateral, the Lien on such Collateral securing the Extended Term Loan Obligations as of the Issue Date and any Lien on such Collateral that has the same priority as that of the Lien on such Collateral securing the Extended Term Loan Obligations as of the Issue Date, including any Lien thereon securing the 2028 Debentures Obligations to the extent such Lien is pari passu with the Lien thereon securing the Extended Term Loan Obligations, as applicable.

“Foreign Subsidiary” means a Restricted Subsidiary not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia.

“FSHCO” means any Domestic Subsidiary substantially all the assets of which are Equity Interests or Indebtedness of one or more Foreign Subsidiaries that are treated as controlled foreign corporations within the meaning of Section 957 of the Code.
“GAAP” means, generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies); provided that the Issuer may at any time elect by written notice to the Trustee to fix GAAP as in effect on the date specified in such notice and, upon any such notice, references herein to GAAP will thereafter be construed to mean for all purposes of this Indenture (other than for financial reporting purposes):

(a) for periods beginning on and after the date specified in such notice, GAAP as in effect on the date specified in such notice; and

(b) for prior periods, GAAP as in effect from time to time during such periods. Notwithstanding anything to the contrary above or in the definition of Capitalized Lease Obligations, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Issue Date, only those leases that would result or would have resulted in Capitalized Lease Obligations on the Issue Date (assuming for purposes hereof that they were in existence on the Issue date) will be considered capital leases and all calculations under this Indenture will be made in accordance therewith.

“Global Note Legend” means the legend set forth in Section 2.1(c), which is required to be placed on all Global Notes issued under this Indenture.

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto issued in accordance with Section 2.1 or Section 2.6.

“Governmental Authority” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“guarantee” means, as to any Person, a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means any guarantee of the Obligations of the Issuers under this Indenture and the Notes in accordance with the provisions of this Indenture.

“Hedge Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; provided
that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Issuer or any of its Subsidiaries will be a Hedge Agreement.

“Holder” means the Person in whose name a Note is registered on the Registrar’s books; provided that it may include the “beneficial owner” of an interest in a Note.

“Hudson Yards Indebtedness” means the deferred financing obligations reflected on the balance sheet of the Issuer related to its ownership for accounting purposes of a portion of the Issuer’s retail property at Hudson Yards.

“IAI Global Note” means a global note substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes resold to IAIs.

“IAIs” means institutional “accredited investors” (as defined in Rules 501(a)(1), (2), (3) or (7) under the Securities Act) who are not QIBs.

“Immaterial Subsidiary” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered, have assets with a value in excess of 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% of total revenues of the Issuer and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Issuer for which Required Financial Statements have been delivered, did not have assets with a value in excess of 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Issuer and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“Incur” means, with respect to any Indebtedness, Capital Stock or Lien, to issue, assume, guarantee, incur or otherwise become liable for, or subject to, such Indebtedness, Capital Stock or Lien, as applicable; provided that any Indebtedness, Capital Stock or Lien of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Person at the time it becomes a Subsidiary, and “Incurrence” shall have a corresponding meaning.

“Indebtedness” means, with respect to any Person, without duplication:

(1) all obligations of such Person for borrowed money;

(2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;

all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;

all Capitalized Lease Obligations of such Person;

all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;

the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;

the principal component of all obligations of such Person in respect of bankers’ acceptances;

all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and

the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

(a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;

(b) prepaid or deferred revenue arising in the ordinary course of business;

(c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or

(d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indebtedness Documents” means, with respect to any Indebtedness, all agreements and instruments governing such Indebtedness, all evidences of such
Indebtedness or Credit Support thereof, all security documents for such Indebtedness (and documents and filings related thereto) and any intercreditor or similar agreements related thereto.

“Indenture” has the meaning set forth in the preamble hereto.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another Person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates own at least 10% of the outstanding Equity Interests of such Person or entity (measured by voting power, economic value or number).

“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Initial Notes” means the $730,534,000 aggregate principal amount of the 8.000% Third Lien Senior Secured Notes due 2024 of the Issuers issued under this Indenture on the Issue Date.

“Initial Post-Closing Period” means the period which ends 90 days after the Issue Date.

“Intercreditor Agreements” means the ABL Intercreditor Agreement, the Junior Lien Intercreditor Agreement, any other Customary Intercreditor Agreement, the Extended Term Loan Subordination Agreement and the Notes PropCo Subordination Agreement.

“Interest Coverage Ratio” means, as of any date, the ratio of (1) the Consolidated EBITDA of the Issuer for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Issuer for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Issuer or Preferred Stock of the Issuer or any Restricted Subsidiary made during such period; provided that, in the event that the Issuer classifies Indebtedness Incurred on the date of determination as, in part, Ratio Debt and, in part, Permitted Debt (other than Permitted Refinancing Indebtedness), any calculation of Consolidated Interest Expense pursuant to this definition will not include any such Permitted Debt.

“Interest Payment Date” means, in the case of the Initial Notes, April 15 and October 15 of each year, commencing on October 15, 2019 and, in the case of any Additional Notes, such interest payment dates as may be designated by the Issuer in accordance with the provisions of Section 2.2 and, in each case, ending at the Stated Maturity of the Notes.
“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

“Investment Grade Securities” means:

1. securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
2. securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;
3. corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
4. investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees of Indebtedness), advances or capital contributions (excluding accounts receivable, trade credit and advances or other payments made to customers, dealers, suppliers and distributors and payroll, commission, travel and similar advances to officers, directors, managers, employees, consultants and independent contractors made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Equity Interests of any Restricted Subsidiary, or any Restricted Subsidiary issues any Equity Interests, in either case, such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Equity Interests of and all other Investments in such Restricted Subsidiary retained. In no event will a guarantee of an operating lease of the Issuer or any Restricted Subsidiary be deemed an Investment.

The amount of any Investment outstanding at any time (including for purposes of calculating the amount of any Investment outstanding at any time under any provision of Section 3.4 and for all other purposes of Section 3.4) will be the original cost of such Investment (determined, in the case of any Investment made with assets of the Issuer or any Restricted Subsidiary, based on the Fair Market Value of the assets invested), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Issuer or a Restricted Subsidiary in
respect of such Investment, and in the case of an Investment in any Person, will be net of any Investment by such Person in the Issuer or any Restricted Subsidiary.

“Issue Date” means June 7, 2019.

“Issue Date Extended Term Loan Amount” means the aggregate principal amount of Extended Term Loans outstanding immediately after the completion of the Transactions on the Issue Date.

“Issue Date Remaining Unsecured Notes Amount” means the aggregate principal amount of the Remaining Unsecured Notes outstanding immediately after the completion of the Transactions on as of the Issue Date.

“Junior Lien Indebtedness” means Indebtedness that is secured only by Junior Liens on the Collateral.

“Junior Lien Intercreditor Agreement” means the Junior Lien Intercreditor Agreement, dated as of the Issue Date, among the Notes Collateral Agent, on behalf of the holders of Third Lien Notes, and the collateral agents holding the First Liens and the Second Liens, among others, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“Junior Lien Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents governing Junior Lien Indebtedness.

“Junior Liens” means Liens on the Collateral, which Liens on any item of Collateral rank junior to the Notes Liens on such item of Collateral pursuant to a Customary Intercreditor Agreement.

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) 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; provided that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Liquidated Damages Amount” has the meaning ascribed in Section 6.2.

“Management Agreements” means each of (i) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager III, LLC, a Delaware limited liability company, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., (ii) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager IV, LLC, a Delaware limited liability company, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., and (iii) that certain Management Services Agreement, dated as of October 25, 2013, by and among CPPIB Equity Investments Inc., a corporation incorporated under the Canada Business Corporations Act, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., in each case, as in effect on the Issue Date, as
amended, amended and restated, supplemented or otherwise modified in a manner not adverse to the Holders in any material respect.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the NM Group on the Issue Date or who became directors, officers or management personnel of NM Group or any direct or indirect parent of NM Group, as applicable, and its Subsidiaries following the Issue Date (other than in connection with a transaction that would otherwise be a Change of Control if such persons were not included in the definition of “Permitted Holders”), or (in each case) family members thereof, or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date Beneficially Own or have the right to acquire, directly or indirectly, Equity Interests of the Issuer or any Permitted Parent.

“Mariposa Intermediate” means Mariposa Intermediate Holdings LLC, a Delaware limited liability company, and its successors.

“Maturity Date” means October 25, 2024.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“MYT Account” means a segregated account of MYT Parent for the benefit of the trustee for the Second Lien Notes on behalf of the holders of the Second Lien Notes, pledged to secure the Second Lien Notes. Upon the maturity of the Second Lien Notes or their earlier retirement, replacement or redemption in full, the proceeds held in the MYT Account shall be released to the MYT Guarantor Entities or their assignees for application in accordance with the provisions of the MYT Waterfall.

“MYT Alternate Security” means any security that is acceptable in the sole discretion of holders of at least 66-2/3% of the aggregate principal amount of the outstanding Second Lien Notes.

“MYT Asset Sale” means any direct or indirect sale, disposition, monetization or other transfer of any assets or property of the MYT Entities (whether directly or indirectly or synthetically, including through derivative transactions) to an Independent Third Party.

Notwithstanding the preceding, none of the following items will be deemed to be a MYT Asset Sale:

(1) a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the MYT Entities (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);
dispositions of assets or property with an aggregate Fair Market Value in any calendar year of less than $5.0 million;  

any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Subsidiary of the MYT Holdco to the MYT Holdco or by the MYT Holdco or a Subsidiary of the MYT Holdco to another Subsidiary of MYT Holdco;  

the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business, liquidation of inventory in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;  

the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;  

the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the MYT Entities, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes; and  

dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events.

“MYT Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.

“MYT Completed Disposition” means any transaction or series of transactions (a) that results in the sale or transfer of 100% of the operating business of the MYT Entities, in each case, to an Independent Third Party, (b) the proceeds of which are applied in accordance with the MYT Waterfall and (c) after giving effect to which Neiman Marcus Group, Inc., MYT Parent and the Sponsors (including any portfolio company thereof) retain no direct or indirect interest (economic or otherwise) in any of the MYT Operating Entities or assets (or the operating business of any of the MYT Entities immediately prior to such transaction), whether in the form of debt, equity, warrants, exchangeable or convertible securities, derivatives, phantom units, tracking stock, earn-outs, purchase price adjustments, other contractual rights or other instruments.

“MYT Covenants” means the covenants contained in Section 3.03 and 3.04 of the MYT Third Lien Notes Pledge Agreement.

“MYT Deposit Event” means (i) the irrevocable deposit of net cash proceeds of MYT Secondary Sales or distributions in respect of the equity of MYT Holdco in the MYT Account in an aggregate amount that is not less than (x) $200.0
million less (y) the aggregate amount of Qualified LCs that have been provided and (ii) the provision of such Qualified LCs.

“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement, dated the Issue Date, among MYT Parent, the MYT Guarantor Entities and Ankura Trust Company, LLC as trustee and Second Lien Notes Collateral Agent, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“MYT Guarantor Entities” means, collectively, and together with their respective successors, MYT Holdco, MYT Intermediate Holdco, Mariposa Luxembourg I S. à r.l., Mariposa Luxembourg II S. à r.l. and New MYT Dutch HoldCo (and each other Person who is required to become a MYT Guarantor Entity pursuant to the terms of the MYT Guarantee and Collateral Agreement).

“MYT Holdco” means MYT Holding Co., a direct Wholly Owned Subsidiary of MYT Parent, a newly formed Delaware corporation, together with its successors.

“MYT Holdco Common Equity” means the common Equity Interests of the MYT Holdco.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.

“MYT Limited Guarantee” means the guarantee provided by each of the MYT Guarantor Entities pursuant to the MYT Guarantee and Collateral Agreement.

“MYT Limited Guarantee Collateral” means the “Collateral,” as defined in the MYT Guarantee and Collateral Agreement.

“MYT Operating Entities” means (i) NMG Germany GmbH, (ii) mytheresa.com GmbH (Germany), (iii) mytheresa.com Service GmbH (Germany), (iv) Theresa Warenvertrieb GmbH (Germany) and (v) the Subsidiaries of any of the foregoing described in clauses (i) through (iv).

“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.

“MYT Secondary Sale” means (i) the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in the MYT Holdco) of equity interests of the MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party, other than a primary sale of equity interests for cash whose net cash proceeds are contributed to or retained by the MYT Entities or (ii) any MYT Asset Sale other than a Qualified MYT Asset Sale.

“MYT Third Lien Notes Pledge Agreement” means the Pledge Agreement dated as of the Issue Date among MYT Parent, MYT Holdco and Wilmington Trust, National Association, on behalf of the holders of the Third Lien Notes.

“MYT Waterfall” means Sections 3.01 and 3.02 of the MYT Third Lien Notes Pledge Agreement.

“MyTheresa Designation” means, collectively, all designations by any of the Company Parties or any of their related parties prior to the execution date of the Transaction Support Agreement of any of the MYT Entities as “unrestricted” subsidiaries under the indentures governing the Unsecured Notes, the Pre-Transactions Term Loan Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Company Party or any of its related parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Company Party (including but not limited to NMG International LLC, a Delaware limited liability company) prior to the execution date of the Transaction Support Agreement to or for the benefit of any other Company Parties of (1) any Equity Interests in the MYT Entities, (2) any indebtedness owed by the MYT Entities to any Company Party (including but not limited to NMG International LLC), and (3) any and all other Claims or Equity Interests of any Company Party (including but not limited to NMG International LLC) in the MYT Entities, and all acts or omissions taken by any Company Party or any of its related parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1) to (3) above.
“Net Cash Proceeds” means the aggregate cash proceeds (using the Fair Market Value of any Cash Equivalents) received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses incurred as a result thereof, Taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to Section 3.7(b) or (c), as applicable) to be paid as a result of such transaction, any costs associated with unwinding any related Hedge Agreements in connection with such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

“New MYT Dutch HoldCo” means a Dutch B.V. to be formed after the Issue Date, wholly-owned subsidiary of MYT Intermediate Holding Co. and direct parent of NMG Germany GmbH as a result of a merger by absorption of Mariposa Luxembourg II S.à r.l. into Mariposa Luxembourg I S.à r.l. and a subsequent merger by absorption of Mariposa Luxembourg I S.à r.l. into such newly formed Dutch B.V.

“NM Group” means, collectively, Neiman Marcus Group, Inc. and its Subsidiaries.

“Non-Mortgageable Leases” means all leasehold Real Properties subject to provisions restricting the mortgaging, assignment or other creation of a security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by an Officer of the Issuer) to be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest; provided that no leasehold Real Property shall be a Non-Mortgageable Lease if it is not treated as a Non-Mortgageable Lease.
under any of the Indebtedness Documents governing any Indebtedness of the Issuer or any Restricted Subsidiary.

“Non-Participating Term Loan Collateral” means the Original Term Loan Priority Collateral and the ABL Priority Collateral.

“Non-Participating Term Loan Exchange Indebtedness” means Indebtedness incurred by the Issuers, or by any of them or any Subsidiary Guarantor, under the Extended Term Loan Agreement or otherwise to Refinance any of the Non-Participating Term Loans, in an aggregate principal amount not exceeding 100% of the aggregate principal amount of the Non-Participating Term Loans actually Refinanced by, such Indebtedness and guarantees of such Indebtedness by the Issuers and/or Subsidiary Guarantors; so long as any such Indebtedness (i) otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Non-Participating Term Loans (except that such Indebtedness and guarantees thereof may be unsecured, secured with Extended Term Loan Liens or secured with Liens junior to the Extended Term Loan Liens any or all of on the Collateral and guaranteed by any Person that guarantees the Extended Term Loans, including the Notes PropCo and the Extended Term Loan PropCo)), (ii) has no amortization, (iii) is not subject to any “most-favored nation” provision, (iv) has a maturity date no earlier than the maturity date of the Extended Term Loans on the Issue Date, (v) has a cash interest rate not exceeding that of the Extended Term Loans on the Issue Date and (vi) is subordinated in right of payment or “waterfall” priority to the Extended Term Loan Obligations.

“Non-Participating Term Loan Exchange Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to the Non-Participating Term Loan Exchange Indebtedness.

“Non-Participating Term Loan Liens” means Liens on the Non-Participating Term Loan Collateral, securing the Non-Participating Term Loan Obligations, which Liens have the Required Collateral Lien Priority for Liens securing the Non-Participating Term Loan Obligations.

“Non-Participating Term Loans” means term loans outstanding under the Pre-Transactions Term Loan Agreement on the Issue Date that the lenders decline to exchange into Extended Term Loans (but not including, for the avoidance of doubt, any Non-Participating Term Loan Exchange Indebtedness).

“Non-Participating Term Loan Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to the Non-Participating Term Loans.

“Non-U.S. Person” means a Person who is not a U.S. Person.

“Note Party” means each Issuer and each Subsidiary Guarantor.

“Notes” means the Initial Notes and the Additional Notes, all of which will be treated as a single class for all purposes, except as otherwise provided, and unless
the context otherwise requires, all references to the Notes will include the Initial Notes and any Additional Notes.

“Notes Collateral Agent” means Wilmington Trust, National Association, in its capacity as such, until a successor replaces it and, thereafter, means the successor.

“Notes Collateral Agreement” means that certain Third Lien Notes Collateral Agreement, dated as of the Issue Date, by and among the Issuers, the Subsidiary Guarantors, the Notes Collateral Agent, the Trustee and the trustee under the 8.750% Third Lien Indenture, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“Notes Custodian” means the custodian with respect to the Global Note (as appointed by the Depositary), or any successor Person thereto and will initially be the Trustee.

“Notes Documents” means this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents, the Intercreditor Agreements and any other Indebtedness Documents related thereto.

“Notes Liens” means Liens on the Collateral securing the Notes Obligations, which Liens have the Required Collateral Lien Priority for Liens securing the Third Lien Notes Obligations.

“Notes Obligations” means the Indebtedness and the related Obligations of the Issuers and the Subsidiary Guarantors under the Notes Documents.

“Notes Priority Real Estate Collateral” consists of the assets known as (1) Tysons Galleria (Store 1023) located at 2255 International Drive, McLean, Virginia 22102, (2) Topanga Plaza (Store 1105) located at 6550 Topanga Canyon Boulevard, Woodland Hills, California 91303, (3) Walnut Creek (Store 1110) located at 1275 Broadway Plaza, Walnut Creek, California 94596, (4) Fort Lauderdale (Store 1018) located at 2442 East Sunrise Boulevard, Fort Lauderdale, Florida 33304, (5) Troy (Store 1033) located at 2705 West Big Beaver Road, Troy, Michigan 48084, (6) Coral Gables (Store 1034) located at 390 San Lorenzo Avenue, Coral Gables, Florida 33146, (7) Charlotte (Store 1102) located at 4400 Sharon Road, Charlotte, North Carolina 28211 and (8) Austin (Store 1101) located at 3400 Palm Way, Austin, Texas 78758, each of which is not collateral for the Pre-Transactions Term Loan Obligations as of the Issue Date.

“Notes Priority Real Estate Recovery” means the occurrence of either (a) the exercise and consummation of the Call Right or (b) the recovery by the holders of the Third Lien Obligations and the Second Lien Obligations of $200.0 million, in the aggregate, on the realization of (x) Liens securing such Third Lien Obligations and Second Lien Obligations on (i) the Notes Priority Real Estate Collateral and (ii) the Notes PropCo Equity Interests and (y) guarantees of the Second Lien Obligations and Third Lien Obligations by Notes PropCo (including the Subsidiary Guarantee by Notes PropCo).
“Notes PropCo” means NMG Notes PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Issuer formed to hold the Notes Priority PropCo Assets.

“Notes PropCo Equity Interests” means the Equity Interests of Notes PropCo.

“Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Officer” means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary (or any person serving the equivalent function of any of the foregoing) of such Person (or of the general partner of such Person) or any individual designated as an “Officer” for purposes of this Indenture by the Board of Directors of such Person (or the Board of Directors of the general partner of such Person).

“Officer’s Certificate” means a certificate signed on behalf of the Issuer by an Officer of the Issuer that meets the requirements set forth in this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuers.

“Original Term Loan Priority Collateral” means assets of the Issuers and the Subsidiary Guarantors constituting collateral for the Obligations under the Pre-Transactions Term Loan Agreement immediately prior to the Issue Date, which assets include, among other things, seven owned real properties and substantially all personal property (including substantially all intellectual property) of the Issuers and the Subsidiary Guarantors other than the ABL Priority Collateral and Excluded Assets. The Original Term Loan Priority Collateral does not include the Extended Term Loan Priority Real Estate Collateral, the Extended Term Loan PropCo Equity Interests, the Notes Priority Real Estate Collateral or the Notes PropCo Equity Interests.

“Parent” means Neiman Marcus Group, Inc., a corporation organized under the laws of the State of Delaware, and its successors.

“Parent Entity” means any direct or indirect parent of the Issuer.

“Pari Passu Lien Indebtedness” means Indebtedness that is secured only by Pari Passu Liens on the Collateral; provided that if such Indebtedness is guaranteed by Notes PropCo or Extended Term Loan PropCo, such guarantees provided by Notes
PropCo and Extended Term Loan PropCo shall be unsecured and rank pari passu in right of payment with the Notes PropCo Guarantee and the Extended Term Loan PropCo Guarantee, respectively.

“Pari Passu Lien Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to Pari Passu Lien Indebtedness.

“Pari Passu Liens” means Liens on the Collateral, which Liens on any item of Collateral shall rank pari passu to the Notes Liens on such item of Collateral (but without regard to the control of remedies), pursuant to a Customary Intercreditor Agreement.

“Participant” means, with respect to the Depositary, Euroclear or Clearstream a Person who has an account with the Depositary, respectively (and, with respect to the Depositary, will include Euroclear or Clearstream).

“Permanent Regulation S Global Note” means a permanent Global Note in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Temporary Regulation S Global Note upon expiration of the Restricted Period.

“Permitted Acquisition” means the purchase or other acquisition, by merger, consolidation, amalgamation or otherwise, by the Issuer or its Restricted Subsidiaries of Equity Interests in, the assets of (including all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person, including minority investments and joint ventures (or any subsequent investment made in a Person, business unit, division, product line or line of business previously acquired in a Permitted Acquisition); provided, that joint ventures (x) may not be consummated with affiliates of Mariposa Intermediate, the Issuers, or their Subsidiaries and (y) must be bona fide operating businesses reasonably related to the Issuer’s business and any such acquisition, minority investment or joint venture may not constitute an investment in debt or equity of Mariposa Intermediate or its Subsidiaries.

“Permitted Asset Swap” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Issuer or any of its Restricted Subsidiaries and another Person; provided that any cash or Cash Equivalents received must be applied in accordance with Section 3.7.

“Permitted Debt” has the meaning assigned to it in Section 3.3(b).

“Permitted Holders” means each of:

1. the Sponsors;
(2) any member of the Management Group (or any controlled Affiliate thereof of which members of the Management Group hold at least 50% of the Voting Stock and 50% of the economic value);

(3) any other holder of a direct or indirect Equity Interest in Parent that holds such Equity Interest as of the Issue Date;

(4) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in clauses (1), (2) or (3) above are members; provided that (a) without giving effect to the existence of such group or any other group, the Persons described in clauses (1), (2) and (3) above, collectively, Beneficially Owned Voting Stock representing 50% or more of the aggregate ordinary voting power of the Voting Stock of the Issuer (or any Permitted Parent) then held by such group and (b) if the Beneficial Ownership described in subclause (a) is shared with any Person other than the Persons described in clauses (1), (2) and (3) above, the Persons described in clauses (1), (2) and (3) above hold at least 50% of the economic value of the equity securities of the Issuer (or Permitted Parent, as the case may be) then held by such group; and

(5) any Permitted Parent.

Any Person or group, together with its Affiliates, whose acquisition of Beneficial Ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

“Permitted Investments” means:

(1) Investments made in order to consummate or complete the Transactions;

(2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Issuer or any Restricted Subsidiary not to exceed $25.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made); provided that loans and advances to consultants in the form of upfront payments made in connection with employment or consulting arrangements entered into in the ordinary course of business shall not be subject to such $25.0 million cap;

(3) Investments in (i) the Issuers or Subsidiary Guarantors, provided that any Investment in Notes PropCo and Extended Term Loan PropCo shall only be made to fund lease and other operating payments that are due in the ordinary course or to maintain its respective legal existence, to the extent they are not already covered by Issuer or any other Subsidiary other than Notes PropCo or Extended Term Loan PropCo, as applicable or (ii) Restricted Subsidiaries that are not Subsidiary Guarantors not to exceed $25.0 million in an aggregate principal amount at any time outstanding, provided that Investments (other than in respect of Excluded Assets) under this subclause (ii) shall take the form of intercompany loans which shall be pledged as Collateral to secure the

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Notes Obligations, provided further in case of both subclause (i) and (ii) that Investments in Subsidiaries that are not Wholly Owned Subsidiaries shall be on arm’s length terms;

(4)  [Reserved];

(5)  Cash Equivalents and Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(6)  Investments arising out of the receipt by the Issuer or any of its Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 3.7;

(7)  accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(8)  Investments acquired as a result of a foreclosure by the Issuer or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(9)  Hedging Agreements;

(10)  Investments existing on, or contractually committed as of, the Issue Date and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (10) is not increased at any time above the amount of such Investments existing or committed on the Issue Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Issue Date or as otherwise permitted under this definition or under Section 3.4, provided that Investments outstanding as of the Issue Date which were Incurred or allocated under a specific clause of the definition of “Permitted Investments” under the indentures governing the Remaining Unsecured Notes as of immediately prior to the Issue Date shall be deemed to be incurred on the Issue Date under the corresponding specific clause of the definition of “Permitted Investments” under this Indenture and not under this clause (10);

(11)  Investments resulting from pledges and deposits that are Permitted Liens;

(12)  intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries Incurred pursuant to Section 3.3(b)(xxi);

(13)  acquisitions of obligations of one or more officers or other employees of any Parent Entity, the Issuer or any Subsidiary of the Issuer in connection with such officer’s or employee’s acquisition of Equity Interests of any Parent Entity, so
long as no cash is actually advanced by the Issuer or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(14) Guarantees of operating leases (for the avoidance of doubt, excluding Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(15) Investments to the extent that payment for such Investments is made with Equity Interests (other than Excluded Equity) of the Issuer;

(16) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 3.4;

(17) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(18) Guarantees permitted under Section 3.3;

(19) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Issuer or any Restricted Subsidiary;

(20) Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(21) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(22) [Reserved];

(23) intercompany current liabilities owed to joint ventures Incurred in the ordinary course of business in connection with the cash management operations of the Issuer and its Subsidiaries;

(24) (a) Investments in Permitted Acquisitions in an aggregate amount, taken together with all other Investments made pursuant to this clause (24) and the aggregate principal amount of any Indebtedness Incurred or assumed under clause (xii) of the definition of “Permitted Debt” that are at the time outstanding, not to exceed $300.0 million less the aggregate consideration paid by TNMG LLC prior to the Issue Date in respect of that certain investment made by TNMG LLC pursuant to that certain Unit Purchase Agreement, dated as of April 17, 2019, by and among FashionPhile Group, LLC, TNMG LLC and the other parties thereto (the “FashionPhile Consideration”) (not including any consideration consisting of common equity of
Mariposa Intermediate, proceeds of common equity issued by Mariposa Intermediate and contributed to Issuer or contributions to Mariposa Intermediate’s common equity capital further contributed to Issuer, and not including any transaction costs of the Issuer and its Restricted Subsidiaries associated with such Permitted Acquisition; provided that affiliates of Mariposa Intermediate, the Issuers, or their Subsidiaries (including any Sponsor but excluding Mariposa Intermediate, the Issuers, and their Subsidiaries) may co-invest in any such joint venture with an unaffiliated third party on terms substantially similar to the terms of the applicable Issuers’ or Subsidiary’s investment without such affiliates’ investments being subject to the caps set forth herein); provided, further, however, that (1) no individual Permitted Acquisition transaction or series of related transactions shall, together with the aggregate principal amount of any Indebtedness Incurred or assumed under clause (xii) of the definition of “Permitted Debt” that is at the time outstanding, exceed $150.0 million plus, after such Permitted Acquisition is made, an additional incremental aggregate amount of $25.0 million in such Permitted Acquisition (subject to the aggregate cap of $300.0 million of this clause (24)), and (2) no Permitted Acquisition transaction may be made if pro forma ABL Availability would be less than $300.0 million;

(b) Any Wholly Owned Subsidiary acquired pursuant to subclause (a) of this clause (24) must become a Subsidiary Guarantor, and assets acquired pursuant to Permitted Acquisitions (including 100% of all equity interests, which shall not, for the avoidance of doubt, constitute Excluded Assets) must be included in the Collateral in each case in accordance with the terms and conditions set forth in the Security Documents; provided however that any non-Wholly Owned Subsidiary or any minority-owned entity or joint venture entity so acquired pursuant to this clause shall be permitted to utilize this clause to fund its ratable share of investments in other bona fide operating businesses, in each case, subject to the $300.0 million aggregate cap, $150.0 million per transaction cap and $25.0 million incremental cap set forth above, and for purposes of clarity, a third party owner (that is not Mariposa Intermediate or any of its Subsidiaries) of a non-Wholly Owned Subsidiary, minority-owned entity or joint venture entity shall not be required to pledge its equity interests in such entity as Collateral;

(25) [Reserved];

(26) Investments that are made with the net proceeds of common equity issued by or contributed to Mariposa Intermediate and contributed to the Issuer; and

(27) additional Investments; provided that the aggregate Fair Market Value of such Investments made since the Issue Date that remain outstanding (with all such Investments being valued at their original Fair Market Value and without taking into account subsequent increases or decreases in value) does not exceed $25.0 million, plus any returns of capital actually received by the Issuer or any Restricted Subsidiary in respect of such Investments; provided that any Investments pursuant to this clause (27) cannot be in any Parent Entity or its subsidiaries (other than an Issuer or Subsidiary Guarantor or its subsidiaries), including any MYT Entity, and the Investment shall take the form of an intercompany loan which shall be pledged to secure the Notes Obligations
“Permitted Liens” means, with respect to any Person:

1. Extended Term Loan Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (i) of the definition of “Permitted Debt” and Extended Term Loan Obligations related thereto;

2. ABL Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (ii) of the definition of “Permitted Debt” and ABL Obligations related thereto;

3. Second Lien Notes Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (iii)(B) of the definition of “Permitted Debt” and the Second Lien Notes Obligations related thereto;

4. 2028 Debentures Liens on the 2028 Debentures Collateral, securing Indebtedness Incurred in accordance with clause (iii)(C) of the definition of “Permitted Debt” and the 2028 Debentures Obligations related thereto;

5. Third Lien Notes Liens on the Collateral, securing (i) Indebtedness Incurred in accordance with clause (iii)(D)(2) of the definition of “Permitted Debt” and Remaining Unsecured Notes Exchange Obligations related thereto and (ii) Permitted Refinancing Indebtedness Incurred in respect of such Indebtedness and Obligations related to such Permitted Refinancing Indebtedness;

6. (i) Non-Participating Term Loan Liens on the Non-Participating Term Loan Collateral, securing Indebtedness Incurred in accordance with clause (iii)(E)(1) of the definition of “Permitted Debt” and Non-Participating Term Loan Obligations related thereto, and (ii) Extended Term Loan Liens, Pari Passu Liens or Junior Liens on the Collateral, securing Non-Participating Term Loan Exchange Indebtedness Incurred in accordance with clause (iii)(E)(2) of the definition of “Permitted Debt” and Non-Participating Term Loan Exchange Obligations related thereto;

7. Third Lien Notes Liens on the Collateral securing Indebtedness Incurred in accordance with clause (iii)(A)(1) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto and (ii) Pari Passu Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (iii)(A)(2) of the definition of Permitted Debt and Pari Passu Lien Obligations related thereto;

2. Liens existing on the Issue Date; provided that Liens outstanding as of the Issue Date that were incurred or allocated under a specific Liens clause under the indentures governing the Remaining Unsecured Notes shall be deemed to be incurred on the Issue Date under the corresponding Liens clause under this Indenture, and not under this clause (2);
(3) Liens securing Indebtedness Incurred in accordance with clause (v) of the definition of “Permitted Debt;” provided that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(4) [Reserved];

(5) (a) Liens on assets of Foreign Subsidiaries that are not Subsidiary Guarantors and (b) Junior Liens on assets of Foreign Guarantors, in either case securing Indebtedness Incurred in accordance with clause (xxi) of the definition of “Permitted Debt”;

(6) Liens securing Permitted Refinancing Indebtedness incurred in accordance with clause (xxiv) of the definition of “Permitted Debt” (with respect to clauses (iv) and (xxiv) of the definition of “Permitted Debt”); provided that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto) and are no higher priority than the original Lien;

(7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Issuer or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) [Reserved];

(9) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in good faith by appropriate proceedings and for which reserves have been set aside in accordance with GAAP;

(10) Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Issue Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Indenture); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing judgments that do not constitute an Event of Default pursuant to Section 6.1(g) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which the Issuer or any affected Restricted Subsidiary, has set aside on its books reserves in accordance with GAAP with respect thereto;

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(12) Liens imposed by law, including landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, to the Issuer or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

(13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Issuer or any Restricted Subsidiary;

(14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capitalized Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers (but not to secure Indebtedness or receivables or capital lease financing), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) Incurred, in each case, by the Issuer or any Restricted Subsidiary in the ordinary course of business, including those Incurred to secure health, safety and environmental obligations in the ordinary course of business;

(15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capitalized Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of real property, servicing agreements, development agreements, site plan agreements and other similar encumbrances Incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Issuer or any Restricted Subsidiary;

(16) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(17) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Issuer or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations Incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary or (b) relating to purchase orders and other
agreements entered into with customers of the Issuer or any Restricted Subsidiary in the ordinary course of business;

(18) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(19) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Issuer and any of its Restricted Subsidiaries, taken as a whole;

(20) Liens solely on any cash earnest money deposits made by the Issuer or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment;

(21) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(22) Liens arising from precautionary Uniform Commercial Code financing statements;

(23) Liens on Equity Interests of any joint venture, to the extent such Equity Interests are Excluded Equity Interests, (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

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

(25) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(26) Liens securing insurance premium financing arrangements;

(27) [Reserved];

(28) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; provided that such defeasance or satisfaction and discharge is not prohibited by this Indenture;

(29) Liens (a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection; (b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts Incurred in the ordinary course of business; and (c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;
Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

Junior Liens on the Collateral securing Indebtedness permitted to be Incurred pursuant to Section 3.3(a) and related Junior Lien Obligations; and

Junior Liens or Pari Passu Liens on the Collateral securing additional obligations in an aggregate outstanding principal amount not to exceed the $50.0 million; provided that the cash interest rate on any such obligations may not exceed 8.0% per annum.

For purposes of determining compliance with this definition, (x) a Lien need not be Incurred solely by reference to one category of Permitted Liens described in this definition but may be Incurred under any combination of such categories (including in part under one such category and in part under any other such category), (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Issuer will, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (z) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (1) or (32) above (giving effect to the Incurrence of such portion of such Indebtedness), the Issuer, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (1) or (32) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition. Notwithstanding the foregoing, (A) all Extended Term Loan Liens shall be Incurred under clause (1)(a) of this definition, (B) all ABL Liens shall be Incurred under clause (1)(b) of this definition, (C) all Second Lien Notes Liens securing Second Lien Notes Incurred under clause (iii)(B) of the definition of “Permitted Debt” and the Second Lien Notes Obligations related thereto shall be Incurred under clause (1)(c) of this definition, (D) all 2028 Debentures Liens shall be Incurred under clause (1)(d) of this definition, (E) all Third Lien Notes Liens securing Indebtedness Incurred under clause (iii)(D)(2) or (iii)(D)(4) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto shall be Incurred under clause (1)(e) of this definition, (F) all Non-Participating Term Loan Liens shall be Incurred under clause (1)(f)(i) of this definition, (G) all Liens securing Non-Participating Term Loan Exchange Obligations shall be Incurred under clause (1)(f)(ii) of this definition, (H) all Third Lien Notes Liens securing Third Lien Notes Incurred under clause (iii)(A)(1) of the definition of “Permitted Debt” and related Third Lien Notes Obligations shall be Incurred under clause (1)(g)(i) of this definition and (I) all Pari Passu Liens shall be Incurred under clause (1)(g)(ii) of this definition, and, in each case of subclauses (A) through (I) above, such Liens may not be later reallocated. Notwithstanding anything to the contrary in any Notes Document, Permitted Liens shall not include Liens securing Indebtedness or Obligations on the MYT Holdco Common Equity that is pledged to secure the Notes.
Obligations pursuant to the MYT Third Lien Notes Pledge Agreement (other than Permitted Liens Incurred under clause (1)(e) or (1)(g) above).

“Permitted Parent” means any Parent Entity for so long as it is controlled only by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof; provided that such Parent Entity was not formed in connection with, or in contemplation of, a transaction (other than the Transactions) that would otherwise constitute a Change of Control.

“Permitted PropCo Guaranteed Obligations” means the (i) the Extended Term Loan Obligations, (ii) the Third Lien Notes Obligations, (iii) the Second Lien Notes Obligations, (iv) the ABL Obligations, (v) the Non-Participating Term Loan Exchange Obligations and (vi) the 2028 Debentures Obligations.

“Permitted Refinancing Indebtedness” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “Refinance” or a “Refinancing”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

1. the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. the final maturity of such Permitted Refinancing Indebtedness is equal to or later than the maturity of the Indebtedness so Refinanced and the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Maturity Date were instead due on the date that is one year following the Maturity Date; provided that no Permitted Refinancing Indebtedness Incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced;

3. if the Indebtedness being Refinanced is subordinated, as to any assets, in right of payment or lien priority to the Notes Obligations, such Permitted Refinancing Indebtedness is subordinated, as to such assets, in right of payment or lien priority to such Notes Obligations on terms at least as favorable to the lenders as those contained in the documentation governing the Indebtedness being Refinanced;

4. no Permitted Refinancing Indebtedness will have different obligors, or greater (including higher ranking priority) Guarantees or security, than the Indebtedness being Refinanced (and, for the avoidance of doubt, any Liens securing such
Permitted Refinancing Indebtedness may not extend to additional assets or be higher in priority than the Liens securing the Indebtedness being Refinanced; and

(5) in the case of a Refinancing of Indebtedness that is secured by any Collateral and subject to specified Required Collateral Lien Priority, the applicable Liens securing such Permitted Refinancing Indebtedness do not have a higher priority than the Required Collateral Lien Priority applicable to the Notes Liens and a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Junior Lien Intercreditor Agreement and, if applicable, the ABL Intercreditor Agreement.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Maturity Date after the date of original Incurrence thereof.

Notwithstanding the foregoing: (a) Indebtedness incurred to Refinance the Remaining Unsecured Notes must be Remaining Unsecured Notes Exchange Indebtedness; (b) Indebtedness incurred to Refinance the Non-Participating Term Loans must be Non-Participating Term Loan Exchange Indebtedness; (c) Indebtedness incurred to Refinance the Third Lien Notes and the related Third Lien Notes Obligations must be unsecured Indebtedness, Junior Lien Indebtedness or Pari Passu Lien Indebtedness; (d) Indebtedness incurred to Refinance any Indebtedness guaranteed by Notes PropCo may not have the benefit of a guarantee by Notes PropCo that has a higher priority in right of payment than the guarantee by Notes PropCo of the Indebtedness being Refinanced; and (e) Indebtedness incurred to Refinance any Indebtedness guaranteed by Extended Term Loan PropCo may not have the benefit of a guarantee by Extended Term Loan PropCo that has a higher priority in right of payment than the guarantee by Extended Term Loan PropCo of the Indebtedness being Refinanced.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Preferred Stock” means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution or winding up.

“Pre-Transactions Term Loan Agreement” means that certain term loan credit agreement, dated as of October 25, 2013, among Mariposa Intermediate Holdings LLC, the Issuer (as successor by merger to Mariposa Merger Sub LLC), the subsidiaries of the Issuer from time to time party thereto, Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent, and the lenders party thereto from time to time, as amended, amended and restated, supplemented or otherwise modified prior to (but not on or after) the Issue Date (and which Pre-Transactions Term Loan Agreement, for the avoidance of doubt, is not the Extended Term Loan Agreement).

“Pre-Transactions Term Loan Lenders” means the lenders party to the Pre-Transactions Term Loan Agreement.

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“Pre-Transactions Term Loan Obligations” means the Indebtedness and related Obligations under the Pre-Transactions Term Loan Agreement and the Obligations under other Indebtedness Documents related to the Pre-Transactions Term Loans.

“Pre-Transactions Term Loans” means the term loans by the lenders under the Pre-Transactions Term Loan Agreement.

“Pro Forma Basis” means, as of any date, that pro forma effect will be given to the Transactions, any Investment, any issuance, Incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued or Incurred as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, in each case that have occurred during the four consecutive fiscal quarter period of the Issuer being used to calculate such financial ratio (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Issuer and its Restricted Subsidiaries to be realized based upon actions taken or reasonably expected to be taken within 12 months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Issuer and provided further that such adjustments shall not exceed 10% of Consolidated EBITDA (after giving effect to such application or adjustment) of the Issuer for the applicable four fiscal quarter period.

“QIB” means any “qualified institutional buyer” (as defined in Rule 144A).

“Qualified LCs” means one or more letters of credit issued by a reputable bank or trust company that is organized under the laws of the United States of America or any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act)) supporting the guarantee of the Second Lien Notes by the MYT Guarantor Entities, in an aggregate amount equal to the difference between (x) $200.0 million and (y) the amount of net cash proceeds of MYT Secondary Sales that has been irrevocably deposited in the MYT Account.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are
reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities; provided that (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.

“Rating Agency” means:

(1) each of Moody’s and S&P; and

(2) if Moody’s or S&P ceases to rate the Notes for reasons outside of the Issuer’s control, a “nationally recognized statistical rating organization” within the meaning of Section 3 of the Exchange Act selected by the Issuer or any Parent Entity as a replacement agency for Moody’s or S&P, as the case may be.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interest in real property owned in fee or leased, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Record Date” for the interest payable on any applicable Interest Payment Date means, in the case of the Initial Notes, April 1 and October 1 immediately preceding such Interest Payment Date (whether or not a Business Day) and, in the case of any Additional Notes, such record date (whether or not a Business Day) as may be designated by the Issuers in accordance with the provisions Section 2.2, in each case, next preceding such Interest Payment Date.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Regulation S Global Note” means a Temporary Regulation S Global Note or Permanent Regulation S Global Note, as applicable.

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless such Person is, or upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Remaining Unsecured Notes” means any 8.00% senior cash pay notes due 2021 and 8.75%/9.50% senior PIK toggle notes due 2021 that remain outstanding following the consummation of the Exchange Offers.

“Remaining Unsecured Notes Exchange Indebtedness” means:
(a) additional Third Lien Notes Incurred to Refinance any of the Remaining Unsecured Notes and guarantees of such additional Third Lien Notes by the Subsidiary Guarantors; or

(b) unsecured Indebtedness Incurred to Refinance any of the Remaining Unsecured Notes and guarantees of such unsecured Indebtedness by the Subsidiary Guarantors;

so long as, in each case of (a) and (b), any such Indebtedness (i) otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Remaining Unsecured Notes (except that such additional Third Lien Notes and guarantees thereof may be secured with Third Lien Notes Liens on the Collateral and guaranteed by any Person that guarantees the Third Lien Notes, including the Notes PropCo and the Extended Term Loan PropCo), (ii) has no amortization, (iii) is not subject to any “most-favored nation” provision, (iv) has a maturity date no earlier than the maturity date of the Third Lien Notes issued on the Issue Date, (v) in the case of (a), has a cash interest rate not exceeding the cash interest rate on the Third Lien Notes issued in the Exchange Offer for the same class of Unsecured Notes and (vi) in the case of (b), has a cash interest rate not exceeding the cash interest rate on the relevant class of Remaining Unsecured Notes outstanding as of the Issue Date.

“Remaining Unsecured Notes Exchange Obligations” means the Indebtedness and the related Obligations under the Remaining Unsecured Notes Exchange Indebtedness and the other Indebtedness Documents related to the Remaining Unsecured Notes Exchange Indebtedness.

“Required Collateral Lien Priority” means, with respect to any Lien on any Collateral, that such Lien on such Collateral has the priority indicated in the table below, based on the category of asset subject to such Lien listed at the top of each column and the Obligations secured by such Lien listed at the beginning of each row:

<table>
<thead>
<tr>
<th>Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations</th>
<th>Extended Term Loan Priority Real Estate Collateral</th>
<th>Original Term Loan Priority Collateral</th>
<th>ABL Priority Collateral</th>
<th>Notes Priority Real Estate Collateral and Notes PropCo Equity Interests (pre-Notes Priority Real Estate Recovery)</th>
<th>Notes Priority Real Estate Collateral and Notes PropCo Equity Interests (post-Notes Priority Real Estate Recovery)</th>
<th>Extended Term Loan Priority PropCo Equity Interests</th>
<th>MYT Limited Guarantee Collateral and MYT Account (i)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Participating Term Loan Obligations</td>
<td>None</td>
<td>1</td>
<td>2</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
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<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>None</td>
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<tr>
<td>Second Lien Notes Obligations</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2(ii)</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>Third Lien Notes Obligations</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>1(iii)</td>
<td>4</td>
<td>3</td>
<td>None</td>
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<tr>
<td>2028 Debentures Obligations</td>
<td>1(iv)</td>
<td>1(iv)</td>
<td>None</td>
<td>3(iv)</td>
<td>2(v)</td>
<td>1(iv)</td>
<td>None</td>
</tr>
</tbody>
</table>
Second Lien Notes Liens on MYT Limited Guarantee Collateral will be released following the earlier to occur of (i) a MYT Deposit Event and (ii) the provision of MYT Alternate Security pursuant to the terms of the MYT Guarantee and Collateral Agreement.

Recovery not to exceed $200.0 million, together with recovery for Second Lien Notes Obligations.

Recovery not to exceed $200.0 million, together with recovery for Third Lien Notes Obligations.

Priority shall be pari passu with the Extended Term Loan Liens and the Non-Participating Term Loan Exchange Liens (or if there are no Extended Term Loan Liens or Non-Participating Term Loan Exchange Liens, (i) with respect to the Call Right Collateral prior to the Call Right Cap Recovery, the 2028 Debenture Obligations will retain its Lien priority thereon (i.e., third priority) and (ii) with respect to the Extended Term Loan Priority Real Estate Collateral, Original Term Loan Priority Collateral, and the Equity Interests in the Extended Term Loan PropCo, the Lien priority provided for the 2028 Debentures will be pari passu with the highest priority Lien remaining on the relevant asset) solely on assets if and to the extent required by the 2028 Debentures Indenture as in effect on the Issue Date.

To the extent no Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, if the Call Right Cap Recovery has occurred, priority will be pari passu with the highest priority Lien remaining on the relevant asset, solely on assets if and to the extent required by the 2028 Debentures Indenture.

“Required PropCo Guarantee Priority” means, with respect to any guarantee of Permitted PropCo Guaranteed Obligations by Notes PropCo or Extended Term Loan PropCo, that such guarantee has the priority indicated in the table below in respect of contractual right of payment, based on the Obligations guaranteed by Notes PropCo and Extended Term Loan PropCo (as the case may be) listed at the beginning of each row:

<table>
<thead>
<tr>
<th>Obligations</th>
<th>Priority of Guarantee by Notes PropCo (pre-Notes Priority Real Estate Recovery)</th>
<th>Priority of Guarantee by Notes PropCo (post-Notes Priority Real Estate Recovery)</th>
<th>Priority of Guarantee by Extended Term Loan PropCo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended Term Loan Obligations and Non-Participating Term Loan Exchange Obligations</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Second Lien Notes Obligations</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>3</td>
<td>2</td>
<td>2</td>
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<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Non-Participating Term Loan Obligations</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
</tr>
</tbody>
</table>

To the extent no Extended Term Loan Obligations nor any Non-Participating Term Loan Exchange Obligations are outstanding, after a Call Right Cap
Recovery the priority of the guarantee by Notes PropCo of 2028 Debenture Obligations shall match the priority of the senior-most remaining guarantee.

“Required Financial Statements” means the financial statements required to be delivered under Section 3.2.

“Restricted Definitive Note” means a Definitive Note bearing the Private Placement Legend.

“Restricted Global Note” means a Global Note bearing the Private Placement Legend.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Period” means the 40-day distribution compliance period as defined in Regulation S.

“Restricted Subsidiary” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Indenture, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Issuer.

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Rule 903” means Rule 903 promulgated under the Securities Act.

“Rule 904” means Rule 904 promulgated under the Securities Act.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor to the rating agency business thereof.

“SEC” means the Securities and Exchange Commission.

“Second Lien” means, with respect to any Collateral, the Lien on such Collateral securing the Second Lien Notes Obligations and any Lien on such Collateral that has the same priority as that of the Lien on such Collateral securing the Second Lien Notes Obligations.

“Second Lien Notes” means the 14.0% Second Lien Notes due 2024 to be issued by the Issuers on the Issue Date.

“Second Lien Notes Collateral Agent” means Ankura Trust Company, LLC, in its capacity as such, until a successor replaces it and, thereafter, means the successor.
“Second Lien Notes Indenture” means the Indenture, dated as of the Issue Date, among the Issuers, the Subsidiary Guarantors and Ankura Trust Company, LLC, as trustee and collateral agent, governing the Second Lien Notes.

“Second Lien Notes Liens” means Liens on the Collateral, which Liens have Required Collateral Lien Priority for Liens securing the Second Lien Notes Obligations.

“Second Lien Notes Obligations” means the Indebtedness and related Obligations under the Second Lien Notes and the other Indebtedness Documents related to the Second Lien Notes.

“Second Lien Obligations” means, with respect to any Collateral, the Second Lien Notes Obligations and any other Indebtedness or other Obligations secured by a Second Lien thereon.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Security Documents” means the Notes Collateral Agreement, the MYT Third Lien Notes Pledge Agreement, the Intercreditor Agreements the Copyright Security Agreement and the Trademark Security Agreement related to the Notes and mortgages, intellectual property security notices and any other agreements, filings and instruments granting, perfecting or otherwise evidencing the Notes Liens.

“Senior Priority Obligations” means, with respect to the Net Cash Proceeds of a Collateral Asset Sale of any asset, (i) if such asset is not an asset of Notes PropCo or Extended Term Loan PropCo, Indebtedness that is secured by a Lien on such asset that ranks senior to the Notes Liens on such asset (after taking into account the Notes Priority Real Estate Recovery, if applicable), (ii) if such asset is an asset of Notes PropCo, Indebtedness that is guaranteed by Notes PropCo on a basis senior to the Notes PropCo Guarantee (after taking into account the Notes Priority Real Estate Recovery, if applicable), and (iii) if such asset is an asset of Extended Term Loan PropCo, Indebtedness that is guaranteed by Extended Term Loan PropCo on a basis senior to the Extended Term Loan PropCo Guarantee; provided that, in no event shall Remaining Unsecured Notes Obligations be Senior Priority Obligations.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” of the Issuer within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Similar Business” means any business engaged or proposed to be engaged in by the Issuer and its Restricted Subsidiaries on the Issue Date and any business or other activities that are similar, ancillary, complementary, incidental or related to, or an extension, development or expansion of, the businesses in which the Issuer and its Restricted Subsidiaries is engaged on the Issue Date.
“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Indebtedness” means (i) any Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors that are subordinated in right of payment to any of the Notes Obligations, (ii) any unsecured Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors (including the Remaining Unsecured Notes), (iii) any Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors (including Junior Lien Obligations) that are secured by Liens on the Collateral ranking junior to the Notes Liens, and (iv) the Non-Participating Term Loan Obligations; provided that Non-Participating Term Loan Obligations shall not be deemed to be Subordinated Indebtedness with respect to repayments of such Indebtedness from Net Cash Proceeds of Non-Participating Term Loan Collateral securing such Indebtedness (to the extent the Non-Participating Term Loan Liens on such Non-Participating Term Loan Collateral are senior in priority to the Notes Liens on such Non-Participating Term Loan Collateral) in accordance with Section 3.7. For the avoidance of doubt, (i) the ABL Obligations, the Extended Term Loan Obligations, the Non-Participating Term Loan Exchange Obligations, the Second Lien Notes Obligations and the 2028 Debentures Obligations shall not be deemed to be Subordinated Indebtedness and (ii) for purposes of the application of Section 3.7 with respect to any asset, (A) any Obligations guaranteed by the holder of such asset on a basis that is junior to the relevant guarantee of the Notes Obligations and (B) any Obligations secured by a Lien on such asset ranking junior to the Lien on such asset securing the Notes Obligations, in each case, shall be Subordinated Indebtedness.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person.

“Subsidiary Guarantee” means the guarantee of the Guaranteed Obligations that is required to be provided pursuant to Section 3.11 and Article X, including the Notes PropCo Guarantee and the Extended Term Loan PropCo Guarantee.
“Subsidiary Guarantor” means any Subsidiary of the Issuers that provides a guarantee of the Guaranteed Obligations, as required by Section 3.11 and Article X, including Notes PropCo and Extended Term Loan PropCo.

“Taxes” means all present and future taxes, levies, imposts, deductions, duties, assessment, fees, withholdings (including backup withholding) or other charges imposed by any government or taxing authority, including any interest, additions to tax or penalties with respect thereto.

“Temporary Regulation S Global Note” means a temporary Global Note in the form of Exhibit A bearing the Global Note Legend, the Guarantor Legend, the Private Placement Legend, and the Temporary Regulation S Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903.

“Temporary Regulation S Legend” means the legend set forth in Section 2.1(e).

“Term/Notes Priority Collateral” means all Collateral other than ABL Priority Collateral.

“Term/Notes Priority Proceeds” means all cash, money, instruments, securities, financial assets, deposit accounts and insurance payments directly received as proceeds of any Term/Notes Priority Collateral.

“Third Lien Notes” means the Notes and the 8.750% Third Lien Notes.

“Third Lien Notes Liens” means Liens on the Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the Third Lien Obligations.

“Third Lien Notes Obligations” means the Indebtedness and related Obligations under the Third Lien Notes and the other Indebtedness Documents related to the Third Lien Notes.

“Third Lien Obligations” means, with respect to any Collateral, the Notes Obligations and any other Indebtedness or other Obligations secured by a Third Lien thereon.


“Transaction Support Agreement” means that certain transaction support agreement, dated March 25, 2019, by and among Neiman Marcus Group, Inc. and each of its Subsidiaries signed thereunder, the Sponsors, certain Pre-Transactions Term Loan Lenders signed thereunder (the “Consenting Pre-Transactions Term Loan Lenders”), nominees, investment managers, advisors or subadvisors to funds and/or accounts, or
trustees of trusts, that hold certain of the Issuer’s Unsecured Notes signed thereunder (the “Consenting Pre-Transactions Unsecured Noteholders”).

“Transactions” means the issuance of the Third Lien Notes and the Guarantees thereof, the issuance of the Second Lien Notes and the Guarantees thereof, the amendment or amendment and restatement of the Pre-Transactions Term Loan Agreement into the Extended Term Loan Agreement and the borrowing thereunder, the issuance of the MYT Holdco Preferred Stock and other transactions as contemplated by the terms of the Transaction Support Agreement.

“Trust Officer” means any officer within the corporate trust administration department of the Trustee, with direct responsibility for performing the Trustee’s duties under this Indenture and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such person’s knowledge of and familiarity with the particular subject.

“Trustee” has the meaning set forth in the preamble hereto.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“Unrestricted Definitive Note” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“Unrestricted Global Note” means a permanent Global Note substantially in the form of Exhibit A attached hereto that bears the Global Note Legend and the Guarantor Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear the Private Placement Legend.

“Unrestricted Subsidiary” means, at any time that such Person is a Subsidiary of the Issuer, any MYT Entity in the event any MYT Entity is required to be contributed to the Issuer or its subsidiaries in accordance with any settlement, judgment, court order or other resolution of a claim, cause of action or litigation with respect to the MyTheresa Distribution. In the event any such MYT Entity is required to be contributed to the Issuer or its subsidiaries in accordance with the immediately preceding sentence, 100% of the Equity Interests of the top-tier MYT Entity (the “Contributed MYT Equity Interests”) held by the Issuer or any of its Subsidiary Guarantors immediately following such contribution shall be required to be pledged as Collateral to the Notes Collateral Agent to secure the Third Lien Notes Obligations on a third-priority basis, subject to
“Unsecured Notes” means the 8.00% senior cash pay notes due 2021 and the 8.75%/9.50% senior PIK toggle notes due 2021 of the Issuer and Corporate Co-Issuer.

“U.S. Government Obligations” means securities that are:

1. Direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

2. Obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in each case, are not callable or redeemable at the option of the issuer thereof, and will also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

1. The sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such
Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by the sum of all such payments.

“Wholly Owned Restricted Subsidiary” is any Wholly Owned Subsidiary that is a Restricted Subsidiary.

“Wholly Owned Subsidiary” of any Person means a direct or indirect Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares or interests required pursuant to applicable law) will at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.2. Other Definitions.

<table>
<thead>
<tr>
<th>Term</th>
<th>Defined in Section</th>
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<td>“actual knowledge”</td>
<td>7.2(g)</td>
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<td>“Additional Amounts”</td>
<td>3.14(a)</td>
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<td>3.8(a)</td>
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<td>2.1(d)</td>
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<td>“Asset Sale Offer”</td>
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<td>“Call Notice”</td>
<td>5.9(a)</td>
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<td>“Capitalized Lease Obligations Cap”</td>
<td>3.3(b)(v)</td>
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<td>“Extended Term Loan Priority PropCo Assets”</td>
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<td>“Guarantor Legend”</td>
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<td>3.4(b)(v)</td>
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<tr>
<td>“Tax Jurisdiction”</td>
<td>3.14(a)</td>
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</table>

### SECTION 1.3. Rules of Construction

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) “or” is not exclusive;

(d) “including” means including without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) the word “will” has the same meaning as “shall” and denotes a mandatory requirement;
ARTICLE II

The Notes

SECTION 2.1. Form and Dating.

(a) The Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A hereto, the terms of which are incorporated in and made a part hereof. The Notes may have notations, legends or endorsements approved as to form by the Issuers, and required by law, stock exchange rule, agreements to which the Issuers are subject or usage. Each Note will be dated the date of its authentication. The Notes will be issuable only in minimum denominations of $2,000.00 and integral multiples of $1.00 in excess thereof.

(b) Additional Notes may be issued only in compliance with this Indenture, including Sections 3.3 and 3.5 of this Indenture. The Issuers will have the right to designate the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Notes, which may differ from the maturity date, interest rate and optional redemption provisions applicable to the Initial Notes. Additional Notes that differ with respect to maturity date, interest rate or optional redemption provisions from the Initial Notes will constitute a different series of Notes from the Initial Notes. Additional Notes that have the same maturity date, interest rate and optional redemption provisions as the Initial Notes will be treated as the same series as the Initial Notes unless otherwise designated by the Issuers. Except as otherwise provided in Section 9.2(a), the Initial Notes and any Additional Notes issued under this Indenture will vote and consent together on all matters as one class and no series of Notes will have the right to vote or consent as a separate class on any matter. The Issuers will also have, subject to the
provisions of Section 9.2(a), the right to vary the application of the provisions of this Indenture to any series of Additional Notes.

(c) The Notes will initially be issued in the form of one or more Global Notes and The Depository Trust Company ("DTC"), its nominees, and their respective successors, will act as the Depositary with respect thereto. Each Global Note will represent such of the outstanding Notes as will be specified therein and each will provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Notes Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6. Each Global Note (i) will be registered in the name of the Depositary for such Global Note or the nominee of such Depositary, (ii) will be delivered by the Trustee to such Depositary or held by the Trustee as Notes Custodian for the Depositary pursuant to such Depositary’s instructions, (iii) will bear a Global Note Legend in substantially the following form:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF THE DEPOSITORY OR A NOMINEE OF THE DEPOSITORY OR A SUCCESSOR DEPOSITORY. THIS NOTE IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY OR BY THE DEPOSITORY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITORY OR A

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and (iv) will bear a Guarantor Legend in substantially the following form:

(A) THE GUARANTEE BY EXTENDED TERM LOAN PROPCO OF THE GUARANTEED OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE “EXTENDED TERM LOAN SUBORDINATION AGREEMENT”) DATED AS OF JUNE 7, 2019 AMONG THE COLLATERAL AGENT, EXTENDED TERM LOAN PROPCO AND THE OTHER PARTIES THERETO, TO THE SENIOR PRIORITY GUARANTEE OBLIGATIONS (AS DEFINED THEREIN); AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT; AND (B) THE GUARANTEE BY NOTES PROPCO OF THE GUARANTEED OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE “NOTES PROPCO SUBORDINATION AGREEMENT”) DATED AS OF JUNE 7, 2019 AMONG THE COLLATERAL AGENT, NOTES PROPCO AND THE OTHER PARTIES THERETO, TO THE SENIOR PRIORITY GUARANTEE OBLIGATIONS (AS DEFINED THEREIN); AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE NOTES PROPCO SUBORDINATION AGREEMENT.

(d) Except as permitted by Section 2.6(g), any Note not registered under the Securities Act will bear the following private placement legend (the “Private Placement Legend”) on the face thereof:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES
ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH AN ISSUER OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE), ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF NOTES OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS NOTE, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS NOTE CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN,
INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, WITHIN THE MEANING OF 29 C.F.R. SECTION 2510.3-103 AS MODIFIED BY SECTION 3(42) OF ERISA OR OTHERWISE OR (2) THE ACQUISITION AND HOLDING OF THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

(e) The Temporary Regulation S Global Note will bear a legend in substantially the following form:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S, (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN Rule 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE
ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF NOTES OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

BY ITS ACQUISITION OF THIS NOTE, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS NOTE CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, “SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, WITHIN THE MEANING OF 29 C.F.R. SECTION 2510.3-103 AS MODIFIED BY SECTION 3(42) OF ERISA OR OTHERWISE OR (2) THE ACQUISITION AND HOLDING OF
THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

(f) Each Global Note and each Definitive Note issued at a more than de minimis discount to its redemption price at maturity (and all Notes issued in exchange therefor or substitution thereof) will bear an OID Legend in substantially the following form (the “OID Legend”):

|THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE. A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY FOR SUCH NOTE BY SUBMITTING A REQUEST FOR SUCH INFORMATION TO THE ISSUERS AT THE FOLLOWING ADDRESS: NEIMAN MARCUS GROUP LTD INC., ONE MARCUS SQUARE, 1618 MAIN STREET, DALLAS, TX 75201, ATTENTION: LEGAL DEPARTMENT.|

(g) Members of, or Participants in, the Depositary (“Agent Members”) will have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary, or the Trustee as its Notes Custodian and the Depositary may be treated by the Issuers, the Trustee and any agent of the Issuers or the Trustee as the absolute owner of the Global Note for all purposes whatsoever, including notices and payments. Notwithstanding the foregoing, nothing herein will prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note. Notwithstanding anything to the contrary contained herein, any notice to be delivered to DTC (including, but not limited to, a notice of redemption) may be delivered electronically by the Trustee or the Issuers in accordance with Applicable Procedures of DTC.

SECTION 2.2. Form of Execution and Authentication. An Officer will sign the Notes for each of the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature of the Trustee will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will authenticate (a) Initial Notes for original issue on the Issue Date in an aggregate principal amount of $730,534,000 and (b) subject to compliance with Section 3.3, one or more series of Additional Notes for original issue after the Issue Date (such Notes to be substantially in the form of Exhibit A) in an
unlimited amount, in each case upon written order of each of the Issuers signed by an Officer of each of the Issuers (an “Authentication Order”), which Authentication Order will, in the case of any issuance of Additional Notes, certify that such issuance is in compliance with Section 3.3. In addition, each such Authentication Order will specify the amount of Notes to be authenticated, the date on which the Notes are to be authenticated, whether the securities are to be Initial Notes or Additional Notes and the aggregate principal amount of Notes outstanding on the date of authentication, and will further specify the amount of such Notes to be issued as Global Notes or Definitive Notes. Such Notes will initially be in the form of one or more Global Notes, which (i) will represent, and will be denominated in an amount equal to the aggregate principal amount of, the Notes to be issued, (ii) will be registered in the name of the Depositary or its nominee and (iii) will be held by the Trustee as Notes Custodian.

The Trustee may appoint anauthenticating agent reasonably acceptable to the Issuers to authenticate Notes. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Issuers or any Affiliate of the Issuers.

SECTION 2.3. Registrar and Paying Agent. The Issuers will maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange (including any co-registrar, the “Registrar”) and (ii) an office or agency in the United States where Notes may be presented for payment (“Paying Agent”). The Registrar will keep a register of the Notes and of their transfer and exchange and, upon written request from the Issuers, the Registrar will provide the Issuers with a copy of such register to enable them to maintain a register of the Notes at their registered offices. The Issuers may appoint one or more co-registars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent. The Issuers may change any Paying Agent, Registrar or co-registrar without prior notice to any Holder. The Issuers will notify the Trustee in writing and the Trustee will notify the Holders of the name and address of any Agent not a party to this Indenture. The Issuers or any of their Subsidiaries may act as Paying Agent, Registrar or co-registrar. The Issuers will enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement will implement the provisions hereof that relate to such Agent. The Issuers will notify the Trustee in writing of the name and address of any such Agent. If the Issuers fail to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee will act as such, and will be entitled to appropriate compensation in accordance with Section 7.6.

The Issuers initially appoint the Trustee as Registrar, Paying Agent and to act as Notes Custodian with respect to the Notes.

The Issuers shall be responsible for making all calculations called for under the Notes, including but not limited to determination of redemption price, premium, if any, interest, and any additional amounts or other amounts payable on the Notes. The Issuers will make the calculations in good faith and, absent manifest error,
their calculations will be final and binding on the Holders. The Issuers will provide a schedule of such calculations to the Trustee, certified by an Officer of the Issuer, and the Trustee is entitled to rely conclusively on the accuracy of the Issuer’s calculations without independent verification. The Trustee shall forward the Issuers’ calculations to any Holder upon the written request of such Holder.

SECTION 2.4. **Paying Agent to Hold Money in Trust.** The Issuers will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, and interest on the Notes, and will notify the Trustee in writing of any Default by the Issuers in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than one of the Issuers) will have no further liability for the money delivered to the Trustee. If one of the Issuers acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent.

SECTION 2.5. **Lists of Holders.** The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and will otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Issuers will furnish to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders, including the aggregate principal amount of the Notes held by each thereof, and the Issuers will otherwise comply with TIA § 312(a).

SECTION 2.6. **Transfer and Exchange.**

(a) **Transfer and Exchange of Global Notes.** A Global Note may not be transferred except, as a whole, by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. Global Notes will be exchanged by the Issuers for Definitive Notes, subject to any applicable laws, only (i) if the Issuers deliver to the Trustee written notice from the Depositary that the Depositary is unwilling or unable to continue to act as Depositary for the Global Notes or that it is no longer a clearing agency registered under the Exchange Act and, in either case, the Issuers fail to appoint a successor Depositary within 120 days after the date of such notice from the Depositary; (ii) if the Issuers in their sole discretion determine that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and deliver a written notice to such effect to the Trustee; provided that in no event will the Temporary Regulation S Global Note be exchanged by the Issuers for Definitive Notes prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act; or (iii) upon request of the Trustee or Holders of a majority of the aggregate principal amount of outstanding Notes if there will have
occurred and be continuing an Event of Default with respect to the Notes. In any such case, the Issuers will notify the Trustee in writing that, upon surrender by the Participants and Indirect Participants of their interests in such Global Note, certificated Notes will be issued to each Person that such Participants, Indirect Participants and DTC jointly identify as being the beneficial owner of the related Notes. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.7 and Section 2.10. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.6 or Section 2.7 or Section 2.10, will be authenticated and delivered in the form of, and will be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.6(a). However, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.6(b) or Section 2.6(c) below.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions hereof and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth in this Indenture to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with the applicable subparagraphs below.

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, no transfer of beneficial interests in a Temporary Regulation S Global Note may be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser) unless permitted by applicable law and made in compliance with Section 2.6(b)(ii) and Section 2.6(b)(iii) below. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions will be required to be delivered to the Registrar to effect the transfers described in this Section 2.6(b)(i) unless specifically stated above.

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.6(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase, or (B) (1) if Definitive Notes are at such time permitted to be issued pursuant to this Indenture, a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued...
a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note will be registered to effect the transfer or exchange referred to in (1) immediately above; provided that in no event will Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Temporary Regulation S Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee will adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.6(i) below.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.6(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Temporary Regulation S Global Note or the Permanent Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (3) thereof, if applicable.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.6(b)(ii) above, and

(A) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who will take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a
and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (A) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer will issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (A) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer and Exchange of Beneficial Interests for Definitive Notes.

(i) Transfer and Exchange of Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes. Subject to Section 2.6(a), if any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in
accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3) thereof, if applicable;

(F) if such beneficial interest is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof;

the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(i) below, and the Issuers will execute and the Trustee will authenticate and deliver to the Person designated in the certificate a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest will instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c)(i) will bear the Private Placement Legend and will be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Section 2.6(c)(i) (A) and Section 2.6(c)(i)(C), a beneficial interest in the Regulation S Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Transfer and Exchange of Beneficial Interests in Restricted Global Notes for Unrestricted Definitive Notes. Subject to Section 2.6(g), a holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:
the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who will take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof,

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Transfer and Exchange of Beneficial Interests in Unrestricted Global Notes for Unrestricted Definitive Notes. Subject to Section 2.6(a), if any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.6(b)(ii) above, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(i) below, and the Issuers will execute and the Trustee will authenticate and deliver to the Person designated in the certificate an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest will instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) will not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Transfer and Exchange of Restricted Definitive Notes for Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in
the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such Restricted Definitive Note is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI Global Note.

(ii) Transfer and Exchange of Restricted Definitive Notes for Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:
(A) the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who will take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.6(d)(ii), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Transfer and Exchange of Unrestricted Definitive Notes for Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Unrestricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from an Unrestricted Definitive Note or a Restricted Definitive Note, as the case may be, to a beneficial interest is effected pursuant to Section 2.6(d)(ii)(A) or this Section 2.6(d)(iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers will issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Unrestricted Definitive Notes or Restricted Definitive Notes, as the case may be, so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder’s compliance with the provisions of this Section 2.6(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder will present or surrender to the Registrar the Definitive Notes duly endorsed or
accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or its attorney, duly authorized in writing.

In addition, the requesting Holder will provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

(i) **Transfer of Restricted Definitive Notes to Restricted Definitive Notes.** Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

   (A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

   (B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

   (C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including, if the Issuers so request, a certification and/or Opinion of Counsel in form reasonably acceptable to the Issuers to the effect that such transfer is in compliance with the Securities Act.

(ii) **Transfer and Exchange of Restricted Definitive Notes for Unrestricted Definitive Notes.** Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

   (A) the Registrar receives the following:

      (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

      (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who will take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers so request) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.
(iii) **Transfer of Unrestricted Definitive Notes to Unrestricted Definitive Notes.** A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar will register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) **Temporary Regulation S Global Note.**

(i) Notes offered and sold in reliance on Regulation S will be issued initially in the form of the Temporary Regulation S Global Note, which will be deposited on behalf of the purchasers of the Notes represented thereby with the Notes Custodian and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided.

(ii) During the Restricted Period, beneficial ownership interests in Temporary Regulation S Global Notes may only be sold, pledged or transferred (A) to the Issuers, (B) in an offshore transaction in accordance with Rule 904 of Regulation S (other than a transaction resulting in an exchange for an interest in a Permanent Regulation S Global Note) or (C) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any State of the United States; and beneficial interests in a 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, whether before or after the expiration of the Restricted Period, only if the transferor first delivers to the Trustee a written certificate to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (if applicable).

(iii) Within a reasonable period after expiration or termination of the Restricted Period, beneficial interests in each Temporary Regulation S Global Note will be exchanged for beneficial interests in a Permanent Regulation S Global Note upon delivery to DTC of the certification of compliance and the transfer of applicable Notes pursuant to the Applicable Procedures. Simultaneously with the authentication of the corresponding Permanent Regulation S Global Note, the Trustee will cancel the corresponding Temporary Regulation S Global Note. The aggregate principal amount of a Temporary Regulation S Global Note and a Permanent Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(iv) Notwithstanding anything to the contrary in this Section 2.6, a beneficial interest in the Temporary Regulation S Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.
(g) **Private Placement Legend.**

(i) Except as permitted by subparagraph (ii) below, each Restricted Global Note and each Restricted Definitive Note (and all Notes issued in exchange therefor or substitution thereof) will bear the Private Placement Legend.

(ii) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii) or (e)(iii) of this Section 2.6 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.

(h) **Global Note Legend.** Each Global Note will bear the Global Note Legend.

(i) **Cancellation and/or Adjustment of Global Notes.** At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(j) **General Provisions Relating to Transfers and Exchanges.**

(i) To permit registrations of transfers and exchanges, the Issuers will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.2 or at the Registrar’s request.

(ii) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.2, 2.10, 3.7, 3.9, 5.7, 5.8 and 9.4).

(iii) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits.
hereof, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(iv) Neither the Registrar nor the Issuers will be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business on a Business Day 15 days before the delivery of a notice of redemption of Notes and ending at the close of business on the day of such delivery, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(v) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers will be affected by notice to the contrary.

(vi) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.2.

(vii) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile or electronically.

(viii) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(ix) Neither the Trustee, the Issuers nor any Agent will have any responsibility for any actions taken or not taken by the Depositary.

(x) Affiliates of the Issuers, including investment funds affiliated with either of the Sponsors, may acquire, hold and dispose of the Notes and exercise voting, consent and other similar rights with respect to such Notes (subject to the express restrictions contained in this Indenture).

SECTION 2.7. Replacement Notes. If any mutilated Note is surrendered to the Trustee, or the Issuers and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, the Issuers will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee’s requirements for replacements of Notes are met. The Holder must supply
Every replacement Note is an obligation of the Issuers.

SECTION 2.8. Outstanding Notes. The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.8 as not outstanding.

If a Note is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 3.1, it will cease to be outstanding and interest on it will cease to accrue.

Subject to Section 2.9, a Note does not cease to be outstanding because the Issuers, a Subsidiary of the Issuers or an Affiliate of any of the Issuers holds the Note.

SECTION 2.9. Treasury Notes. In determining whether the Holders of the requisite portion of outstanding Notes have concurred in any request, demand, authorization, direction, notice, waiver or consent (other than in respect of any action pursuant to Section 9.2(a), which requires the consent of each Holder of an affected Note), Notes Beneficially Owned by, or held by or for the account of, the Issuers, any Subsidiary of the Issuers or any Affiliate of any of the Issuers will be disregarded and considered as though not outstanding. For purposes of determining whether the Trustee will be protected in relying on any such request, demand, authorization, direction, notice, waiver or consent, only Notes which a Trust Officer actually knows to be so Beneficially Owned or held will be considered as not outstanding. Upon request of the Trustee, the Issuers will promptly furnish to the Trustee an Officer’s Certificate listing and identifying all Notes, if any, known by the Issuers to be Beneficially Owned or held by or for the account of any of the above-described persons, and the Trustee will be entitled to accept such Officer’s Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

SECTION 2.10. Temporary Notes. Until Definitive Notes are ready for delivery, the Issuers may prepare and the Trustee will upon receipt of an Authentication Order authenticate temporary Notes. Temporary Notes will be substantially in the form of Definitive Notes but may have variations that the Issuers consider appropriate for temporary Notes. Without unreasonable delay, the Issuers will prepare and the Trustee, upon receipt of an Authentication Order, will authenticate Definitive Notes in exchange.
SECTION 2.11. Cancellation. The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of all canceled Notes in its customary manner (subject to the record retention requirements of the Exchange Act and the Trustee), and upon the written request of the Issuers, the Trustee will deliver copies of such canceled Notes to the Issuers. The Issuers may not issue new Notes to replace Notes that it has redeemed or paid or that have been delivered to the Trustee for cancellation.

SECTION 2.12. Payment of Interest; Defaulted Interest.

(a) Interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name such Note (or one or more predecessor Notes) is registered at the close of business on the regular Record Date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3.

(b) Any interest on any Note which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days will forthwith cease to be payable to the Holder on the regular Record Date by virtue of having been such Holder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called “Defaulted Interest”) will be paid by the Issuers, at their election in each case, as provided in clause (i) or (ii) below:

(i) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which will be fixed in the following manner. The Issuers will notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date (not less than 30 days after such notice unless a shorter period will be acceptable to the Trustee) of the proposed payment (the “Special Interest Payment Date”), and at the same time the Issuers will deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or will make arrangements for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Issuers will fix a record date (the “Special Record Date”) for the payment of such Defaulted Interest, which will be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Issuers will promptly notify the Trustee of such Special Record Date and will, or at the written request and in the name and expense of the
Issuers, the Trustee will, cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 13.1, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest will be paid on the Special Interest Payment Date to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on such Special Record Date and will no longer be payable pursuant to the following clause (ii).

(ii) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment pursuant to this clause (ii), such manner of payment will be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.13. CUSIP and ISIN Numbers. The Issuers in issuing the Notes may use “CUSIP” and/or “ISIN” numbers (if then generally in use). The Trustee will not be responsible for the use of CUSIP or ISIN numbers, and the Trustee makes no representation as to their correctness as printed on any Note or notice to Holders. The Issuers will promptly notify the Trustee in writing of any change in the CUSIP or ISIN numbers. A separate CUSIP or ISIN number will be issued for any Additional Notes, unless (i) the Initial Notes and such Additional Notes have the same maturity date, interest rate and optional redemption provisions and are treated as “fungible” for U.S. federal income tax purposes, (ii) both the Initial Notes and such Additional Notes are issued in the same series (as set forth in Section 2.2) without (or with less than a de minimis amount of) original issue discount for U.S. federal income tax purposes or (iii) another then-recognized identifier is used.

SECTION 2.14. Record Date. The Record Date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture will be determined as provided for in TIA § 316(c).

ARTICLE III

Covenants

SECTION 3.1. Payment of Notes. The Issuers will promptly pay the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal, premium, if any, and interest will
be considered paid on the date due if by 10:00 a.m. (New York City time) on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal, premium, if any, and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

The Issuers will pay interest on overdue principal at the rate specified therefor in the Notes.

Notwithstanding anything to the contrary contained in this Indenture, the Issuers may, to the extent they are required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder. Either Issuer or any Subsidiary Guarantor or any successor in interest to any of the foregoing (each, a “Payor”) may withhold from any interest payment made on any Note to or for the benefit of any Person who is not a “United States person” (as such term is defined for U.S. federal income tax purposes) U.S. federal withholding tax, and pay such withheld amounts to the Internal Revenue Service, unless such Person provides documentation to such Issuer or other Payor such that an exemption from U.S. federal withholding tax would apply to such payment if interest on such Note were treated entirely as income from sources within the United States for U.S. federal income tax purposes.

SECTION 3.2. Reports and Other Information.

(a) Whether or not the Issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Issuer will provide to the Holders and the Trustee the following reports:

(i) within 90 days after the end of each fiscal year (or such longer period as would be provided by the SEC if the Issuer were then subject to SEC reporting requirements as a non-accelerated filer), an annual report containing:

(A) audited annual financial statements of the Issuer and a report thereon from the Issuer’s independent accounting firm;

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section similar in scope to the information required under such caption by Form 10-K of the Exchange Act (which shall include a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million made pursuant to clause (24) of the definition thereof); and

(C) until the MYT Completed Disposition occurs, a narrative discussion of the key financial metrics of the MYT Entities consistent with a customary earnings press release;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or such longer period as would be permitted by the SEC if
the Issuer were then subject to SEC reporting requirements as a non-accelerated filer), quarterly reports containing:

(A) unaudited quarterly financial statements of the Issuer for the fiscal quarter most recently ended and the corresponding fiscal quarter of the prior fiscal year;

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” similar in scope to the information required under such caption by Form 10-Q of the Exchange Act and, in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter (which shall include a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million made pursuant to clause (24) of the definition thereof); and

(C) until the MYT Completed Disposition occurs, a narrative discussion of the key financial metrics of the MYT Entities consistent with a customary earnings press release; and

(iii) within the time period specified for filing current reports on Form 8-K by the SEC, all current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file such reports for any of the following events (A) significant acquisitions or dispositions by the Issuer or its Restricted Subsidiaries or the MYT Entities, (B) the bankruptcy of the Issuer or a Significant Subsidiary or of any of the MYT Entities, (C) the acceleration of any Indebtedness of the Issuer or any Restricted Subsidiary or any of the MYT Entities having a principal amount in excess of $15.0 million, (D) a change in the Issuer’s certifying independent auditor, (E) the appointment or departure of the Chief Executive Officer or Chief Financial Officer (or persons fulfilling similar duties) of the Issuer or any of the MYT Operating Entities, (F) non-reliance on previously issued financial statements of the Issuer or the MYT Entities, (G) change of control transactions with respect to the Issuer or the MYT Entities, (H) entering into, materially modifying or terminating material contracts of the Issuer or its Restricted Subsidiaries (for the avoidance of doubt, excluding officer employment arrangements) and (I) the incurrence of costs associated with exit or disposal activities by the Issuer, its Restricted Subsidiaries or the MYT Entities; and

(iv) In addition, the Issuer shall provide, in the same manner as the reports described above, copies of all operative Indebtedness Documents (including full and complete schedules and exhibits thereto) with respect to any outstanding Indebtedness of the Issuer and its Restricted Subsidiaries or the MYT Entities whose principal amount (or committed amount) exceeds $25.0 million.

The information described in clauses (iii) and (iv) above with respect to the MYT Entities need not be provided after the MYT Completed Disposition occurs.

(b) For the avoidance of doubt, notwithstanding the foregoing, (i) the Issuer will not be required to furnish any information, certificates or reports
required by (A) Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (B) Regulation G or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (ii) the reports referred to above will not be required to contain the separate financial statements or other information contemplated by Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X and (iii) the reports referred to above will not be required to present compensation or beneficial ownership information.

(c) At any time that the Issuer (and any applicable Parent Entity) is not subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act, in lieu of filing such reports with the SEC, the Issuer may make available such information electronically (including by posting to a non-public, password-protected website maintained by the Issuer or a third party) to any Holder, any bona fide prospective investor the Notes, any bona fide market maker (or person who intends to be a market maker) in the Note or any bona fide securities analyst, in each case, who provides to the Issuer its email address, employer name and other information reasonably requested by the Issuer. Any Person who requests such financial information from the Issuer or seeks to participate in any conference call required by this covenant will be required to represent to and agree with the Issuer (and by accepting such financial information, such Person will be deemed to have represented to and agreed with the Issuer) to the Issuer’s good faith satisfaction that:

(i) it is a Holder, a bona fide prospective investor in the Notes, a bona fide market maker (or intended market maker) with respect to the Notes or a bona fide securities analyst, as applicable;

(ii) if it is a prospective purchaser of the Notes, it is (A) a Qualified Institutional Buyer (as defined in Rule 144A of the Securities Act), (B) a non-U.S. Person (as defined in Regulation S under the Securities Act) or (C) an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating an investment in the Notes (or, if it is a bona fide market maker or intended market maker, only in connection with making a market in the Notes or, if it is a bona fide securities analyst, for preparing analysis for Holders and prospective purchasers of the Notes that otherwise have access to the financial information in compliance with this covenant); and

(vi) it (A) will not use such information in any manner intended to compete with the business of the Issuer and (B) is not a Person (which includes such
(d) The Issuer shall respond, as promptly as practicable, in good faith, to any request for access to the website described above.

(e) To the extent not satisfied by the foregoing, for so long as any Notes are outstanding (unless satisfied and discharged or defeased), the Issuer will furnish to Holders and prospective purchasers of the Notes, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision).

(f) Notwithstanding the foregoing, the financial statements, information, auditors’ reports and other documents required to be provided as described above, may be, rather than those of the Issuer, those of any Parent Entity; provided that, if the financial information so furnished relates to such Parent Entity, the same is accompanied by consolidating information, which may be posted to the website of the Issuer or on a non-public, password-protected website maintained by the Issuer or a third party, which explains in reasonable detail the differences between the information relating to such Parent Entity, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

(g) Issuer will be deemed to have satisfied the reporting requirements of Section 3.2(a) if (i) at any time that the Issuer or any Parent Entity is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or is a voluntary filer, the Issuer or any Parent Entity has filed such reports containing such information (including the information required pursuant to Section 3.2(e), which, for the avoidance of doubt, need not be filed with the SEC via EDGAR to the extent it is otherwise provided to Holders in accordance with this Section 3.2) with the SEC via the EDGAR (or successor) filing system or (ii) at any time that the Issuer or any Parent Entity does not file such reports with the SEC via the EDGAR (or successor) filing system, the Issuer or any Parent Entity makes such reports available electronically (including by posting to a non-public, password-protected website as provided above) pursuant to this Section 3.2. Notwithstanding the foregoing, the Trustee shall have no obligation to monitor or confirm, on a continuing basis or otherwise, whether the Issuer or any Parent Entity posts such reports, information and documents on any website or the SEC’s EDGAR service, or to collect any such information from the Issuer’s or any Parent Entity’s website or the SEC’s EDGAR service.

(h) Promptly after the date the annual and quarterly financial information for the prior fiscal period have been furnished pursuant to Section 3.2(a)(i) or Section 3.2(a)(ii), the Issuer will hold a quarterly conference call to review the most recent financial results, which shall also include a discussion of the financial metrics of the MYT Entities and a reasonable question and answer session open to all invited
call participants. Prior to the date such conference call is to be held, the Issuer will post to its website or a non-public, password-protected website maintained by the Issuer or a third party an announcement of such quarterly conference call for the benefit of the Trustee, the Holders, beneficial owners of the Notes, prospective purchasers of the Notes, securities analysts and market making financial institutions, which announcement will contain the time and the date of such conference call and direct the recipients thereof to contact an individual at the Issuer (for whom contact information will be provided in such notice) to obtain information on how to access such quarterly conference call; provided that any Person who attends such conference call with the Issuer will be required to represent to and agree with the Issuer (and by attending such conference call, such person will be deemed to have represented and agreed with the Issuer) to clauses (i) through (vi) of Section 3.2(c).

(i) Delivery of reports, information and documents to the Trustee is for informational purposes only and its receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers’, any Parent Entity’s, any Subsidiary Guarantor’s or any other Person’s compliance with any of its covenants under this Indenture or the Notes (as to which the Trustee is entitled to rely exclusively on an Officer’s Certificate delivered pursuant to this Indenture). The Trustee shall have no liability or responsibility for the content, filing or timeliness of any report, information or document delivered or filed under or in connection with this Indenture or the transactions contemplated thereunder.

SECTION 3.3. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incure any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock, and the Issuer will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; provided, however, that the Issuers and any Subsidiary Guarantor may Incure unsecured or Junior Lien Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock and any Subsidiary Guarantor may issue shares of Preferred Stock, in each case if the Interest Coverage Ratio for the Issuer’s most recently ended four full fiscal quarters for which Required Financial Statements have been delivered immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued is 2.25 to 1.00 or greater (“Ratio Debt”), as if the additional Indebtedness had been Incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of the proceeds therefrom had occurred, at the beginning of such four-quarter period.

(b) The foregoing limitations will not apply to (collectively, “Permitted Debt”):

(i) the Incurrence by the Issuers and the Subsidiary Guarantors of Indebtedness pursuant to one or more Credit Agreements up to an aggregate
outstanding principal amount, including all Indebtedness incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (i) (and any successive Refinancing Indebtedness), not to exceed an amount equal to the Issue Date Extended Term Loan Amount plus, solely in the event the Call Right is exercised, an amount equal to the aggregate principal amount of the Third Lien Notes and Second Lien Notes redeemed in connection therewith (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) in connection with any Refinancings less the amount applied to permanently repay Indebtedness incurred under this clause (i) pursuant to Section 3.7:

(ii) the Incurrence by the Issuers and the Subsidiary Guarantors of Indebtedness pursuant to the ABL Credit Agreement and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof) up to an aggregate outstanding principal amount, including all Indebtedness incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (ii) (and any successive Refinancing Indebtedness), not to exceed an amount equal to $1,000.0 million (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) in connection with any Refinancings less the amount applied to permanently repay Indebtedness incurred under this clause (ii) pursuant to Section 3.7;

(iii) (A) (1) the Incurrence by the Issuers of the Third Lien Notes issued on the Issue Date and the Incurrence by the Subsidiary Guarantors of the Subsidiary Guarantees related to the foregoing Third Lien Notes; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(B) (1) the Incurrence by the Issuers of the Second Lien Notes issued on the Issue Date, the Incurrence of any Second Lien Notes issued in respect of interest paid in kind thereon and the Incurrence by the Subsidiary Guarantors of guarantees of any such Second Lien Notes; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(C) (1) the Incurrence by the LLC Co-Issuer of the 2028 Debentures outstanding on the Issue Date and the Incurrence by Extended Term Loan PropCo and Notes PropCo of a guarantee of such 2028 Debentures having the Required PropCo Guarantee Priority; and
the Incurrence by the LLC Co-Issuer and Extended Term Loan PropCo of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(D) (1) the Incurrence by the Issuers of the Remaining Unsecured Notes and the Incurrence by the Subsidiary Guarantors of guarantees outstanding on the Issue Date of such Remaining Unsecured Notes;

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Remaining Unsecured Notes Exchange Indebtedness described in clause (a) of the definition thereof in respect of the Indebtedness described in subclause (1), in an aggregate principal amount not to exceed (w) 85% of the Issue Date Remaining Unsecured Notes Amount, minus (x) 85% of the aggregate principal amount of Remaining Unsecured Notes previously Refinanced by the Incurrence of Remaining Unsecured Notes Exchange Indebtedness pursuant to subclause (3) below, minus (y) 85% of the aggregate principal amount of Remaining Unsecured Notes that have been repaid after the Issue Date (other than as a result of a Refinancing with Remaining Unsecured Notes Exchange Indebtedness), minus (z) the aggregate principal amount of Indebtedness Incurred pursuant to this subclause (2) that is repaid after the Issue Date (including as a result of the Incurrence of Refinancing Indebtedness (provided that clause (y) above shall not apply to any Remaining Unsecured Notes repaid pursuant to Section 3.4(b)(xii)(D) within 45 days prior to the stated maturity date of the Remaining Unsecured Notes);

(3) the Incurrence by the Issuers and the Subsidiary Guarantors of Remaining Unsecured Notes Exchange Indebtedness described in clause (b) of the definition thereof in respect of the Indebtedness described in subclause (1), in an aggregate principal amount not to exceed (w) 100% of the Issue Date Remaining Unsecured Notes Amount, minus (x) 100% of the aggregate principal amount of Remaining Unsecured Notes previously Refinanced by the Incurrence of Remaining Unsecured Notes Exchange Indebtedness Incurred pursuant to subclause (2) above, minus (y) 100% of the aggregate principal amount of Remaining Unsecured Notes that have been repaid after the Issue Date (other than as a result of a Refinancing with Remaining Unsecured Notes Exchange Indebtedness), minus (z) the aggregate principal amount of indebtedness Incurred pursuant to this subclause (3) that is repaid after the Issue Date (including as a result of the Incurrence of Refinancing Indebtedness); and

(4) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of Indebtedness incurred pursuant to subclause (2) or (3) above; and

(E) (1) the Incurrence by the Issuers of the Non-Participating Term Loans and the Incurrence by the Subsidiary Guarantors of guarantees of such Non-Participating Term Loans; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Non-Participating Term Loan Exchange Indebtedness;
Indebtedness of the Issuer and its Restricted Subsidiaries existing on the Issue Date (other than Indebtedness described in clause (i), (ii) or (iii) above), provided that Indebtedness outstanding as of the Issue Date which was incurred or allocated under a specific clause of the definition of “Permitted Debt” under the indentures governing the Remaining Unsecured Notes as of immediately prior to the Issue Date shall be deemed to be incurred on the Issue Date under the corresponding specific clause of the definition of “Permitted Debt” under this Indenture, and not under this clause (iv);

Capitalized Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness (including, for the avoidance of doubt, the Hudson Yards Indebtedness outstanding as of Issue Date) to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Issuer or any of its Restricted Subsidiaries under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Issuer or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness Incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (v) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (A) $200.0 million and (B) 2.25% of Consolidated Total Assets as of the date any such Indebtedness is Incurred (the “Capitalized Lease Obligations Cap”); provided that (x) such Indebtedness is Incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness and (y) the Capitalized Lease Obligations Cap shall be reduced by an amount equal to the amount that the Hudson Yards Indebtedness is reduced (whether by repayment, retirement, recharacterization, discharge or otherwise) after the Issue Date (but such reductions shall not result in a Capitalized Lease Obligations Cap of less than the greater of (A) $100.0 million and (B) 1.125% of Consolidated Total Assets as of the date any such Indebtedness is Incurred);

Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; provided that upon the Incurrence of any Indebtedness with respect to reimbursement obligations regarding workers’ compensation claims, such obligations are reimbursed not later than 45 days following such Incurrence;

Indebtedness arising from agreements of the Issuer or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, Incurred in connection with the acquisition or disposition of any business, assets or a Restricted Subsidiary of any of the Issuers in accordance with the terms of this Indenture, other than Guarantees of
Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition;

(viii) intercompany Indebtedness between or among the Issuer or any of its Restricted Subsidiaries; provided that (A) such Indebtedness owing to a Restricted Subsidiary that is not a Subsidiary Guarantor will only be permitted by this clause (viii) if at all times such Indebtedness is unsecured and subordinated in right of payment to the applicable Issuer’s Obligations with respect to the Notes or Guarantee of such Subsidiary Guarantor, as applicable, (B) no such Indebtedness owing by the Extended Term Loan PropCo or Notes PropCo shall be incurred hereunder except to the extent permitted under clause (3)(i) of the definition of “Permitted Investments”, and (C) any subsequent issuance or transfer of any Capital Stock or any other event that results in any Restricted Subsidiary lending such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) will be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (viii);

(ix) Indebtedness pursuant to Hedge Agreements;

(x) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case, provided in the ordinary course of business, including those Incurred to secure health, safety and environmental obligations in the ordinary course of business;

(xi) (A) guarantees of Indebtedness of the Issuers or any of the Subsidiary Guarantors; or (B) guarantees of Indebtedness of any other Subsidiary, in each case of (A) and (B) permitted to be Incurred under this Indenture; in each case of (A) and (B), to the extent (1) such guarantees are Permitted Investments (other than pursuant to clause (18) of the definition thereof) and (2) in the case of guarantees made by the Issuers or any of the Subsidiary Guarantors pursuant to clause (B) above, such guarantees are made in connection with a Permitted Acquisition;

(xii) (A) Indebtedness Incurred or assumed in connection with an acquisition of any assets (including Capital Stock), business or Person and Indebtedness of any Person that becomes a Restricted Subsidiary or is merged into or consolidated or amalgamated with Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture and (B) Indebtedness Incurred or assumed in anticipation of an acquisition of any assets, business or Person; provided that in each case contemplated by the foregoing subclauses (A) and (B):

(1) immediately after giving effect for such acquisition, merger, consolidation or amalgamation, no Event of Default has occurred and is continuing and on a Pro Forma Basis, either (x) the Issuer would be permitted to incur at least $1.00 of additional Ratio Debt or (y) the Interest Coverage Ratio of the Issuer would increase;
the aggregate principal amount of any such Indebtedness Incurred pursuant to this clause (xii) by Restricted Subsidiaries that are not Subsidiary Guarantors, together with any Permitted Refinancing Indebtedness Incurred by Restricted Subsidiaries that are not Subsidiary Guarantors to Refinance any Indebtedness originally Incurred pursuant to this clause (xii) (and any successive Permitted Refinancing Indebtedness thereof), may not exceed $50.0 million at any one time outstanding;

the aggregate principal amount of any Indebtedness Incurred or assumed under the foregoing subclauses (A) and (B), together with (x) the aggregate principal amount of any Permitted Refinancing Indebtedness in respect thereof and (y) the aggregate amount of any Investments outstanding under clause (24) of the definition of “Permitted Investments”, does not exceed the limits set forth in that clause; and

the assets acquired, if held in the Issuer or a Subsidiary Guarantor (other than Notes PropCo and Extended Term Loan PropCo), shall be pledged as Collateral, subject to Liens with the Required Collateral Lien Priority;

Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification is received by the Issuer of its incurrence;

Indebtedness of the Issuer or any Restricted Subsidiary supported by a letter of credit issued pursuant to any Credit Agreement, so long as such letter of credit has not been terminated and is in a principal amount not in excess of the stated amount of such letter of credit;

Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Issuer or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 3.4.
(xx) [Reserved];

(xxi) Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness Incurred by Foreign Subsidiaries to Refinance any Indebtedness originally Incurred pursuant to this clause (xxi) (and any successive Permitted Refinancing Indebtedness), not to exceed $25.0 million;

(xxii) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are Incurred in the ordinary course of business and not in connection with the borrowing of money;

(xxiii) Indebtedness representing deferred compensation or other similar arrangements Incurred by the Issuer or any Restricted Subsidiary (A) in the ordinary course of business or (B) in connection with any Permitted Investment;

(xxiv) any Permitted Refinancing Indebtedness Incurred to Refinance Indebtedness Incurred as Ratio Debt or under clause (iv) or this clause (xxiv) of this Section 3.3(b);

(xxv) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xxvi) Indebtedness Incurred by the Issuer or any Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case Incurred or undertaken in the ordinary course of business;

(xxvii) Indebtedness Incurred by the Issuer or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Notes in accordance with this Indenture; and

(xxviii) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness Incurred to Refinance any Indebtedness originally Incurred pursuant this clause (xxviii) (and any successive Permitted Refinancing Indebtedness), not to exceed $100.0 million; provided that the cash interest rate on any such Indebtedness may not exceed 8.0% per annum.

(c) For purposes of determining compliance with this Section 3.3, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be Incurred as Ratio Debt, the Issuer may, in its sole discretion, at the time of Incurrence, combine, divide, classify or reclassify, or at any later time combine, divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 3.3; provided that (i) all Indebtedness under the Extended Term Loans or guarantees thereof
(and any Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (i) of the definition of “Permitted Debt,”
(ii) all Indebtedness under the ABL Credit Agreement or guarantees thereof (and any Refinancing Indebtedness in respect thereof) will be deemed to have
been Incurred pursuant to clause (ii) of the definition of “Permitted Debt,” (iii) all Indebtedness under the Second Lien Notes or guarantees thereof (and any
Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(B) of the definition of “Permitted Debt,”
(iv) all Indebtedness under the 2028 Debentures or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to
have been Incurred pursuant to clause (iii)(C) of the definition of “Permitted Debt,” (v) all Indebtedness under the Remaining Unsecured Notes or guarantees
thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(D) of the definition of
“Permitted Debt,” and (vi) all Indebtedness under the Non-Participating Term Loans or guarantees thereof (and any Permitted Refinancing Indebtedness in
respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(E) of the definition of “Permitted Debt,” and, in each case of clauses (i) through
(vi) above, the Issuer will not be permitted to reclassify at any later date all or any portion of such Indebtedness. All Indebtedness originally Incurred under
clause (xxviii) of the definition of “Permitted Debt” will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have
been permitted to be Incurred by the obligor thereon as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization of original issue
discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness
outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an Incurrence of Indebtedness for purposes of this
Section 3.3. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular
amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness
represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 3.3.

(d) For purposes of determining compliance with any dollar-denominated restriction on the Incurrence of Indebtedness, the dollar-
equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on
the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower dollar-equivalent), in the
case of revolving credit debt; provided that if such Indebtedness is Incurred to Refinance other Indebtedness denominated in a foreign currency, and such
refinancing would cause the applicable dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date
of such refinancing, such dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing
Indebtedness does not exceed the principal amount of such Indebtedness being Refinanced (plus unpaid accrued interest and premiums (including tender
premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

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SECTION 3.4. Limitation on Restricted Payments.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any payment or distribution on account of the Issuer’s or any of its Restricted Subsidiaries’ Equity Interests, including any payment made in connection with any merger or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any Parent Entity, including in connection with any merger or consolidation;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness of any of the Issuers or any Subsidiary Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness of any of the Issuers or any Subsidiary Guarantor in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within 45 days of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; provided that a repayment of Remaining Unsecured Notes during such 45-day period shall be in an amount that would be permitted pursuant to Section 3.4(b)(ix)(D) and will count against the amount permitted pursuant to such provision) and (B) Indebtedness permitted under Section 3.3(b)(viii); or

(iv) make any Restricted Investment;

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “Restricted Payments”).

(b) The provisions of Section 3.4(a) will not prohibit:

(i) the making of any Restricted Payment described in Section 3.4(a)(iii) or Section 3.4(a)(iv) in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Issuer; provided that the amount of any such net cash proceeds that are utilized for any Restricted Payment pursuant to this clause (i) will be excluded from and Section 3.4(b)(ii)(C);
Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors (collectively, “Related Persons”) of the Issuer or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (ii), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; provided that the aggregate amount of such purchases or redemptions may not exceed:

(A) $20.0 million in any fiscal year for purchases or redemptions from Persons that are current Related Persons at the time of such purchase or redemption; plus

(B) $5.0 million in the aggregate from the Issue Date for purchases or redemptions from former Related Persons; plus

(C) the amount of net cash proceeds contributed to the Issuer that were received by any Parent Entity since the Issue Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements; plus

(D) the amount of net proceeds of any key man life insurance policies received during such fiscal year; plus

(E) the amount of any bona fide cash bonuses otherwise payable (but not actually paid) to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests; and;

provided, further, that cancellation of Indebtedness owing to the Issuer or any of its Restricted Subsidiaries from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(iii) [Reserved];

(iv) [Reserved];
(v) Restricted Payments to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal or combined or unitary state tax return that includes the Issuer and its Restricted Subsidiaries (or the taxable income thereof) (such payments being referred to as “Tax Distributions”), or to any Parent Entity that is a partner or a sole owner of the Issuer in the event the Issuer is treated as a partnership or a “disregarded entity” for U.S. federal income tax purposes, in each case, in an amount not to exceed the amount that the Issuer and its Restricted Subsidiaries would have been required to pay in respect of federal, state or local Taxes (as the case may be) in respect of such fiscal year if the Issuer and its Subsidiaries paid such Taxes directly as a stand-alone taxpayer (or stand-alone group) (such amounts, plus any cash actually distributed by an Unrestricted Subsidiary for such period pursuant to the second proviso below, the “Issuer Tax Amount”); provided, that any amounts paid pursuant to this clause (v) shall actually be used by a Parent Entity to pay taxes to an applicable taxing authority; provided further that Restricted Payments will be permitted in respect of the income of an Unrestricted Subsidiary only to the extent of the amount of cash distributed to the Issuer or any Restricted Subsidiary by such Unrestricted Subsidiary for such purpose; provided further that amounts paid under this clause (v) and taken together with any amounts paid in respect of federal, state or local Taxes under Section 3.8(b)(xvi) shall not exceed the Issuer Tax Amount for any applicable year;

(vi) Restricted Payments to permit any Parent Entity to:

(A) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Issuer and the Restricted Subsidiaries, but not, for the avoidance of doubt, any costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Issuers and their Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, with a Restricted Payment to a Parent Entity), subject to reasonable pro-rataion of joint services, costs, fees and expenses;

(B) pay fees and expenses related to any public offering or private placement of debt or equity securities of any Parent Entity or any Permitted Investment, whether or not consummated, to the extent the proceeds of any of the foregoing transactions are contributed to the Issuers;

(C) pay franchise Taxes and other fees and expenses in connection with any Parent Entity’s ownership of any Restricted Subsidiary or the maintenance of its legal existence;
(D) make payments under transactions permitted by Section 3.8 (other than Section 3.8(b)(viii)), to the extent such payments are due at the time of such Restricted Payment; or

(E) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Issuer and its Restricted Subsidiaries, but not, for the avoidance of doubt, any indemnities, costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Issuers and their Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, with a Restricted Payment to a Parent Entity), incurred after the Issue Date, subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses;

(vii) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(viii) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;

(ix) Restricted Payments to any Parent Entity for the purpose of paying indemnities of, and reimbursement of reasonable and documented out-of-pocket fees and expenses to any Sponsor, in each case incurred in connection with the provision by such Sponsors of bona fide services (including such services provided under the Management Agreements as in effect on the Issue Date) to any Parent Entity for the benefit of the Issuer and its Subsidiaries and not, for the avoidance of doubt, any litigation related thereto (other than litigation for defense of the Issuer and its Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by the Issuer shall not be paid for, directly or indirectly, by any Restricted Payment to the Issuer), subject to reasonable pro-ration of joint services, fees, costs and expenses.

(x) the mandatory redemption of a de minimis aggregate principal amount of 8.75%/9.50% senior PIK toggle notes due 2021 pursuant to Section 5.10 of the indenture governing such notes as of the Issue Date;

(xi) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or
the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Indenture;

(xii) (A) Restricted Payments to repurchase, repay, exchange for or refinance Non-Participating Term Loans using the proceeds of Non-Participating Term Loan Exchange Indebtedness (including by means of an exchange offer or modification of the Non-Participating Term Loans to become Non-Participating Term Loan Exchange Indebtedness);

(B) Restricted Payments to repurchase, repay, exchange for or refinance Remaining Unsecured Notes using the proceeds of Remaining Unsecured Notes Exchange Indebtedness (including by means of an exchange offer or modification of the Remaining Unsecured Notes to become Remaining Unsecured Notes Exchange Indebtedness), so long as any such Remaining Unsecured Notes Exchange Indebtedness is Incurred under clause (iii)(D)(2) or (iii)(D)(3) of the definition of “Permitted Debt”;

(C) Restricted Payments to repurchase, repay, exchange for or refinance Non-Participating Term Loans or Remaining Unsecured Notes using (i) the cash proceeds of common equity sales by or common equity contributions to, the Issuer or (ii) any non-cash assets contributed to or sold to the Issuer in respect of the Issuer’s common equity (including an interest in the MYT Holdco so contributed or purchased); and

(D) Restricted Payments to repurchase or repay Non-Participating Term Loans or Remaining Unsecured Notes using up to an aggregate $60.0 million of cash; provided that the total purchase price or repayment amount of any Indebtedness repurchased or repaid (or any portion of which is repurchased or repaid) pursuant to this subclause (D) more than 45 days prior to the final maturity date of such Indebtedness may not be greater than (x) 90% of face value (in the case of Non-Participating Term Loans) and (y) 40% of face value (in the case of Remaining Unsecured Notes);

(xiii) payments or distributions to satisfy dissenters’ rights, pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of this Indenture;

(xiv) the distribution or dividend of the MYT Assets (or proceeds from a sale of MYT Assets or the MYT Entities) in the event the MYT Assets (or proceeds from such sale) are contributed to the Issuers or any of their Restricted Subsidiaries on or after Issue Date to the extent that the MYT Assets (or such proceeds) are required to be distributed in accordance with any settlement, judgment, court order or other resolution of a Claim, Cause of Action or litigation with respect to the MyTheresa Distribution or the MyTheresa Designation, subject to (i) restoration of all terms set forth in the MYT Holdco Preferred Series A Certificate, (ii) compliance by the MYT Entities with all of the MYT Covenants and the MYT Waterfall (as if such MYT Waterfall had been in effect while the MYT Assets (or proceeds from a sale of MYT Assets or MYT Entities) were held by the Issuers or any of their Restricted Subsidiaries), (iii) the
automatic release of any pledges or Liens on the MYT Contributed Equity Interests contemplated by the definition of “Unrestricted Subsidiary” and (iv) the restoration of the MYT Third Lien Notes Pledge Agreement;

(xv) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries and any class or series of Preferred Stock of any Restricted Subsidiaries issued or Incurred in accordance with Section 3.3;

(xvi) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) by the Issuer after the Issue Date; and

(B) the declaration and payment of dividends to Issuer or any Parent Entity, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of the Issuer or any Parent Entity issued after the Issue Date;

provided, however, that (1) for the most recently ended four full fiscal quarters for which Required Financial Statements have been delivered immediately preceding the date of issuance of such Designated Preferred Stock, the Interest Coverage Ratio of the Issuer would have been at least 2.25 to 1.00 and (2) the aggregate amount of dividends declared and paid pursuant to this clause (xvi) does not exceed the net cash proceeds actually received by the Issuer from the sale (or the contribution of the net cash proceeds from the sale) of Designated Preferred Stock; and

(xvii) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness, Disqualified Stock or Preferred Stock of the Issuer and its Restricted Subsidiaries pursuant to provisions similar to Section 3.7 and Section 3.9; provided that, prior to such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Issuers (or a third party to the extent permitted by this Indenture) have made a Change of Control Offer or Asset Sale Offer, as the case may be, with respect to the Notes and have repurchased, redeemed, defeased, acquired or retired all Notes validly tendered and not withdrawn in connection with such Change of Control Offer or Asset Sale Offer, as the case may be.

(c) For purposes of this Section 3.4, if any Investment or Restricted Payment (or a portion thereof) would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of “Permitted Investments,” the Issuer may divide and classify such Investment or Restricted Payment (or a portion thereof) in any manner that complies with this Section 3.4 and may later divide and reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.
The Issuer and its Restricted Subsidiaries shall not, directly or indirectly, use any Investments made pursuant to Section 3.4(b)(i) or any clause of the definition of “Permitted Investment” (i) to provide assets to a Person that Incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to Refinance any Indebtedness of the Issuers or their Restricted Subsidiaries or (ii) to make the payments restricted by Section 3.4(a)(i), (ii), or (iii).

SECTION 3.5. Liens.

The Issuers will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, Incur or suffer to exist any Lien securing Indebtedness on any asset or property of any of the Issuers or any Restricted Subsidiary, except:

(i) Permitted Liens; or

(ii) Liens other than Permitted Liens on assets that are not Collateral; provided that with respect to this clause (ii), the Notes or the applicable Subsidiary Guarantee of a Subsidiary Guarantor, as the case may be, are equally and ratably secured with such Lien; provided that any Lien that is granted to secure the Notes Obligations or any Subsidiary Guarantee pursuant to this clause (ii) will be automatically and unconditionally released and discharged at the same time as the release of the underlying Lien that gave rise to the obligation to equally and ratably secure the Notes Obligations or such Subsidiary Guarantee under this clause (ii) (other than a release as a result of the enforcement of remedies in respect of such Lien or the Notes Obligations secured by such Lien).

SECTION 3.6. Dividend and Other Payment Restrictions Affecting Subsidiaries.

(I) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock; or

(ii) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(b) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.
(II) Section 3.6(l) will not apply to encumbrances or restrictions existing under or by reason of:

(A) contractual encumbrances or restrictions of the Issuer or any Restricted Subsidiary in effect on the Issue Date, including pursuant to:

(1) the Extended Term Loan Agreement and the other documents relating to the Extended Term Loan Agreement;

(2) the ABL Credit Agreement and the other documents relating to the ABL Credit Agreement;

(3) the Second Lien Notes Indenture and the other documents relating to the Second Lien Notes Indenture;

(4) Indebtedness permitted pursuant to Section 3.3(b)(iv); and

(5) Hedge Agreements;

(B) the Third Lien Notes Obligations and all Indebtedness Documents related thereto;

(C) applicable law or any applicable rule, regulation or order;

(D) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Issuer or any Restricted Subsidiary that was in existence at the time of such acquisition (or at the time it merges with or into the Issuer or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof)), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that in connection with a merger under this clause (D), if a Person other than the Issuer or such Restricted Subsidiary is the Successor Company with respect to such merger, any Subsidiary of such Person, or any agreement or instrument of such Person or any Subsidiary of such Person, will be deemed acquired or assumed, as the case may be, by the Issuer or such Restricted Subsidiary, as the case may be, at the time of such merger;

(E) customary encumbrances or restrictions contained in contracts or agreements for the sale of assets applicable to such assets pending consummation of such sale, including customary restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary;

(F) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
customary provisions in operating or other similar agreements entered into in the ordinary course of business and which limitation is applicable only to the assets that are the subject of those agreements;

purchase money obligations for property acquired and Capitalized Lease Obligations entered into in the ordinary course of business to the extent such obligations impose restrictions of the nature discussed in Section 3.6(I)(c) on the property so acquired;

customary provisions contained in leases, sub-leases, licenses, sublicenses, contracts and other similar agreements entered into in the ordinary course of business to the extent such obligations impose restrictions of the type described in Section 3.6(I)(c) on the property subject to such lease;

[Reserved];

other Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary that is Incurred subsequent to the Issue Date pursuant to Section 3.3; provided that such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuers’ ability to make anticipated principal or interest payments on the Notes in accordance with this Indenture (as determined by the Issuer in good faith);

any encumbrance or restriction contained in the documents relating to any secured Indebtedness otherwise permitted to be Incurred pursuant to Section 3.3 and Section 3.5 to the extent such documents limit the right of the debtor to dispose of the assets securing such Indebtedness;

any encumbrances or restrictions arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, materially affect the Issuers’ ability to make anticipated principal or interest payments on the Notes in accordance with this Indenture (as determined by an Officer of the Issuer in good faith);

customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to the applicable joint venture; and

any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) of this Section 3.6(II) imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or Refinancings of the contracts, instruments or obligations referred to in clauses (A) through (N) of this Section 3.6(I); provided that such encumbrances and restrictions contained in any such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing are, in the good faith judgment of the Issuer, not materially more restrictive, taken as a whole, than the encumbrances and restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing.
(III) For purposes of determining compliance with this Section 3.6, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock will not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Issuer or a Restricted Subsidiary to other Indebtedness Incurred by the Issuer or any such Restricted Subsidiary will not be deemed a restriction on the ability to make loans or advances.

SECTION 3.7. Asset Sales.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause or make an Asset Sale, unless:

(1) the Issuer or any of its Restricted Subsidiaries, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that the amount of:

(A) any liabilities (as shown on the Issuer’s or such Restricted Subsidiary’s most recent balance sheet or in the notes thereto) of the Issuer or such Restricted Subsidiary (other than liabilities that are Subordinated Indebtedness) that are assumed by the transferee of any such assets or Equity Interests pursuant to an agreement that releases or indemnifies the Issuer or such Restricted Subsidiary, as the case may be, from further liability (or are otherwise extinguished in connection with the transactions relating to such Asset Sale);

(B) any notes or other obligations or other securities or assets received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 90 days of the receipt thereof; and

(C) any Designated Non-cash Consideration received by the Issuer or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) $25.0 million and (y) 0.35% of Consolidated Total Assets, calculated at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value) will be deemed to be Cash Equivalents for the purposes of this clause (2).

(b) With respect to any Collateral Asset Sale, the following provisions shall apply:
(1) The Issuer shall cause the Net Cash Proceeds of any Collateral Asset Sale to be deposited immediately in an account subject to a Control Agreement for the benefit of the Notes Collateral Agent pursuant to the terms of the Intercreditor Agreements, which may be a Control Agreement in favor of the ABL Agent, Second Lien Notes Collateral Agent and/or the Extended Term Loan Agent, acting as gratuitous bailee for the benefit of the Notes Collateral Agent pursuant to the ABL Intercreditor Agreement and/or the Junior Lien Intercreditor Agreement; and

(2) Within 30 days after the Issuer’s or any Restricted Subsidiary’s receipt of the Net Cash Proceeds of any Collateral Asset Sale, the Issuer or any Restricted Subsidiary shall apply an amount equal to the Net Cash Proceeds from such Collateral Asset Sale, at its option, to repay (x) Senior Priority Obligations (with any such repayment of revolving Senior Priority Obligations to be accompanied by a corresponding permanent reduction in commitments with respect thereto) or (y) Obligations under the Notes by, at its option, (A) purchasing Third Lien Notes (on a pro rata basis between and within the Notes and the 8.750% Third Lien Notes) through open-market purchases at a price not less than 100% of the principal amount thereof; or (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders and holders of the 8.750% Third Lien Notes to purchase their Third Lien Notes at a price not less than 100% of the principal amount thereof, provided that (i) in the case of a Collateral Asset Sale with respect to a warehouse or distribution center, no prepayment under this clause (2) shall be required to the extent of the cost of any investment in, or purchase of, a new warehouse or distribution center (but not to exceed the Net Cash Proceeds of such Collateral Asset Sale) completed within 24 months before and 12 months after the date of such Collateral Asset Sale; and (ii) Net Cash Proceeds from Collateral Asset Sales of stores (in an aggregate amount not to exceed $30.0 million after the Issue Date) may be applied to capital expenditures incurred within 12 months of the date of the Collateral Asset Sale.

(c) With respect to Asset Sales other than a Collateral Asset Sale, the following provisions shall apply: Within 365 days after the Issuer’s or any Restricted Subsidiary’s receipt of the Net Cash Proceeds of such Asset Sale, the Issuer or any Restricted Subsidiary may apply an amount equal to the Net Cash Proceeds from such Asset Sale, at its option:

(1) to repay (x) Indebtedness (other than Subordinated Indebtedness) or (y) Notes Obligations by, at its option, (A) purchasing Third Lien Notes through open-market purchases at a price not less than 100% of the principal amount thereof, or (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders and holders of 8.750% Third Lien Notes to purchase their Third Lien Notes (on a pro rata basis between and within the Notes and the 8.750% Third Lien Notes) at a price not less than 100% of the principal amount thereof; or

(2) to acquire all or substantially all of the assets of, or any Capital Stock of, another Similar Business, if, after giving effect to any such acquisition of Capital Stock, the Similar Business is or becomes a Restricted Subsidiary or to acquire other assets that are used or useful in a Similar Business (provided that any such assets
that would constitute Collateral shall be pledged as Collateral under the Security Documents and in accordance with this Indenture and the Security Documents substantially simultaneously with such purchase; provided further that the Issuer and its Restricted Subsidiaries will be deemed to have complied with the provisions described in this clause (2) if and to the extent that, within 365 days after the Asset Sale that generated the Net Cash Proceeds, the Issuer or any Restricted Subsidiary enters into a binding agreement to make an investment in compliance with the provision described in this clause (2) and that investment is thereafter completed within 365 days after the end of such 365-day period.

(d) Pending the final application of any Net Cash Proceeds of an Asset Sale (other than a Collateral Asset Sale, which shall be governed by Section 3.7(b) above), the Issuer or any of its Restricted Subsidiaries may temporarily reduce Indebtedness under a revolving credit facility, if any, or otherwise invest or utilize Net Cash Proceeds in any manner not prohibited by this Indenture.

(e) Any amount of Net Cash Proceeds from any Asset Sale that are not invested or applied as provided and within the time period set forth in Section 3.7(b) or Section 3.7(c) will be deemed to constitute “Excess Proceeds.” Notwithstanding the foregoing sentence, any amount of proceeds offered to Holders pursuant to Section 3.7(b) or Section 3.7(c) pursuant to an Asset Sale Offer made at any time after the Asset Sale will be deemed to have been applied as required and will not be deemed to be Excess Proceeds without regard to the extent to which such offer is accepted by the Holders. When the aggregate amount of Excess Proceeds exceeds $25.0 million, the Issuers will make an offer (an “Asset Sale Offer”) to all Holders and holders of 8.750% Third Lien Notes to purchase their Third Lien Notes (on a pro rata basis between and within the Notes and the 8.750% Third Lien Notes) and, if required by the terms of any Pari Passu Lien Indebtedness, to all holders of such Pari Passu Lien Indebtedness, to purchase the maximum principal amount of such Third Lien Notes and Pari Passu Lien Indebtedness, as appropriate, on a pro rata basis, that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to (x) in the case of the Third Lien Notes, 100% of the principal amount thereof and (y) in the case of Pari Passu Lien Indebtedness, 100% of the principal amount thereof (or in the event such Pari Passu Lien Indebtedness was issued with original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price, if any, as may be provided by the terms of such Pari Passu Lien Indebtedness), to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture and the agreement governing such Pari Passu Lien Indebtedness. The Issuers will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed $25.0 million by transmitting electronically or by mailing to the Holders the notice required pursuant to the terms of this Indenture, with a copy to the Trustee or otherwise in accordance with the Applicable Procedures of the Depositary. The Issuers may satisfy the foregoing obligations with respect to such Net Cash Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Cash Proceeds prior to the expiration of the application period or by electing to make an Asset Sale Offer with respect to such Net Cash Proceeds before the aggregate amount of Excess Proceeds exceeds $25.0 million.
For the case of both an Asset Sale of Collateral and of assets not constituting Collateral, to the extent that the aggregate amount of Third Lien Notes and other Indebtedness tendered or otherwise surrendered in accordance with the terms of this section is less than the Excess Proceeds, the Issuers may use any remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Third Lien Notes and other Indebtedness tendered or otherwise surrendered by Holders and holders of the 8.750% Third Lien Notes in accordance with the terms of this section exceeds the amount of Excess Proceeds, the Trustee will select the Third Lien Notes (and the Issuers or their agents will select such Pari Passu Lien Indebtedness, if applicable) to be purchased in the manner described in Section 3.7(i) below. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds will be reset at zero. To the extent the Excess Proceeds exceed the outstanding aggregate principal amount of the Third Lien Notes (and, if required by the terms thereof, all Pari Passu Lien Indebtedness), the Issuers need only make an Asset Sale Offer up to the outstanding aggregate principal amount of Third Lien Notes (and any such Pari Passu Lien Indebtedness), and any additional Excess Proceeds will not be subject to this Section 3.7 and will be permitted to be used for any purpose otherwise permitted by this Indenture in the Issuers’ discretion.

The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the purchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this Indenture by virtue of such compliance.

The provisions under this Indenture relative to the Issuers’ obligation to make an offer to repurchase the Notes as a result of an Asset Sale may be waived or modified at any time with the written consent of the Holders of a majority in principal amount of the Notes.

If more Notes are tendered pursuant to an Asset Sale Offer than the Issuers are required to purchase, selection of such Notes for purchase will be made in compliance with the requirements of the principal national securities exchange, if any, on which such Notes are listed (but only to the extent that the Trustee has been notified in writing of such listing by the Issuer) or if such Notes are not listed, on a pro rata basis or as nearly a pro rata basis as practicable (with adjustments so that only Notes in denominations of the minimum denomination of $2,000.00 or integral multiples of $1.00 in excess thereof) will be purchased, by lot or by such other method as the Trustee will deem fair and appropriate (and in such manner as complies with applicable legal requirements, if any); provided that the selection of Notes for purchase will not result in a Holder with a principal amount of Notes less than the minimum denomination of $2,000.00. If all of the Notes are in global form, interests in the Notes to be redeemed will be selected for redemption by the Depositary in accordance with the Applicable Procedures of the Depositary. No Note will be repurchased in part if less than the minimum denomination of such Note would be left outstanding.
Notices of an Asset Sale Offer will be delivered or caused to be delivered, or in the case of Notes in global form, delivered or cause to be delivered electronically in accordance with the Applicable Procedures of the Depositary, at least 30 but not more than 60 days before the purchase date to each Holder at such Holder’s registered address, with a copy to the Trustee, or otherwise in accordance with Applicable Procedures of the Depositary. If any Note is to be purchased in part only, any notice of purchase that relates to such Note will state the portion of the principal amount thereof that has been or is to be purchased.

(k) A new Note in principal amount equal to the unpurchased portion of any Note purchased in part will be issued in the name of the Holder thereof upon cancellation of the original Note. On and after the purchase date, unless the Issuers default in payment of the purchase price, interest will cease to accrue on Notes or portions thereof purchased.

SECTION 3.8. Transactions with Affiliates.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer involving aggregate consideration in excess of $15.0 million (each of the foregoing, an “Affiliate Transaction”), unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, the Issuer delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Issuer, approving such Affiliate Transaction, together with an Officer’s Certificate certifying that the Board of Directors of the Issuer determined or resolved that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 3.8(a) will not apply to:

(i) transactions between or among (A) the Issuers and the Subsidiary Guarantors or (B) the Issuers and any Person that becomes a Subsidiary Guarantor as a result of such transaction (including by way of a merger, consolidation or amalgamation);

(ii) transactions between or among the Issuers and any Restricted Subsidiary that involves shared overhead in the ordinary course of business;
(iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Issuer or any Parent Entity in good faith;

(iv) loans or advances to employees or consultants of any Parent Entity, the Issuer or any Restricted Subsidiary in accordance with clause (2) of the definition of “Permitted Investments;”

(v) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Issuer or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Issuer and its Restricted Subsidiaries, and subject to reasonable pro-rata of joint services, indemnities, costs, fees and expenses;

(vi) the Transactions and other transactions, agreements and arrangements in existence on the Issue Date, or any amendment thereto to the extent such amendment is not adverse to the Holders in any material respect;

(vii) (A) any employment agreements entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors; and

(C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto.

(viii) (A) Restricted Payments permitted under Section 3.4; and

(B) Permitted Investments.

(ix) any purchase by any Parent Entity of the Equity Interests of the Issuer and the purchase by the Issuer of Equity Interests in any Restricted Subsidiary;

(x) [Reserved];

(xi) transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm’s length terms;

(xii) any transaction in respect of which the Issuer delivers to the Trustee a letter addressed to the Board of Directors of the Issuer or any Parent Entity from an accounting, appraisal or investment banking firm, in each case, of nationally
recognized standing that is in the good faith determination of the Issuer qualified to render such letter, which letter states that such transaction is on terms that are no less favorable to the Issuer or its Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate;

(xiii) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(xiv) the issuance, sale or transfer of Equity Interests of the Issuer to any Parent Entity and capital contributions by any Parent Entity to the Issuer (and payment of reasonable out-of-pocket expenses Incurred by the Sponsors or any Parent Entity in connection therewith);

(xv) the issuance of Equity Interests to the management of any Parent Entity, the Issuer or any of the Restricted Subsidiaries in connection with the Transactions;

(xvi) payments by any Parent Entity, the Issuer or any of the Restricted Subsidiaries pursuant to tax sharing agreements among any Parent Entity, the Issuer and any of the Restricted Subsidiaries that would otherwise be permitted Tax Distributions under Section 3.4(b)(v) and shall be subject to the same restrictions as set forth under Section 3.4(b)(v); provided, that amounts paid under this clause (xvi) in respect of federal, state or local Taxes, taken together with any amounts paid under Section 3.4(b)(v) shall not exceed the Issuer Tax Amount for any applicable year;

(xvii) payments or loans (or cancellation of loans) to employees or consultants that are:

(A) approved by a majority of the disinterested directors of the Issuer in good faith;

(B) made in compliance with applicable law; and

(C) otherwise permitted under this Indenture;

(xviii) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Indenture that are fair to the Issuer and the Restricted Subsidiaries;

(xix) [Reserved];

(xx) transactions pursuant to, and complying with, Section 4.1(b) and the last sentence of Section 4.1(d);

(xxi) the existence of, or the performance by the Issuer or any Subsidiary Guarantor of their obligations under the terms of, any customary registration rights agreement to which they are a party or become a party in the future.
SECTION 3.9. Change of Control.

(a) Upon the occurrence of a Change of Control after the Issue Date, each Holder will have the right to require the Issuers to purchase all or any part of such Holder’s Notes at a purchase price in cash (the “Change of Control Payment”) equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), except to the extent the Issuers have previously elected to redeem the Notes pursuant to Section 5.1.

(b) Within 30 days following any Change of Control, except to the extent that the Issuers have exercised their right to redeem the Notes pursuant to Section 5.1, the Issuers will deliver a notice (a “Change of Control Offer”) to each Holder with a copy to the Trustee, or otherwise in accordance with the Applicable Procedures of the Depositary, describing:

(i) that a Change of Control has occurred or, if the Change of Control Offer is being made in advance of a Change of Control, that a Change of Control is expected to occur, and that such Holder has, or upon such occurrence will have, the right to require the Issuers to purchase such Holder’s Notes at a purchase price in cash equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of Holders of record on a Record Date to receive interest on the relevant Interest Payment Date);

(ii) the transaction or transactions that constitute, or are expected to constitute, such Change of Control;

(iii) the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is delivered (the “Change of Control Payment Date”);

(iv) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(v) that unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(vi) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of such Notes completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vii) that Holders will be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes; provided that the
paying agent receives, not later than the expiration time of the Change of Control Offer, a facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount of Notes tendered for purchase, a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased and a description of reasonable detail of any conditions precedent applicable to such withdrawal;

(viii) that if the Issuers are redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to $2,000.00 or an integral multiple of $1.00 in excess thereof;

(ix) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(x) the other instructions determined by the Issuers, consistent with this Section 3.9, that a Holder must follow in order to have its Notes purchased.

(c) While the Notes are in global form and the Issuers make an offer to purchase all of the Notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the Notes to be made through the facilities of the Depositary in accordance with the Applicable Procedures of the Depositary. A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon the occurrence of such Change of Control.

(d) The Issuers will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 3.9. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 3.9, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this Section 3.9 by virtue of such compliance.

(e) On the Change of Control Payment Date, the Issuers will, to the extent permitted by law,

(i) accept for payment all Notes issued by them or portions thereof validly tendered and not withdrawn pursuant to the Change of Control Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer’s Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers.

(f) On the Business Day immediately preceding the Change of Control Payment Date, the Issuers will deposit with the Paying Agent in an amount equal
to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered.

(g) Holders electing to have a Note purchased will be required to surrender the Note, with an appropriate form duly completed, to the Issuers at the address specified in the notice at least three Business Days prior to the Change of Control Payment Date. Holders will be entitled to withdraw their election if the Trustee or the Issuers receive not later than one Business Day prior to the expiration of the Change of Control Offer, facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount at maturity of the Note which was delivered for purchase by the Holder and a statement that such Holder is withdrawing his selection to have such Note purchased.

(h) On the Change of Control Payment Date, all Notes purchased by the Issuers under this Section 3.9 will be delivered by the Issuers to the Trustee for cancellation, and the Issuers will pay the purchase price plus accrued and unpaid interest, if any, to the Holders entitled thereto. With respect to any Note purchased in part, the Issuers will issue a new Note in a principal amount equal at maturity to the unpurchased portion of the original Note in the name of the Holder upon cancellation of the original Note.

(i) Notwithstanding the foregoing provisions of this Section 3.9, the Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(j) Prior to any Change of Control Offer, each of the Issuers will deliver to the Trustee an Officer’s Certificate stating that all conditions precedent contained herein to the right of each of the Issuers to make such offer have been complied with.

SECTION 3.10. Maintenance of Insurance. The Issuers and the Subsidiary Guarantors will maintain with financially sound and reputable insurance companies, insurance with respect to their properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

SECTION 3.11. Additional Guarantors.

(a) Each of the Issuer’s current and future Domestic Subsidiaries (other than the Co-Issuers, Notes PropCo and Extended Term Loan PropCo) and, subject to clause (b) below, each of the Issuer’s future Foreign Subsidiaries shall, jointly and severally, irrevocably, fully and unconditionally guarantee on a senior basis and subject
to the applicable Intercreditor Agreements the Guaranteed Obligations. The foregoing requirement to provide a Subsidiary Guarantee shall not apply to an Excluded Subsidiary.

(b) After the Issue Date, (i) no direct or indirect Subsidiary (including an Excluded Subsidiary) or equity investee of the Issuer may directly or indirectly provide Credit Support for the Indebtedness incurred under clause (i) or (ii) of the definition of “Permitted Debt”, (ii) no direct or indirect Subsidiary (including an Excluded Subsidiary) or equity investee of the Issuer may be an obligor on any Indebtedness for borrowed money for which any Issuer or Subsidiary Guarantor directly or indirectly provides Credit Support, unless, in each case of clause (i) and (ii), such Subsidiary or equity investee provides a Subsidiary Guarantee, and (iii) each Immaterial Subsidiary existing as of the Issue Date shall, within 90 days following the Issue Date (or such later date as agreed to by the Issuer and the Extended Term Loan Agent) either (A) be dissolved, liquidated or merged out of existence or (B) become a Subsidiary Guarantor with respect to the Guaranteed Obligations.

(c) To the extent a Person is required to provide a Subsidiary Guarantee under the above provisions, such Person shall execute and deliver a supplemental indenture to this Indenture evidencing such Subsidiary Guarantee in the form of Exhibit D within 10 Business Days after the requirement to provide such Subsidiary Guarantee arises under this Indenture on the same terms and conditions as those set forth in this Indenture and applicable to the other Guarantors, together with such opinions of counsel and certifications as the Trustee reasonably requires, and pledge all assets held by such Person (other than Excluded Assets) as After-Pledged Property with Required Collateral Lien Priority as provided under Section 3.16.

(d) Neiman Marcus Bermuda, L.P., a limited partnership organized under the laws of Bermuda, NMG Asia Holdings Limited, a company organized under the laws of Hong Kong, and NMG Asia Limited, a company organized under the laws of Hong Kong, shall not be required to provide a Subsidiary Guarantee unless additional Investments are made after the Issue Date by the Issuers or any Restricted Subsidiaries in such Foreign Subsidiary exceeding $2.5 million in aggregate.

(e) On the Issue Date, MYT Parent and MYT Holdco shall execute and deliver the MYT Third Lien Notes Pledge Agreement.

SECTION 3.12. Notes PropCo and Extended Term Loan PropCo Guarantees

(a) Notes PropCo shall provide an unsecured Subsidiary Guarantee (the “Notes PropCo Guarantee”) of the Guaranteed Obligations, which Subsidiary Guarantee shall have the Required PropCo Guarantee Priority. Notes PropCo shall not have any Subsidiaries and may not make any Investments in any Person. No assets that may be pledged to secure the Notes Obligations may be held by Notes PropCo, and Notes PropCo shall not incur any Liens to secure Indebtedness or trade payables. Notes PropCo shall not hold any assets other than Notes Priority PropCo Assets or have any operations other than (i) holding the Notes Priority PropCo Assets and leasing or licensing such
Notes Priority PropCo Assets to the Issuers or the Subsidiary Guarantors, and (ii) performing its obligations with respect to the Indebtedness permitted to be incurred under this Indenture (including under the ABL Obligations, the Extended Term Loan Obligations, the Third Lien Notes Obligations, the 2028 Debentures Obligations, the Second Lien Notes Obligations, the Non-Participating Exchange Term Loan Obligations and the Remaining Unsecured Notes Exchange Obligations and any Permitted Refinancing Indebtedness thereof), (iii) maintaining its legal existence, (iv) issuing Equity Interests to its parent company, (v) making Restricted Payments to its parent company, (vi) participating in tax, accounting and other administrative matters, (vii) providing indemnification to officers and directors, and (viii) activities incidental to the foregoing businesses, activities or operations. While Notes PropCo holds Notes Priority PropCo Assets, Notes PropCo shall not dissolve or liquidate or merge or consolidate with an Issuer or a Restricted Subsidiary.

(b) Extended Term Loan PropCo shall provide an unsecured Subsidiary Guarantee (the “Extended Term Loan PropCo Guarantee”) of the Guaranteed Obligations, which Subsidiary Guarantee shall have the Required PropCo Guarantee Priority. Extended Term Loan PropCo shall not have any Subsidiaries and may not make any Investments in any Person. No assets that may be pledged to secure the Extended Term Loan Obligations may be held by Extended Term Loan PropCo, and Extended Term Loan PropCo shall not incur any Liens to secure Indebtedness or trade payables. Extended Term Loan PropCo shall not hold any assets other than Extended Term Loan Priority PropCo Assets or have any operations other than (i) holding the Extended Term Loan Priority PropCo Assets and leasing or licensing such Extended Term Loan Priority PropCo Assets to the Issuers or the Subsidiary Guarantors, and (ii) performing its obligations with respect to the Indebtedness permitted to be incurred under this Indenture (including under the ABL Obligations, the Extended Term Loan Obligations, the Third Lien Notes Obligations, the 2028 Debentures Obligations, the Second Lien Notes Obligations, the Non-Participating Exchange Term Loan Obligations and the Remaining Unsecured Notes Exchange Obligations and any Permitted Refinancing Indebtedness thereof), (iii) maintaining its legal existence, (iv) issuing Equity Interests to its parent company, (v) making Restricted Payments to its parent company, (vi) participating in tax, accounting and other administrative matters, (vii) providing indemnification to officers and directors, and (viii) activities incidental to the foregoing businesses, activities or operations. While Extended Term Loan PropCo holds Extended Term Loan Priority PropCo Assets, Extended Term Loan PropCo shall not dissolve or liquidate or merge or consolidate with an Issuer or a Restricted Subsidiary.

(c) Notwithstanding anything to the contrary in this Indenture (including permissions by “Subsidiary Guarantors” to incur Indebtedness or provide other Credit Support under Section 3.3), Notes PropCo and Extended Term Loan PropCo shall not Incur or provide Credit Support for any Indebtedness or other related Obligations, other than guarantees of Permitted PropCo Guaranteed Obligations which have the Required PropCo Guarantee Priority.

SECTION 3.13. Compliance Certificate; Statement by Officers as to Default. The Issuer will deliver to the Trustee, within 120 days after the end of each
fiscal year of the Issuer ending after the Issue Date, an Officer’s Certificate to the effect that to the best knowledge of the signer thereof on behalf of each of
the Issuers, the Issuers are or are not in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without
regard to any period of grace or requirement of notice provided hereunder) and, if the Issuers (through its own action or omission or through the action or
omission of any Subsidiary Guarantor as applicable) will be in default, specifying all such defaults and the nature and status thereof of which such signer may
have knowledge. The individual signing any certificate given by any Person pursuant to this Section 3.13 will be the principal executive, financial or
accounting officer of such Person or the direct or indirect parent of such Person, in compliance with TIA § 314(a)(4).

So long as any of the Notes are outstanding, upon any Officer becoming aware of any Default or Event of Default, the Issuers will deliver to
the Trustee, within 30 days after the occurrence thereof, an Officer’s Certificate specifying such Default or Event of Default and what action the Issuers are
taking or propose to take with respect thereto.


(a) All payments made by a Foreign Guarantor in respect of a Guarantee will be made free and clear of and without withholding or
deduction for, or on account of, any present or future Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or
withholding for, or on account of, any Taxes imposed or levied by or on behalf of any jurisdiction in which the relevant Foreign Guarantor is then
incorporated or organized or resident for tax purposes, any jurisdiction from or through which payment on behalf of such Foreign Guarantor is made or any
political subdivision or governmental authority thereof or therein having power to tax (each, a “Tax Jurisdiction”), will at any time be required to be made
from any payments made by or on behalf of the relevant Foreign Guarantor under its Guarantee, including payments of principal, redemption price, purchase
price, interest or premium, the relevant Foreign Guarantor will pay such additional amounts (the “Additional Amounts”) as may be necessary in order that the
net amounts received in respect of such payments (including payments of principal, redemption price, interest or premium) by each Holder
(including Additional Amounts) after such withholding or deduction will equal the respective amounts that would have been received in respect of such payments in the
absence of such withholding or deduction; provided, however, that no Additional Amounts will be payable with respect to:

(i) any Taxes that would not have been so imposed but for the existence of any present or former connection between the
Holder or the beneficial owner of the Note or Guarantee (or between a fiduciary, settler, beneficiary, partner, member or shareholder of, or possessor of power
over the relevant Holder or beneficial owner, if the relevant Holder is an estate, nominee, trust, partnership, limited liability company or corporation) and the
relevant Tax Jurisdiction, other than by the mere acquisition or holding of any Note or the enforcement or receipt of payment under or in respect of any Note
or Guarantee;
any Taxes imposed or withheld as a result of the failure of the Holder or beneficial owner of any Note or Guarantee to comply with any written request, made to that Holder or beneficial owner within a reasonable period before any such withholding or deduction would be payable, by an Issuer or a Foreign Guarantor to provide timely or accurate information concerning the nationality, residence or identity of such Holder or beneficial owner or to make any valid or timely declaration or similar claim or satisfy any certification information or other reporting requirements (in each case, to the extent such Holder or beneficial owner is legally eligible to do so), which is required or imposed by a statute, treaty, regulation or administrative practice of the relevant Tax Jurisdiction as a precondition to exemption from, or reduction in the rate of deduction or withholding of such Taxes;

(iii) any Taxes that are imposed or withheld as a result of the presentation of any Note or Guarantee for payment (where presentation is required) more than 30 days after the relevant payment is first made available for payment to the Holder or beneficial owner (except to the extent that the Holder or beneficial owner would have been entitled to Additional Amounts had the Note been presented on the last day of such 30 day period);

(iv) any estate, inheritance, gift, value added, sale, excise, transfer, personal property or similar tax or assessment;

(v) any Tax which is payable otherwise than by deduction or withholding from payments made under or with respect to any Note or Guarantee;

(vi) any Tax imposed on or with respect to any payment by a Foreign Guarantor to the Holder if such Holder is a fiduciary, partnership, limited liability company or person other than the sole beneficial owner of such payment to the extent that Taxes would not have been imposed on such payment had such Holder been the sole beneficial owner of such Note or Guarantee;

(vii) any Taxes that are imposed or withheld as a result of the presentation of any Note or Guarantee for payment by or on behalf of a Holder or beneficial owner of such Notes or Guarantee who would have been able to avoid such withholding or deduction by presenting the relevant Note or Guarantee to, or otherwise accepting payment from, another paying agent;

(viii) any Taxes that are imposed or withheld pursuant to Sections 1471 through 1474 of the Code, any regulations promulgated thereunder, any official interpretations thereof, any similar law or regulation adopted pursuant to an intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing or any agreements entered into pursuant to Section 1471(b)(1) of the Code; or

(ix) any combination of items (i) through (viii) above.

(b) The relevant Foreign Guarantor will pay when due any present or future stamp, transfer, court or documentary taxes or any other excise or property taxes
that arise in a Tax Jurisdiction with respect to the initial execution, delivery or registration of the Guarantees or any other document or instrument relating thereto (other than the Notes).

(c) The relevant Foreign Guarantor will use reasonable efforts to furnish to the Holders, within a reasonable period of time after the due date for the payment of any Taxes so deducted or withheld pursuant to applicable law, either certified copies of tax receipts evidencing such payment by such Foreign Guarantor (in such form as provided in the ordinary course by the relevant Tax Jurisdiction and as is reasonably available to the Foreign Guarantor), or, if such receipts are not obtainable, other evidence of such payments by such Foreign Guarantor reasonably satisfactory to the Holders.

SECTION 3.15. Impairment of Security Interest.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take, any action which action or omission might reasonably or would (in the good faith determination of the Issuer), have the result of materially impairing the value of the security interests taken as a whole (including the lien priority with respect thereto) with respect to the Collateral for the benefit of the Notes Collateral Agent and the Holders (including materially impairing the lien priority of the Notes with respect thereto) (it being understood that any release described under Section 11.6 and the incurrence of Permitted Liens shall not be deemed to so materially impair the security interests with respect to the Collateral).

(b) At the written direction of the Issuer and without the consent of the Holders, the Notes Collateral Agent (or its agent or designee) shall from time to time enter into one or more amendments, extensions, renewals, restatements, supplements or other modifications or replacements to or of the Security Documents to, but subject in all cases to the Intercreditor Agreements: (i) cure any ambiguity, omission, defect or inconsistency therein that does not adversely affect the interests of the Holders in any material respect, (ii) add to the Collateral or (iii) make any other change thereto that does not adversely affect the Holders in any material respect.

SECTION 3.16. After-Pledged Property.

(a) With respect to After-Pledged Property of the Issuers or any Subsidiary Guarantor, the Issuers or such Subsidiary Guarantor shall execute and deliver such mortgages, deeds of trust, security instruments, financing statements and certificates and opinions of counsel as shall be reasonably necessary to create a Lien on such After-Pledged Property constituting Collateral securing the Notes Obligations as contemplated by the Security Documents and perfect such Liens to the extent required by the Security Documents in favor of the Notes Collateral Agent, and having the Required Collateral Lien Priority, subject only to Permitted Liens, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to apply to such After-Pledged Property to the same extent and with the same force and effect as the then-existing Collateral.

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(b) (x) If any Issuer or Subsidiary Guarantor (A)(1) acquires fee simple title in Real Property after the Issue Date or (2) owns fee simple title in Real Property on the date it executes a supplemental indenture to provide a Subsidiary Guarantee pursuant to Section 3.11(c), that, in each case of subclauses (1) and (2) of this clause (A), on the date of such acquisition or the date that such Subsidiary Guarantee is provided, as applicable, has an individual fair market value (as determined customarily and in good faith by an Officer of the Issuer) of $2.5 million or more or (B)(1) acquires a leasehold interest in Real Property after the Issue Date with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center or (2) owns leasehold title in Real Property with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center on the date it provides a Subsidiary Guarantee or (y) any Non-Mortgageable Lease with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center ceases to be a Non-Mortgageable Lease hereunder, then in each case of the foregoing clauses (x) and (y) above, within 10 Business Days after the corresponding deadlines for Extended Term Loans (in each case, subject to extension as provided in the Extended Term Loan Agreement):

(i) notify the Notes Collateral Agent thereof;

(ii) cause any such acquired Real Property owned in fee simple that has a fair market value (as determined in good faith by an Officer of the Issuer) of $2.5 million or more to be subjected to a customary mortgage or deed of trust securing the Notes Obligations;

(iii) cause any such acquired or owned leasehold Real Property to be subjected to a customary mortgage or deed of trust securing the Notes Obligations;

(iv) with respect to any such Real Property, to the extent provided to the holders of any other Indebtedness of the Issuer or the Restricted Subsidiaries (or any agent or representative thereof), obtain fully paid American Land Title Association Lender’s Extended Coverage title insurance policies, with endorsements (including a standard survey endorsement or equivalent (only with respect to any such Real Property acquired or owned in fee simple pursuant to Section 3.16(b)(x)) and zoning endorsements where available) and in customary amounts that in no event shall be less than fair market value of such Real Property (the “Mortgage Policies”);

(v) with respect to any such Real Property acquired or owned in fee simple pursuant to Section 3.16(b)(x), to the extent necessary and customary to issue the Mortgage Policies, obtain American Land Title Association/American Congress on Surveying and Mapping form surveys, dated no more than 30 days before the date of their delivery to the Notes Collateral Agent, certified to the Notes Collateral Agent and the issuer of the Mortgage Policies and sufficient for the issuer of the Mortgage Policies to omit as an exception to each title policy the standard printed survey exception relating to such Real Property;
(vi) provide customary evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Notes Collateral Agent as loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks as are reasonably available for similar properties in the same geographical area, including the insurance required by the terms of any mortgage or deed of trust;

(vii) obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Issuers and the Subsidiary Guarantors in the states in which such Real Properties are located; and

(viii) take, or cause the applicable Issuer or Subsidiary Guarantor to take, such actions as shall be necessary or reasonably requested by the Notes Collateral Agent to perfect such Liens.

SECTION 3.17. Covenant Suspension.

(a) If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a “Covenant Suspension Event”), Sections 3.3, 3.4, 3.6, 3.7, 3.8 and 4.1(a)(iv) (collectively, the “Suspended Covenants”) will no longer be applicable to such Notes.

(b) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time pursuant to Section 3.17(a) (any such period, a “Suspension Period”), and on any subsequent date (the “Reversion Date”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events.

(c) Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Asset Sales will be reset at zero.

(d) With respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments since the Issue Date will be calculated as though Section 3.4 had been in effect prior to, but not during, the Suspension Period. In addition, all Indebtedness Incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified as having been Incurred or issued pursuant to Section 3.3(b)(iv). In addition, for purposes of Section 3.8, all agreements and arrangements entered into by the Issuer and any Restricted Subsidiary with an Affiliate of the Issuer during the Suspension Period prior to such Reversion Date will be deemed to have been entered into on or prior to the Issue Date, and for purposes of Section 3.6, all contracts entered into during the Suspension Period prior to such Reversion Date that contain any of the restrictions contemplated by such Section 3.6 will be deemed to have been existing on the Issue Date.

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During the Suspension Period, any reference in the definitions of “Permitted Liens” and “Unrestricted Subsidiary” to Section 3.3 or any provision thereof will be construed as if Section 3.3 had remained in effect since the Issue Date and during the Suspension Period.

During the Suspension Period, the obligation to grant further Subsidiary Guarantees will be suspended. Upon the Reversion Date, the obligation to grant Subsidiary Guarantees under Section 3.11 will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was Incurred for purposes of Section 3.11).

Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of any failure to comply with the Suspended Covenants during any Suspension Period, and the Issuer and any Subsidiary of the Issuer will be permitted, following a Reversion Date, without causing a Default or Event of Default or breach of any of the Suspended Covenants (notwithstanding the reinstatement thereof) under this Indenture, to honor, comply with or otherwise perform any contractual commitments or obligations entered into during a Suspension Period following a Reversion Date and to consummate the transactions contemplated thereby.

The Issuer will provide an Officer’s Certificate to the Trustee indicating the occurrence of any Covenant Suspension Event or Reversion Date. The Trustee will have no obligation to (i) independently determine or verify if such events have occurred, (ii) make any determination regarding the impact of actions taken during the Suspension Period on the Issuer and its Restricted Subsidiaries’ future compliance with their covenants or (iii) notify the Holders of any Covenant Suspension Event or Reversion Date.

For the avoidance of doubt, the MYT Covenants, the MYT Waterfall and the other provisions contained in the MYT Third Lien Notes Pledge Agreement will remain in place during any Suspension Period.

SECTION 3.18. Stay, Extension and Usury Laws. The Issuers and each of the Subsidiary Guarantors covenant (to the extent that they may lawfully do so) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuers and each of the Subsidiary Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 3.19. Nancy Holdings Corporate Reorganization. Nancy Holdings LLC shall be merged into the Issuer, and the intercompany lease agreements between Nancy Holdings LLC and the LLC Co-Issuer will be terminated, in each case,
within 90 days after the Issue Date (or such later date as mutually agreed by the Company Parties and the Extended Term Loan Agent) and, concurrently with such merger, the Issuer, as successor to Nancy Holdings LLC, shall mortgage the owned Real Properties constituting collateral currently held by Nancy Holdings LLC, which mortgages will have the Required Collateral Lien Priority.

SECTION 3.20. Ratings. The Issuers shall use their commercially reasonable efforts to cause, within 60 days after the end of the fiscal quarter ending June 30, 2019, the Notes to receive a rating from S&P or Moody’s, or, if during such time neither of such institutions shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency (as described in Rule 436 under the Securities Act).

ARTICLE IV

Merger; Consolidation or Sale of All or Substantially All Assets

SECTION 4.1. When the Issuers May Merge or Otherwise Dispose of Assets.

(a) No Issuer may consolidate or merge with or into or wind up into (whether or not such Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person (other than the merger or consolidation of one Issuer into another Issuer) unless:

(i) such Issuer is the surviving Person or the Person formed by or surviving any such consolidation, merger or winding up (if other than such Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia (such Issuer or such Person, as the case may be, being herein called the “Successor Company”) and, if such entity is not (A) a corporation, a co-obligor of the Notes is a corporation organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, a co-obligor of the Notes is organized or existing under such laws;

(ii) the Successor Company (if other than such Issuer) expressly assumes all the obligations of such Issuer under Notes Documents pursuant to a supplemental indenture or other documents or instruments;

(iii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), no Default or Event of Default has occurred and is continuing;

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The Successor Company will succeed to, and be substituted for, such Issuer under this Indenture, the Notes and the Notes Documents, and such Issuer will automatically be released and discharged from its obligations under this Indenture, the Notes and the Notes Documents.

(b) Notwithstanding the foregoing clauses 4.1(a)(iii) and 4.1(a)(iv):

(i) any of the Issuers or any Subsidiary Guarantor may consolidate with, merge into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to an Issuer or a Subsidiary Guarantor;

(ii) any of the Issuers may merge or consolidate with an Affiliate of such Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Issuer in another state of the United States, the District of Columbia or any territory of the United States so long as the principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby;

(iii) any Restricted Subsidiary may merge with or consolidate into an Issuer, provided that such Issuer is the Successor Company in such merger;

(iv) any Subsidiary Guarantor may dissolve or liquidate to the extent that the assets of such Subsidiary Guarantor are transferred to the Issuers or another Subsidiary Guarantor substantially contemporaneously with such dissolution or liquidation; and

(v) any Restricted Subsidiary that is not a Subsidiary Guarantor may dissolve or liquidate to the extent that the assets of such Restricted Subsidiary that is
not a Subsidiary Guarantor are transferred to the Issuers or another Restricted Subsidiary substantially contemporaneously with such dissolution or liquidation.

(c) Subject to Section 10.2 and Section 10.5, each Subsidiary Guarantor will not, and the Issuer will not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, merger or winding up (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (including by way of liquidation or dissolution of the Subsidiary Guarantor) is a corporation, partnership, limited partnership or limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia (such Subsidiary Guarantor or such Person, as the case may be, being herein called the “Successor Guarantor”):

(B) the Successor Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under the Notes Documents, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents pursuant to a supplemental indenture or other documents or instruments;

(C) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction) no Default or Event of Default will have occurred and be continuing; and

(D) the Successor Guarantor (if other than such Subsidiary Guarantor) will have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; and

(ii) such sale or disposition or consolidation or merger does not violate Section 3.7;

provided that, in the event of a Subsidiary Guarantor liquidating or dissolving, the Person which receives the assets of such Subsidiary Guarantor substantially contemporaneously with such liquidation or dissolution shall be considered the Successor Guarantor for purposes of the above.

(d) Subject to Sections 10.2 and 10.5, the Successor Guarantor will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture, such
Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents, and such Subsidiary Guarantor will automatically be released and discharged from its obligations under this Indenture, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents. Notwithstanding the foregoing:

(i) a Subsidiary Guarantor may merge or consolidate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Subsidiary Guarantor in the United States, any state or territory thereof or the District of Columbia, so long as the principal amount of Indebtedness of the Issuer and the Restricted Subsidiaries is not increased thereby;

(ii) a Subsidiary Guarantor may consolidate or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to, an Issuer or Subsidiary Guarantor;

(iii) a Subsidiary Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of a jurisdiction in the United States; and

(iv) any Restricted Subsidiary may merge with or consolidate into any Subsidiary Guarantor; provided that, in the case of this clause (iv), the surviving Person (A) shall be a corporation, partnership, limited partnership or limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia and (B) if not the Subsidiary Guarantor, the surviving Person will become a Subsidiary Guarantor upon the consummation of such merger or consolidation.

(e) For purposes of this Section 4.1, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, will be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

ARTICLE V
Redemption of Notes

SECTION 5.1. Optional Redemption.

(a) The Notes may be redeemed, in whole at any time, or in part from time to time, subject to the conditions and at the redemption prices set forth in Paragraph 7 of the form of Note set forth in Exhibit A hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

(b) On and after the Redemption Date, interest will cease to accrue on the Notes or portions thereof called for redemption so long as the Issuers have deposited
with the Paying Agent funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on the Notes to be redeemed.

SECTION 5.2. Election to Redeem; Notice to Trustee of Optional and Mandatory Redemptions. If the Issuers elect to redeem Notes pursuant to Section 5.1 or the Issuers are required to redeem Notes pursuant to Section 5.9 or 5.10, the Issuers will furnish to the Trustee, at least five calendar days for Global Notes and 10 calendar days for Definitive Notes before notice of redemption is required to be delivered or caused to be delivered to Holders pursuant to Section 5.4, an Officer’s Certificate setting forth (a) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption will occur, (b) the Redemption Date, (c) the principal amount of the Notes to be redeemed and (d) the redemption price. The Issuers may also include a request in such Officer’s Certificate that the Trustee give the notice of redemption in the Issuers’ name and at their expense and setting forth the information to be stated in such notice as provided in Section 5.4. The Issuers will deliver to the Trustee such documentation and records as will enable the Trustee to select the Notes to be redeemed pursuant to Section 5.3.

SECTION 5.3. Selection by Trustee of Notes to Be Redeemed. If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption on a pro rata basis (or as nearly pro rata as practicable) unless otherwise required by law or the rules of the principal national securities exchange, if any, on which such Notes are listed (but only to the extent that the Trustee has been notified in writing of such listing by the Issuer), in minimum denominations of $2,000.00 and in integral multiples of $1.00 in excess thereof; provided that the selection of Notes for redemption will not result in a Holder of Notes with a principal amount of Notes owning less than $2,000.00 in aggregate principal amount of Notes, and provided further that if all of the Notes are in global form, interests in the Notes to be redeemed will be selected for redemption by the Depositary in accordance with the Applicable Procedures of the Depositary. If any Note is to be purchased or redeemed in part only, the notice of purchase or redemption relating to such Note will state the portion of the principal amount thereof that has been or is to be purchased or redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Note in accordance with Section 5.7. On and after the Redemption Date, interest will cease to accrue on Notes or portions thereof called for redemption so long as the Issuers have deposited with the Paying Agent funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on the Notes to be redeemed.

The Trustee will promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes will relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Note which has been or is to be redeemed.

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SECTION 5.4. Notice of Redemption. In the case of a redemption pursuant to Sections 5.1, 5.9 or 5.10, the Issuers will deliver or cause to be delivered or in the case of Notes in global form, delivered or caused to be delivered electronically in accordance with the Applicable Procedures of the Depositary, a notice of redemption to each Holder whose Notes are to be redeemed not less than 30 nor more than 60 days prior to a date fixed for redemption (a “Redemption Date”); provided, however, that redemption notices may be delivered more than 60 days prior to a Redemption Date if the notice is issued pursuant to Article VIII. In connection with any redemption of Notes, any such redemption may, at the Issuers’ discretion, be subject to one or more conditions precedent, including, but not limited to, the funding of the amounts required to be funded by Calling Lenders in connection with the Call Right Redemption. In addition, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice will state that, in the Issuers’ discretion, the Redemption Date may be delayed until such time as any or all such conditions will be satisfied (or waived by the Issuers in their sole discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Issuers in their sole discretion) by the Redemption Date, or by the Redemption Date so delayed. At the Issuers’ written request, the Trustee may give notice of redemption in the Issuers’ name and at the Issuers’ expense.

All notices of redemption will be prepared by the Issuers and will state:

(a) the Redemption Date,

(b) the redemption price and the amount of accrued interest to, but excluding, the Redemption Date payable as provided in Section 5.6, if any,

(c) if less than all outstanding Notes are to be redeemed, the identification of the particular Notes (or portion thereof) to be redeemed, as well as the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption,

(d) in case any Note is to be redeemed in part only, the notice which relates to such Note will state that on and after the Redemption Date, upon surrender of such Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed,

(e) that on the Redemption Date the redemption price (and accrued interest to, but excluding, the Redemption Date payable as provided in Section 5.6, if any) will become due and payable upon each such Note, or the portion thereof, to be redeemed, and, unless the Issuers default in making the redemption payment, that interest on Notes called for redemption (or the portion thereof) will cease to accrue on and after said date,

(f) the place or places where such Notes are to be surrendered for payment of the redemption price and accrued interest, if any,

(g) the name and address of the Paying Agent,
that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price,

(i) the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Notes,

(j) the Section of this Indenture pursuant to which the Notes are to be redeemed, and

(k) a description in reasonable detail of any conditions precedent applicable to such redemption.

At the Issuers' request, the Trustee will give the notice of redemption in the Issuers’ name and at its expense; provided, however, that the Issuers will have delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officer’s Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph. Such Officer’s Certificate will state that all conditions precedent to the delivery of such notice have been complied with.

SECTION 5.5. Deposit of Redemption Price. Prior to 10:00 a.m. New York City time, on any Redemption Date, the Issuers will deposit with the Trustee or with a Paying Agent (or, if the Issuers are acting as their own Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Notes which are to be redeemed on that date.

SECTION 5.6. Notes Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Notes so to be redeemed will, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to, but excluding, the Redemption Date), and from and after such date (unless the Issuers default in the payment of the redemption price and accrued interest, if any, to, but excluding, the Redemption Date) such Notes will cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note will be paid by the Issuers at the redemption price, together with accrued interest, if any, to, but excluding, the Redemption Date (subject to the rights of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

If any Note called for redemption is not so paid upon surrender thereof for redemption, the principal (and premium, if any) will, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

If a Redemption Date is on or after a Record Date and on or before the related Interest Payment Date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such Record Date.
Date, and no further interest will be payable to Holders whose Notes will be subject to redemption by the Issuers.

SECTION 5.7. Notes Redeemed in Part. Any Note which is to be redeemed only in part (pursuant to the provisions of this Article) will be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3 (with, if the Issuers so require, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers duly executed by, the Holder thereof or such Holder’s attorney duly authorized in writing), and the Issuers will execute, and the Trustee upon receipt of an Authentication Order will authenticate and make available for delivery to the Holder of such Note at the expense of the Issuers, a new Note or Notes, of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered, provided that each such new Note will be in a minimum principal amount of $2,000.00 and integral multiples of $1.00 in excess thereof.

SECTION 5.8. Offer to Repurchase. In the event that, pursuant to Section 3.7, the Issuers are required to commence an offer to all Holders to purchase the Notes (an “Offer to Repurchase”), it will follow the procedures specified below:

(a) The Offer to Repurchase will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the “Offer Period”). No later than five Business Days after the termination of the Offer Period (the “Purchase Date”), the Issuers will apply all Excess Proceeds (the “Offer Amount”), to the purchase of Notes and such Pari Passu Lien Indebtedness, if any (in each instance, on a pro rata basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Offer to Repurchase. Payment for any Notes so purchased will be made pursuant to Section 3.1.

(b) If the Purchase Date is on or after an Interest Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest will be payable to Holders who tender Notes pursuant to the Offer to Repurchase.

(c) Upon the commencement of an Offer to Repurchase, the Issuers will deliver a notice to the Trustee and each of the Holders. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Repurchase. The notice, which will govern the terms of the Offer to Repurchase, will state:

(i) that the Offer to Repurchase is being made pursuant to this Section 5.8 and Section 3.7, and the length of time the Offer to Repurchase will remain open;
(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment will continue to accrue interest;

(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Offer to Repurchase will cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Offer to Repurchase may elect to have Notes purchased in a minimum amount of $2,000.00 or an integral multiple of $1,000 in excess thereof only;

(vi) that Holders electing to have Notes purchased pursuant to any Offer to Repurchase will be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Notes completed, or transfer by book-entry transfer, to the Issuers, the Depositary, if appointed by the Issuers, or the Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders will be entitled to withdraw their election if the Issuers, the Depositary or the Paying Agent, as the case may be, receives, not later than on the expiration of the Offer Period, facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount of Notes the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Notes purchased;

(viii) that, if the aggregate principal amount of Notes and, if applicable, Pari Passu Lien Indebtedness, if any, surrendered by Holders thereof exceeds the Offer Amount, the Trustee will select the Notes and, if applicable, the Issuers will select such Pari Passu Lien Indebtedness to be purchased or prepaid, on a pro rata basis based on the principal amount of Notes and Pari Passu Lien Indebtedness, if any, surrendered (with such adjustments as may be deemed appropriate by the Issuers so that only Notes in minimum denominations of $2,000.00 or integral multiples of $1.00 in excess thereof are redeemed); and

(ix) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

(d) On or before the Purchase Date, the Issuers will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Offer to Repurchase, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer’s Certificate stating that such Notes or portions thereof were accepted for payment by the Issuers in accordance with the terms of this Section 5.8. The Issuers, the Depositary or the Paying
Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Issuers for purchase, and the Issuers will promptly issue a new Note, and the Trustee, upon written request from the Issuers, will authenticate and deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted will be promptly delivered by the Issuers to the Holder thereof. The Issuers will publicly announce the results of the Offer to Repurchase on the Purchase Date.

SECTION 5.9. Call Right Redemption.

(a) Lenders under the Extended Term Loan Agreement (the “Calling Lenders”) may exercise the Call Right by complying with the procedures provided therefor in the Extended Term Loan Agreement and delivering (or causing the agent under the Extended Term Loan Agreement to deliver) to the Trustee and the Issuers the notice of redemption set forth in Exhibit E hereto (the “Call Notice”). Notes in a principal amount of $200.0 million (or such lesser amount equal to the then-outstanding principal amount of Notes) (such amount, the “Called Notes”) shall be redeemed in accordance with the terms of clauses (b) and (c) below.

(b) Upon (1) receipt by the Trustee and the Issuers of the Call Notice with respect to the Call Right and (2) compliance with the Call Right Procedures provided for in the Extended Term Loan Agreement, the Issuers shall redeem the Called Notes at a price equal to the principal amount of Called Notes plus accrued but unpaid interest to, but not including, the date of redemption provided for in the Call Notice, which date shall be not more than 30 Business Days and not fewer than five Business Days following delivery of the Call Notice. Such redemption shall be conditioned upon and subject to the provision by the Calling Lenders to the Issuers of Immediately available funds in cash in an amount equal to the principal amount of Called Notes.

(c) Except as expressly set forth above in this Section 5.9, the provisions of Sections 5.1 through 5.7 shall apply mutatis mutandis to a redemption of Notes pursuant to the Call Right.


At any time following a contribution made in accordance with the MYT Waterfall, the Issuers shall redeem all or a portion of the Third Lien Notes in an aggregate principal amount equal to the amount of such contribution, on a pro rata basis among the outstanding Third Lien Notes (based on their aggregate outstanding principal amount), in accordance with the procedures set forth in this Article V at a redemption price equal to 100.0%, plus accrued and unpaid interest, if any, to (but not including) the redemption date (subject to the right of Holders of record and holders of record of the 8.750% Third Lien Notes on the relevant record date to receive interest due on the relevant interest payment date).
ARTICLE VI

Defaults and Remedies

SECTION 6.1. Events of Default. The occurrence of each of the following events, for so long as such event is continuing, is an "Event of Default":

(a) a default in any payment of interest on any Note when due continued for five Business Days;

(b) a default in the payment of principal or premium, if any, of any Note when due at its Stated Maturity, upon optional or mandatory redemption, upon required purchase, upon acceleration or otherwise;

(c) the failure by the Issuer or any Restricted Subsidiary to comply for 30 days after receipt of written notice referred to below with any of its obligations, covenants or agreements (other than a default pursuant to Section 6.1(a) or this Section 6.1(b)) contained in the Notes Documents;

(d) the failure by the Issuer or any Restricted Subsidiary to pay the principal amount of any Indebtedness for borrowed money (other than Indebtedness for borrowed money owing to Issuer or a Restricted Subsidiary) within any applicable grace period upon the final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid at final maturity or accelerated exceeds $50.0 million or its foreign currency equivalent;

(e) an Issuer or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) files a petition for relief, commences a voluntary case or commences proceedings to be adjudicated bankrupt or insolvent under any Bankruptcy Law;

(ii) consents to the entry of an order for relief against it in an involuntary case or to the institution of bankruptcy or insolvency proceedings against it;

(iii) files an answer, response or consent in an involuntary case seeking or consenting to reorganization, liquidation or other relief under applicable Bankruptcy Law;

(iv) generally is not paying its debts as they become due;

(v) consents to the appointment of a Custodian of it or for any substantial part of its property;

(vi) makes a general assignment for the benefit of its creditors; or
(vii) takes any comparable action under any domestic or foreign laws relating to insolvency;

(f) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against an Issuer or any Significant Subsidiary in an involuntary case, or adjudicates an Issuer or any Significant Subsidiary bankrupt or insolvent in an involuntary case, or an similar relief is granted under any domestic or foreign laws;

(ii) appoints a Custodian of an Issuer or any Significant Subsidiary or for any substantial part of an Issuer’s or any of the Significant Subsidiary’s property, or any similar relief is granted under any domestic or foreign laws; or

(iii) orders the winding up or liquidation of an Issuer or any Significant Subsidiary, or any similar relief is granted under any domestic or foreign laws;

and in each of the foregoing cases, the order or decree remains unstayed, undischarged and in effect for 60 consecutive days;

(g) failure by any Issuer or any Significant Subsidiary to pay final and non-appealable judgments aggregating in excess of $50.0 million or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent insurance companies), which judgments are not discharged, waived or stayed for a period of 60 days after such judgment becomes final and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(h) the Subsidiary Guarantee of a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms thereof or of this Indenture), or any Subsidiary Guarantor that is a Significant Subsidiary (or any Officer thereof with authority to act on behalf of such Subsidiary Guarantor with respect to such matters) denies in writing that it has any further liability under its Subsidiary Guarantee or gives written notice to such effect, other than by reason of the termination or discharge of this Indenture or the release of any such Subsidiary Guarantee in accordance with this Indenture, and such Default continues for five days;

(i) the Liens created by the Security Documents securing the Notes or Guarantees shall at any time not constitute perfected Liens on any portion of the Collateral intended to be covered thereby (to the extent perfection is required by this Indenture or such Security Documents) other than in accordance with the terms of such relevant Security Document and this Indenture or other than the satisfaction in full of all Obligations under this Indenture or release or amendment of any such Lien in accordance with the terms of this Indenture or such Security Documents, or (ii) except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture and such relevant Security Document, any
such Security Document shall for whatever reason be terminated or cease to be in full force and effect, if, in each case, such default occurs with respect to a portion of the Collateral exceeding $50.0 million in fair market value;

(j) [Reserved];

(k) (i) the Liens created by the MYT Third Lien Notes Pledge Agreement and related security documents with respect to the assets securing the Notes shall at any time not constitute perfected Liens on any portion of the collateral intended to be covered thereby (to the extent perfection is required by this Indenture or such security documents) other than in accordance with the terms of the MYT Third Lien Notes Pledge Agreement such relevant security document and this Indenture and other than the satisfaction in full of all Notes Obligations or release or amendment of any such Lien in accordance with the terms of the MYT Third Lien Notes Pledge Agreement, this Indenture or such security documents, or (ii) except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture, the MYT Third Lien Notes Pledge Agreement and such relevant security document, any such security document shall for whatever reason be terminated or cease to be in full force and effect, if, in each case, such default occurs with respect to the collateral subject to the MYT Third Lien Notes Pledge Agreement exceeding $12.5 million in fair market value;

(l) the failure by MYT Parent or any of the MYT Entities to comply with or cause compliance with the terms of the MYT Waterfall; or

(m) the failure by any of the MYT Entities to comply for 30 days after receipt of written notice referred to below with any of the MYT Covenants.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

However, a default under Section 6.1(c) will not constitute an Event of Default until either the Trustee notifies in writing the Issuers or the Holders of at least 25.0% in principal amount of outstanding Notes notify in writing the Issuers and the Trustee of the default and such default is not cured within the time specified in Section 6.1(c) after receipt of such notice.

SECTION 6.2. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.1(e) or Section 6.1(f) above with respect to an Issuer) occurs and is continuing, either the Trustee, by written notice to the Issuers, or the Holders of at least 25.0% in principal amount of the outstanding Notes, by written notice to the Issuers and the Trustee, may declare the Contractual Performance Amount to be due and payable. Upon such a declaration, such Contractual Performance Amount will be due and payable immediately. If an Event of Default arising from Section 6.1(e) or

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Section 6.1(f) of an Issuer occurs, the Contractual Performance Amount shall be due and payable as of immediately prior to the occurrence of such Event of Default.

The Issuers and the Subsidiary Guarantors agree and acknowledge that the excess of the Contractual Performance Amount over the sum of the principal amount of the then outstanding Notes plus accrued and unpaid interest (the “Liquidated Damages Amount”) constitutes liquidated damages and not unmatured interest or a penalty, and the actual amount of damages to the Holders as a result of the relevant Event of Default would be impracticable and extremely difficult to ascertain. Accordingly, the Liquidated Damages Amount is provided by mutual agreement of the Issuers, the Subsidiary Guarantors and the Trustee (on behalf of the Holders) as a reasonable estimation and calculation of such actual lost profits and other actual damages of the Holders. Each Holder, by accepting a Note (or a beneficial interest therein), shall be deemed to have directed the Trustee to make such agreement on its behalf.

SECTION 6.3. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy (including a lawsuit for breach of contract) to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture (including sums owed to the Trustee, the Agents and their agents and counsel) and the Guarantees.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

SECTION 6.4. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of the Holders of all of the Notes, waive, rescind or cancel any declaration of an existing or past Default or Event of Default and its consequences (including acceleration) under this Indenture if such waiver, rescission or cancellation would not conflict with any judgment or decree, except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes (other than such nonpayment of principal or interest that has become due as a result of such acceleration). Upon any such waiver, such Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured for every purpose of this Indenture; but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

In the event of any Event of Default arising from Section 6.1(d), such Event of Default and all consequences thereof (excluding, however, any payment default on the Notes Obligations resulting from acceleration of the Notes) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if prior to 20 days after such Event of Default arose, the Issuer delivers an
Officer’s Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has otherwise been cured.

SECTION 6.5. Control by Majority. The Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee, provided, however, that the holders of a majority in aggregate principal amount of the Third Lien Notes voting, acting and being treated together as a single series in the aggregate shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Notes Collateral Agent or of exercising any trust or power conferred on the Notes Collateral Agent or of directing the Notes Collateral Agent with respect to any actions under the Security Documents. With respect to such directions, the Notes Collateral Agent shall follow the direction of the majority of all outstanding Third Lien Notes voting together as a single aggregate series. The Trustee and the Notes Collateral Agent, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee or the Notes Collateral Agent, as applicable, determines is unduly prejudicial to the rights of any other Holder (it being understood that neither the Trustee nor the Notes Collateral Agent has an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders) or that would involve the Trustee in personal liability unless such Holders have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense. Prior to taking any action under this Indenture, the Trustee will be entitled to security or indemnification reasonably satisfactory to it in its reasonable discretion against all losses, liabilities and expenses that may be caused by taking or not taking such action.

SECTION 6.6. Limitation on Suits. In case an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest, when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(a) such Holder has previously given the Trustee written notice that an Event of Default is continuing or will occur upon notice and/or passage of time;

(b) Holders of at least 25.0% in principal amount of the outstanding Notes have requested (the “Requesting Holders”) in writing the Trustee to pursue the remedy, which pursuit of the requested remedy may be conditioned upon the occurrence of an Event of Default in the future;

(c) such Requesting Holders have offered the Trustee security or indemnity in respect of any loss, liability or expense (which security or indemnity is
reasonably acceptable to the Trustee, such acceptance not to be unreasonably withheld or delayed); 

(d) the Trustee has not complied with, or indicated in writing to the Requesting Holders that it will comply with, such request within 10 days after the receipt of the request and the offer of security or indemnity; and 

(e) the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a written direction inconsistent with such request within such 10-day period.

SECTION 6.7. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of, premium, if any, or interest on the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, will not be impaired or affected without the consent of such Holder.

SECTION 6.8. Collection Suit by Trustee. If an Event of Default specified in Section 6.1(a) or Section 6.1(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.6.

SECTION 6.9. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation and reasonable expenses, disbursements and advances of the Trustee, the Agent and their agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuers, their Subsidiaries or their respective creditors or properties and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders (pursuant to the written direction of Holders of a majority in principal amount of the then outstanding Notes) in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee will consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation and reasonable expenses, disbursements and advances of the Trustee, the Agent and their agents and its counsel, and any other amounts due the Trustee under Section 7.6. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in such proceeding.

SECTION 6.10. Priorities. The Trustee will pay out any money or property received by it in the following order:
First: to the Trustee for amounts due under Section 7.6;

Second: to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

Third: to the Issuers or, to the extent the Trustee receives any amount for any Subsidiary Guarantor, to such Guarantor as a court of competent jurisdiction will direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Issuers (or Trustee) will deliver to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including attorneys’ fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10.0% in outstanding principal amount of the Notes.

ARTICLE VII

Trustee

SECTION 7.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee will, in the exercise of its rights and powers under this Indenture, use the same degree of care and skill in its exercise of such rights and powers as a prudent Person would exercise or use under the circumstances in the conduct of such Person’s own affairs, subject to the provisions of clause (b) below.

(b) Except during the continuance of an Event of Default of which a Trust Officer has actual knowledge, the Trustee:

(i) and the Agents undertake to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Trustee or the Agents; and

(ii) in the absence of bad faith on its part, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee under this Indenture, the

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Notes and the Guarantees, as applicable. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee will examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture, the Notes and the Guarantees as the case may be (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee will not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this Section 7.1(c) does not limit the effect of Section 7.1(b);

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Trust Officer or Trust Officers unless it is proved in a final non-appealable decision of a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.

(d) The Trustee and the Agents will not be liable for interest on any money received by it except as the Trustee and the Agents may agree in writing with the Issuers.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture, the Notes or the Guarantees will require the Trustee or an Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it will have reasonable grounds to believe that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee will be subject to the provisions of this Section 7.1.

(h) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders will have offered to the Trustee, security, prefunding or indemnity reasonably satisfactory to it against any loss, liability or expenses (including reasonable attorneys’ fees and expenses) that might be incurred by it in compliance with such request or direction.
SECTION 7.2. Rights of Trustee.

(a) The Trustee and the Agents may conclusively rely and will be protected in acting upon any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or any other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper Person or Persons. The Trustee and the Agents need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer’s Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on an Officer’s Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys, custodians, nominees and agents and will not be responsible for the misconduct or negligence of or for the supervision of any agent, custodians, nominees or attorney appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that the Trustee’s conduct does not constitute willful misconduct or negligence as determined in a final non-appealable decision of a court of competent jurisdiction.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture, the Notes and the Guarantees will be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder or under the Notes and the Guarantees in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee and the Agents will not be bound to make any investigation into any statement, warranty or representation, or the facts or matters stated in any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or other paper or document made or in connection with this Indenture; moreover, the Trustee and the Agents will not be bound to make any investigation into (i) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture or any other agreement, instrument or document, or (iii) the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note other evidence of indebtedness or other paper or document, but the Trustee or an Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee or an Agent, as applicable, determines to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuers, personally or by agent or
The Trustee will not be deemed to have knowledge of any Default or Event of Default except any Default or Event of Default of which a Trust Officer will have (i) received written notification from the Issuers or a Holder at the Corporate Trust Office of the Trustee and such notice references the Notes and this Indenture or (ii) obtained “actual knowledge.” “Actual knowledge” will mean the actual fact or statement of knowing by a Trust Officer without independent investigation with respect thereto.

In no event will the Trustee or an Agent be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee or Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and each agent (including the Agents), custodian and other Person employed to act hereunder.

The Trustee may request that the Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

The Trustee will not have any duty (i) to see to any recording, filing, or depositing of this Indenture or any agreement referred to herein, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, re-filing or redepositing of any thereof or (ii) to see to any insurance.

The right of the Trustee or an Agent to perform any discretionary act enumerated in this Indenture will not be construed as a duty.

Subject to the TIA, the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuers, the Subsidiary Guarantors or their Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Section 7.9. In addition, the Trustee will be permitted to engage in transactions with the Issuers; provided, however, that if the Trustee acquires any conflicting interest the Trustee must (a) eliminate such conflict within 90 days of acquiring such conflicting interest, (b) apply to the SEC for permission to continue acting as Trustee or (c) resign.

Neither the Trustee nor any Agent will be responsible for and neither of them makes any representation as to the validity or adequacy of this Indenture, the Notes or the Guarantees, neither of them will be accountable for the Issuers’ use of the Notes or the proceeds from the Notes, and neither
of them will be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication or for the use or application of any funds received by any Paying Agent other than the Trustee. In accepting the trust hereby created, the Trustee acts solely as Trustee under this Indenture and not in its individual capacity and all persons, including without limitation the Holders and the Issuer having any claim against the Trustee arising from this Indenture shall look only to the funds and accounts held by the Trustee hereunder for payment except as otherwise provided herein.

SECTION 7.5. Notice of Defaults. If a Default occurs and is continuing and is actually known to the Trustee, the Trustee will provide to each Holder notice of the Default within 90 days after it is actually known to the Trustee. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Note, the Trustee may withhold notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of the Holders.

SECTION 7.6. Compensation and Indemnity. The Issuers will pay to the Trustee and the Agents from time to time such compensation for their services as the parties agree in writing from time to time. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Issuers will reimburse the Trustee and the Agents upon request for all reasonable out-of-pocket expenses incurred or made by it, including, but not limited to, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and costs of counsel, in addition to the compensation for its services. Such expenses will include the compensation and reasonable expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuers will indemnify the Trustee and the Agents or any predecessor Trustee or Agent in each of its capacities hereunder (including Paying Agent, and Registrar), and each of their officers, directors, employees, counsel and agents, against any and all loss, liability or expense (including, but not limited to, attorneys' fees and expenses) incurred by it in connection with the administration of this trust and the performance of their duties hereunder and under the Notes and the Guarantees, including the costs and expenses of enforcing this Indenture (including this Section 7.6), the Notes and the Guarantees and of defending itself against any claims (whether asserted by any Holder, the Issuers or otherwise). The Trustee and the Agents will notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee or an Agent to so notify the Issuers will not relieve the Issuers of their obligations hereunder. The Issuers will defend the claim and the Trustee and the Agents may have separate counsel and the Issuers will pay the reasonable fees and expenses of such counsel. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or an Agent as a result of its own willful misconduct or negligence or bad faith.

To secure the Issuers’ payment obligations in this Section, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The right of the Trustee to receive payment of any amounts due under this Section 7.6 will not be subordinate to any other liability or indebtedness of the Issuers.
The Issuers’ obligations pursuant to this Section and any lien arising hereunder will survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee or an Agent. When the Trustee or an Agent incurs expenses after the occurrence of a Default specified in Section 6.1(e) or (f) with respect to the Issuers, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

Pursuant to Section 10.1, the obligations of the Issuers hereunder are jointly and severally guaranteed by the Subsidiary Guarantors.

SECTION 7.7. Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Issuers. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee upon written notice to the Issuers and the Trustee, and may appoint a successor Trustee. The Issuers will remove the Trustee if:

(i) the Trustee fails to comply with Section 7.9;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuers or by the Holders of a majority in aggregate principal amount of the then outstanding Notes and such Holders do not within 30 days thereafter appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers will promptly appoint a successor Trustee.

(c) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will deliver a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.6. All costs reasonably incurred in connection with any resignation or removal hereunder will be borne by the Issuers.

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the Holders of at least 10.0% in principal amount of the Notes may petition, at the Issuers’ expense, any court of competent jurisdiction for the appointment of a successor Trustee.
(e) If the Trustee fails to comply with Section 7.9, unless the Trustee’s duty to resign is stayed, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.7, the Issuers’ obligations under this Indenture will continue for the benefit of the retiring Trustee.

SECTION 7.8. Successor Trustee by Merger. If the Trustee, consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act will be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee will succeed to the trusts created by this Indenture, any of the Notes will have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes will not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates will have the full force which it is anywhere in the Notes or in this Indenture provided.

SECTION 7.9. Eligibility; Disqualification. The Trustee will have a combined capital and surplus of at least $150,000 as set forth in its most recent filed annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.10. Limitation on Duty of Trustee. The Trustee will not have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Notes and the Guarantees by the Issuers, the Subsidiary Guarantors or any other Person.

SECTION 7.11. Preferential Collection of Claims Against the Issuers. The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed will be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12. Reports by Trustee to Holders. Within 60 days after each October 15, beginning with October 15, 2019, the Trustee will provide to the Holders a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA § 313(b). The Trustee will also provide all reports as required by TIA § 313(c). The Trustee shall promptly provide, upon written request by a Holder
ARTICLE VIII

Discharge of Indenture; Defeasance

SECTION 8.1. Discharge of Liability on Notes; Defeasance.

(a) This Indenture will be discharged and will cease to be of further effect (except as to rights, indemnities and immunities of the Trustee and to surviving rights of registration or transfer or exchange of Notes, as expressly provided for in this Indenture) as to all outstanding Notes, and the Liens, if any, on the Collateral securing the Notes and the Note Guarantees will be released, in each case when:

(i) either (A) all the Notes theretofore authenticated and delivered (other than Notes which have been replaced or paid pursuant to Section 2.7 and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuers and thereafter repaid to the Issuers or discharged from such trust) have been delivered to the Trustee for cancellation or (B) all of the Notes not previously delivered to the Trustee for cancellation (1) have become due and payable, (2) will become due and payable at their Stated Maturity within one year or (3) if redeemable at the option of the Issuers, have been called for redemption or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers, and any of the Issuers or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee funds in cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest on the Notes to the date of deposit together with irrevocable instructions from the Issuers directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(ii) the Issuers and/or the Subsidiary Guarantors have paid all other sums payable under this Indenture; and

(iii) Issuer has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(b) Subject to Section 8.1(c) and Section 8.2, the Issuers at any time may terminate (i) all of their obligations under the Notes and this Indenture (with respect to such Notes) and have each Subsidiary Guarantor’s obligation discharged with respect to its Subsidiary Guarantee and have Liens, if any, on the Collateral securing the Notes and the Note Guarantees released and cure any then-existing Events of Default (“legal...
defeasance option") or (ii) its obligations under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.14, 3.15, 3.16, 3.19 and 3.20 and the operation of Section 4.1 (other than Sections 4.1(g)(i), (ii) and (vi)) and Sections 6.1(c) (with respect to any Default under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.14, 3.15, 3.16, 3.19 and 3.20, 6.1(d), 6.1(e) (with respect to Significant Subsidiaries of the Issuers only), 6.1(f) (with respect to Significant Subsidiaries of the Issuers only), 6.1(g), 6.1(h), 6.1(i), 6.1(j), 6.1(k) and 6.1(m) and have Liens, if any, on the Collateral securing the Notes and the Note Guarantees released ("covenant defeasance option"). The Issuers may exercise their legal defeasance option notwithstanding their prior exercise of the covenant defeasance option. In the event that the Issuers terminate all of their obligations under the Notes and this Indenture (with respect to such Notes) by exercising the legal defeasance option or the covenant defeasance option, the obligations of each Subsidiary Guarantor under its Subsidiary Guarantee of such Notes will be terminated simultaneously with the termination of such obligations.

(c) If the Issuers exercise their legal defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default specified in Section 6.1(c) (with respect to any Default by the Issuer or any of its Restricted Subsidiaries with any of their obligations under Article III other than Sections 3.1, 3.13, 3.17, 6.1(d), 6.1(e) (with respect to Significant Subsidiaries of the Issuers only), 6.1(f) (with respect to Significant Subsidiaries of the Issuers only), 6.1(g), 6.1(h), 6.1(i), 6.1(j), 6.1(k) or 6.1(m).

(d) Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee will acknowledge in writing the discharge of those obligations that the Issuers terminate.

(e) Notwithstanding clauses (a) and (b) above, the Issuers’ obligations in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 7.6, 7.7 and in this Article VIII will survive until the Notes have been paid in full. Thereafter, the Issuers’ obligations in Sections 7.6, 8.5 and 8.6 will survive such satisfaction and discharge.

SECTION 8.2. Conditions to Defeasance.

(a) The Issuers may exercise their legal defeasance option or their covenant defeasance option only if:

(i) the Issuers irrevocably deposit or cause to be deposited in trust with the Trustee cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient to pay the principal of, and premium (if any) and interest on the applicable Notes when due at maturity or redemption, as the case may be;

(ii) the Issuers deliver to the Trustee a certificate from a nationally recognized certified public accounting firm expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited
U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Notes to maturity or redemption, as the case may be;

(iii) the Issuers deliver to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(iv) the Issuers shall have delivered to the Trustee an Officer’s Certificate stating that the deposit was not made by the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuers or any Subsidiary Guarantor or others;

(v) in the case of the legal defeasance option, the Issuers will have delivered to the Trustee an Opinion of Counsel stating that (A) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vi) in the case of the covenant defeasance option, the Issuers will have delivered to the Trustee an Opinion of Counsel to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(vii) the Issuers deliver to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes to be so defeased and discharged as contemplated by this Article VIII have been complied with.

(b) Before or after a deposit, the Issuers may make arrangements satisfactory to the Trustee for the redemption of such Notes at a future date in accordance with Article V.

SECTION 8.3. Application of Trust Money. The Trustee will hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article VIII. It will apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

SECTION 8.4. Repayment to Issuers. Anything herein to the contrary notwithstanding, the Trustee will deliver or pay to the Issuers from time to time upon
Company Order any money or U.S. Government Obligations held by it as provided in this Article VIII which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect legal defeasance option or covenant defeasance option, as applicable, provided that the Trustee will not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this Section 8.4.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent will pay to the Issuers upon written request any money held by them for the payment of principal of or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuers for payment as general creditors.

SECTION 8.5. Indemnity for U.S. Government Obligations. The Issuers will pay and will indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.6. Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuers and each Subsidiary Guarantor under this Indenture, the Notes and the Guarantees will be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article VIII; provided, however, that, if any of the Issuers or the Subsidiary Guarantors has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Issuers or any Subsidiary Guarantor, as the case may be, will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

Amendments

SECTION 9.1. Without Consent of Holders. Notwithstanding Section 9.2, the Notes Documents may be amended or supplemented by the Issuers, any Subsidiary Guarantor (with respect to this Indenture or a Subsidiary Guarantee to which it is a party), MYT Parent or the MYT Guarantor Entities (in respect of the MYT Third Lien Notes Pledge Agreement or any related security documents), the Trustee and the Notes Collateral Agent, as applicable, without notice to or consent of any Holder:

(a) to cure any ambiguity, omission, mistake or inconsistency identified in an Officer’s Certificate of the Issuer, which states that such cure is a good
faith attempt by the Issuer to reflect the intention of the parties to this Indenture, delivered to the Trustee and the Notes Collateral Agent;

(b) to conform the text of the Notes Documents (including any supplemental indenture or other instrument pursuant to which Additional Notes are issued) to the “Description of New Notes” in the Exchange Offering Memorandum or, with respect to any Additional Notes and any supplemental indenture or other instrument pursuant to which such Additional Notes are issued, to the “Description of Notes” relating to the issuance of such Additional Notes, solely to the extent that such “Description of Notes” provides for terms of such Additional Notes that differ from the terms of the Initial Notes, as contemplated by Section 2.2;

(c) to comply with Section 4.1;

(d) to provide for the assumption by a successor Person of the obligations of an Issuer or any Subsidiary Guarantor under and in accordance with this Indenture and the Notes or Subsidiary Guarantee, as the case may be;

(e) to provide for uncertificated Notes in addition to or in place of certificated Notes; provided, however, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(f) to add or release Subsidiary Guarantees in accordance with the terms of the Notes Documents;

(g) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Notes Collateral Agent for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the Notes Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Notes Collateral Agent pursuant to the Notes Documents or otherwise;

(h) to add to the covenants of the Issuers for the benefit of the Holders or to surrender any right or power herein conferred upon the Issuers, any Subsidiary Guarantor, MYT Parent or any MYT Entity;

(i) to make any change that does not adversely affect the rights of any Holder upon delivery to the Trustee of an Officer’s Certificate of the Issuer certifying the absence of such adverse effect;

(j) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA;

(k) to make any amendment to the provisions of the Notes Documents relating to the transfer and legending of Notes as permitted by this Indenture, including to facilitate the issuance and administration of the Notes; provided, however, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such
amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(l) to evidence and provide for the acceptance of appointment by a successor Trustee, provided that the successor Trustee is otherwise qualified and eligible to act as such under the terms of this Indenture;

(m) to provide for or confirm the issuance of Additional Notes in accordance with this Indenture;

(n) to provide for the accession of any parties to the Security Documents or the Intercreditor Agreements, as applicable (and other amendments to such documents that in either case are administrative or ministerial in nature) in connection with an incurrence of additional Indebtedness to the extent permitted by the Notes Documents;

(o) to provide for the release of the Collateral from the Liens in accordance with the terms of this Indenture, provided that such release shall not affect the liens on the collateral granted in accordance with, and pursuant to, the terms of the 8.750% Third Lien Indenture; or

(p) to enter into a Customary Intercreditor Agreement in connection with the incurrence of Junior Lien Indebtedness or Pari Passu Lien Indebtedness permitted by this Indenture;

provided that, for the avoidance of doubt, no co-obligor or co-issuer may be added (directly or indirectly) to the Notes without the consent of a majority in principal amount of the Notes then outstanding.

SECTION 9.2. With Consent of Holders.

(a) This Indenture, the Notes, the Guarantees and the Security Documents may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and any existing or past Default or compliance with any provisions of such documents may be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). For the avoidance of doubt, the Notes and the 8.750% Third Lien Notes will be treated separately, except that a majority in outstanding principal amount of all of the Third Lien Notes will direct the Notes Collateral Agent (other than with respect to any Collateral that secures only the Notes but not the 8.750% Third Lien Notes or only the 8.750% Third Lien Notes but not the Notes). However, without the consent of each Holder of a Note affected (including, for the avoidance of doubt, any Notes held by Affiliates), no amendment, supplement or waiver may (with respect to any Notes held by a non-consenting Holder):
reduce the percentage of the aggregate principal amount of Notes whose Holders must consent to an amendment,

(ii) reduce the rate of or extend the time for payment of interest on any Note;

(iii) reduce the principal of or change the Stated Maturity of any Note;

(iv) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration;

(v) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed as described under Section 5.1;

(vi) make any Note payable in money other than that stated in such Note;

(vii) impair the right of any Holder to receive payment of principal of, premium, if any, or interest on such Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes;

(viii) make any change in the amendment or waiver provisions of this Indenture that require each Holder’s consent, as described in clauses (i) through (x);

(ix) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(x) make the Notes or any Guarantee subordinated in right of payment or “waterfall” priority to, in either case, any other Obligations; or

(xi) release any Issuer or Subsidiary Guarantor from its Obligations under the Notes Documents, except in accordance with the terms of the Notes Documents.

In addition, without the consent of the Holders of at least 66 2/3% in principal amount of the then outstanding Notes, no amendment, supplement or waiver may modify any Notes Document that would have the effect of (i) releasing all or substantially all of the Collateral from the Liens of the Security Documents (except as permitted by the terms of this Indenture or the Security Documents) or changing or altering the priority of Notes Liens on the Collateral or (ii) releasing all or substantially all of the “Collateral” (as defined in the MYT Third Lien Pledge Agreement) or changing or altering the priority of
the Liens granted pursuant to the MYT Third Lien Pledge Agreement (except as permitted by the terms thereof or any other Notes Document).

(b) It is not necessary for the consent of the Holders under this Section 9.2 to approve the particular form of any proposed amendment, but it will be sufficient if such consent approves the substance thereof.

(c) Additional Notes will be disregarded for purposes of any amendment or waiver relating to a Default or Event of Default that existed (disregarding any applicable notice, cure or grace periods) prior to the time of issuance of such Additional Notes.

(d) After an amendment under this Section 9.2 becomes effective, the Issuers will (or will cause the Trustee, at the expense of and at the written request of the Issuers, to) deliver to the Holders affected thereby a notice briefly describing such amendment. The failure of the Issuers to deliver such notice, or any defect therein, will not in any way impair or affect the validity of an amendment under this Section 9.2.

SECTION 9.3. Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Note will bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder’s Note, even if notation of the consent or waiver is not made on the Note. After an amendment or waiver becomes effective, it will bind every Holder unless it makes a change described in clauses (i) through (ix) of Section 9.2(a), in which case the amendment or waiver or other action will bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder’s Notes. An amendment or waiver made pursuant to Section 9.2 will become effective upon receipt by the Trustee of the requisite number of written consents.

The Issuers may, but will not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, will be entitled to give such consent or to take any such action, whether or not such Persons continue to be Holders after such record date.

SECTION 9.4. Notation on or Exchange of Notes. If an amendment changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuers or the Trustee so determines, the Issuers in exchange for the Note will issue and the Trustee will authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note will not affect the validity of such amendment.

SECTION 9.5. Trustee To Sign Amendments. The Trustee and the Notes Collateral Agent will sign any amendment, supplement or waiver authorized
pursuant to this Article IX if the amendment, supplement or waiver does not, in the sole determination of the Trustee or the Notes Collateral Agent, as applicable, adversely affect the rights, duties, liabilities or immunities of the Trustee or the Notes Collateral Agent, as applicable. If it does, the Trustee or the Notes Collateral Agent, as applicable, may but need not sign it. In signing any amendment, supplement or waiver pursuant to this Article IX, the Trustee and the Notes Collateral Agent will be entitled to receive, and (subject to Section 7.1 and Section 7.2) will be fully protected in relying upon, an Officer’s Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by or complies with this Indenture, that all conditions precedent to such amendment required by this Indenture have been complied with and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers, enforceable against the Issuers in accordance with its terms, subject to customary exceptions. Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

ARTICLE X

Guarantees

SECTION 10.1. Guarantees.

(a) Subject to the provisions of this Article X, each Subsidiary Guarantor hereby jointly and severally, irrevocably, fully and unconditionally guarantees, on a senior basis, as guarantor and not as a surety, with each other Guarantor, the full and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, all Obligations of the Issuers under this Indenture and the Notes Documents (including interest that, but for the filing of a petition in any bankruptcy or other insolvency proceeding with respect to the Issuers, would have accrued on any Obligation, whether or not a claim is allowed against the Issuers for such interest in the related bankruptcy proceeding) to the Holders and the Trustee, whether for payment of principal of, premium, if any, or interest on the Notes, expenses, indemnification or otherwise (all such obligations guaranteed by such Subsidiary Guarantors being herein called the “Guaranteed Obligations”). Each Subsidiary Guarantor agrees (to the extent lawful) that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it will remain bound under this Article X notwithstanding any extension or renewal of any Subsidiary Guarantor Obligation.

(b) Each Subsidiary Guarantor waives (to the extent lawful) presentation to, demand of, payment from and protest to the Issuers of any of the Guaranteed Obligations and also waives (to the extent lawful) notice of protest for nonpayment. Each Subsidiary Guarantor waives (to the extent lawful) notice of any default under the Notes or the Guaranteed Obligations.

(c) Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein constitutes a Guarantee of payment when due (and not a Guarantee of
(d) Except as set forth in Section 10.2 and Article VIII, the obligations of each Subsidiary Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and will not (to the extent lawful) be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Subsidiary Guarantor herein will not (to the extent lawful) be discharged or impaired or otherwise affected by (i) the failure of any Holder to assert any claim or demand or to enforce any right or remedy against the Issuers or any other Person under this Indenture, the Notes or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes, the Notes Collateral Agreement, the MYT Third Lien Notes Pledge Agreement or any other Notes Document; (iv) the release of any security held by any Holder for the Guaranteed Obligations or any of them; (v) the failure of any Holder to exercise any right or remedy against any other Guarantor; (vi) any change in the ownership of the Issuers; (vii) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; or (viii) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Subsidiary Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

(e) Each Subsidiary Guarantor agrees that its Subsidiary Guarantee herein will remain in full force and effect until payment in full of all the Guaranteed Obligations or such Subsidiary Guarantor is released from its Subsidiary Guarantee in compliance with Section 4.1, Section 10.2 and Article VIII. Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein will continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of, premium, if any, or interest on any of the Guaranteed Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuers or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Issuers to pay any of the Guaranteed Obligations when and as the same will become due, whether at maturity, by acceleration, by redemption or otherwise, each Subsidiary Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Trustee or the Trustee on behalf of the Holders an amount equal to the sum of (i) the unpaid amount of such Guaranteed Obligations then due and owing and (ii) accrued and unpaid interest on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by law) (including interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding
(g) Each Subsidiary Guarantor further agrees that, as between such Subsidiary Guarantor, on the one hand, and the Holders, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed by this Guarantee may be accelerated as provided in this Indenture for the purposes of its Subsidiary Guarantee in this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed by this Guarantee and (ii) in the event of any such declaration of acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purposes of this Subsidiary Guarantee.

(h) Each Subsidiary Guarantor also agrees to pay any and all reasonable costs and expenses (including attorneys’ fees) incurred by the Trustee or the Holders in enforcing any rights under this Guarantee.

(i) No Issuers or the Subsidiary Guarantors will be required to make a notation on the Notes to reflect any Subsidiary Guarantee or any release, termination or discharge thereof and any such notation will not be a condition to the validity of any Guarantee.

SECTION 10.2. Limitation on Liability; Termination, Release and Discharge.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the obligations of each Subsidiary Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Subsidiary Guarantor not constituting a fraudulent conveyance or fraudulent transfer under federal or state law or the laws of the jurisdiction of organization of such Subsidiary Guarantor and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

(b) A Subsidiary Guarantee by a Subsidiary Guarantor (other than Notes PropCo and Extended Term Loan PropCo) will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of the Capital Stock of such Subsidiary Guarantor to a party that is not an Affiliate of the Issuer, if after such transaction, the Subsidiary Guarantor is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or
(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(c) The Notes PropCo Guarantee will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock of Notes PropCo to a party that is not an Affiliate of the Issuer, if after such transaction, Notes PropCo is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(d) The Extended Term Loan PropCo Guarantee will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock of Extended Term Loan PropCo to a party that is not an Affiliate of the Issuer, if after such transaction, Extended Term Loan PropCo is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(e) In the case of Section 10.2(b), the Issuers will deliver to the Trustee an Officer’s Certificate and Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

(f) The release of a Subsidiary Guarantor from its Subsidiary Guarantee and its obligations under this Indenture in accordance with the provisions of this Section 10.2 will not preclude the future application of Section 3.11 to such Person.

SECTION 10.3 Right of Contribution. Each Subsidiary Guarantor hereby agrees that to the extent that any such Guarantor will have paid more than its proportionate share of any payment made on the obligations under its Guarantee, such Guarantor will be entitled to seek and receive contribution from and against the Issuers or any other Guarantor who have not paid their proportionate share of such payment. The provisions of this Section 10.3 will in no respect limit the obligations and liabilities of each Subsidiary Guarantor to the Trustee and the Holders and each Subsidiary Guarantor will remain liable to the Trustee and the Holders for the full amount guaranteed by such Guarantor hereunder.
SECTION 10.4.  No Subrogation. Notwithstanding any payment or payments made by each Subsidiary Guarantor hereunder, no Guarantor will be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Issuers or any other Guarantor or any collateral security or guarantee or right of offset held by the Trustee or any Holder for the payment of the Guaranteed Obligations, nor will any Subsidiary Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuers or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee and the Holders by the Issuers on account of the Guaranteed Obligations are paid in full. If any amount will be paid to any Subsidiary Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations will not have been paid in full, such amount will be held by such Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Guarantor, and will, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Guaranteed Obligations.

SECTION 10.5.  Limitations on Merger.  Subject to Section 4.1 and Section 10.2, a Subsidiary Guarantor will not, and the Issuer will not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(a) such Person is a Successor Guarantor;

(b) the Successor Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor’s Guarantee pursuant to a supplemental indenture or other documents or instruments;

(c) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction) no Default or Event of Default will have occurred and be continuing; and

(d) the Successor Guarantor (if other than such Subsidiary Guarantor) will have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; or

(e) such sale or disposition or consolidation or merger does not violate Section 3.7.

The Successor Guarantor will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor’s Guarantee, and such Subsidiary Guarantor will automatically be released and discharged from its
obligations under this Indenture and such Guarantor’s Guarantee. Notwithstanding the foregoing, (1) a Subsidiary Guarantor may merge or consolidate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Guarantor in the United States, any state or territory thereof, the District of Columbia or the jurisdiction of such Guarantor, so long as the principal amount of Indebtedness of the Issuer and the Restricted Subsidiaries is not increased thereby and the Person resulting from such merger or consolidation is or becomes an Issuer or a Subsidiary Guarantor, (2) a Subsidiary Guarantor may consolidate or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to an Issuer or another Subsidiary Guarantor, (3) a Subsidiary Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Guarantor or the laws of a jurisdiction in the United States, so long as such Subsidiary Guarantor remains a Subsidiary Guarantor and (4) any Restricted Subsidiary may merge into any Subsidiary Guarantor, provided that, in the case of this clause (d), the surviving Person will be a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Restricted Subsidiary or Subsidiary Guarantor and the surviving Person of such merger (if not the Guarantor) is or will become a Subsidiary Guarantor upon the consummation of such merger.

SECTION 10.6. Subordination of PropCo Guarantees. The guarantee by Extended Term Loan Propco of the Guaranteed Obligations pursuant to this Article X is subordinate in the manner and to the extent set forth in that certain subordination agreement (as amended, supplemented or otherwise modified from time to time) dated as of June 7, 2019 among the Collateral Agent, Extended Term Loan PropCo and the other parties thereto (the “Extended Term Loan PropCo Subordination Agreement”), to the Senior Priority Guarantee Obligations (as defined therein); and each Holder, by its acceptance of a Note or a beneficial interest therein, irrevocably agrees to be bound by the provisions of such subordination agreement.

The guarantee by Notes Propco of the Guaranteed Obligations pursuant to this Article X is subordinate in the manner and to the extent set forth in that certain subordination agreement (as amended, supplemented or otherwise modified from time to time) dated as of June 7, 2019 among the Collateral Agent, Notes PropCo and the other parties thereto (the “Notes PropCo Subordination Agreement”), to the Senior Priority Guarantee Obligations (as defined therein); and each Holder, by its acceptance of a Note or a beneficial interest therein, irrevocably agrees to be bound by the provisions of such subordination agreement.

The Notes Obligations are secured by the Collateral as provided in the Security Documents with Liens that have the Required Collateral Lien Priority. The Issuer shall, and shall cause each Subsidiary Guarantor to, and each Subsidiary Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) necessary to maintain (at the sole cost and expense of the Issuer and the Subsidiary Guarantors) the security interest created by the Security Documents in the Collateral as a perfected security interest to the extent perfection is required by the Security Documents, subject only to Permitted Liens.

SECTION 11.2. Extended Term Loan Priority Real Estate Collateral and Extended Term Loan PropCo Equity Interests.

(a) On the Issue Date (or within the Initial Post-Closing Period, subject to the Extended Post-Closing Period, in the event that the Extended Term Loan Agent extends such Initial Post-Closing Period for obtaining mortgages or deeds of trust on the Notes Priority Real Estate Collateral or the Extended Term Loan Priority Real Estate Collateral beyond such Initial Post-Closing Period, provided, that, during such Extended Post-Closing Period, no such mortgages or deeds of trust on any Extended Term Loan Priority Real Estate Collateral to secure the Notes Obligations shall be obtained more than 10 days after the corresponding mortgages or deeds of trust on such properties are obtained to secure the Extended Term Loan Obligations), the Notes Collateral Agent shall be granted a third-priority Lien on specified real estate interests which consist of certain owned real properties and real property leases (whether operating leases, ground leases, or otherwise) which constitute collateral for the Extended Term Loan Obligations as of the Issue Date to the extent not constituting Non-Mortgageable Leases (such real estate interests, the “Extended Term Loan Priority Real Estate Collateral”), and a third-priority pledge of the Extended Term Loan PropCo Equity Interests.

(b) Notwithstanding the foregoing, to the extent any real property interests that would otherwise be mortgaged as Extended Term Loan Priority Real Estate Collateral constitute Non-Mortgageable Leases (the “Extended Term Loan Priority PropCo Assets”), such Non-Mortgageable Leases shall be contributed to the Extended Term Loan PropCo, which shall grant a lease or license to the applicable Restricted Subsidiary of the Issuer to use the Extended Term Loan Priority PropCo Assets on terms consistent with Exhibit F in each case within the time period described in clause (a).
SECTION 11.3.  Notes Priority Real Estate Collateral and Notes PropCo Equity Interests.

(a)  On the Issue Date (or within the Initial Post-Closing Period, subject to the Extended Post-Closing Period, in the event that the Extended Term Loan Agent extends such Initial Post-Closing Period for obtaining mortgages or deeds of trust on the Notes Priority Real Estate Collateral or the Extended Term Loan Priority Real Estate Collateral beyond such Initial Post-Closing Period; provided, that, during such Extended Post-Closing Period, no such mortgages or deeds of trust on any Extended Term Loan Priority Real Estate Collateral to secure the Third Lien Notes Obligations shall be obtained more than 10 days after the corresponding mortgages or deeds of trust on such properties are obtained to secure the Extended Term Loan Obligations), the Notes Collateral Agent, on behalf of the Holders shall be granted a Lien on the Notes Priority Real Estate Collateral and a pledge of the Notes PropCo Equity Interests in each case with the Required Collateral Lien Priority applicable thereto.

(b)  Notwithstanding the foregoing, to the extent any real property interests that would otherwise be mortgaged as Notes Priority Real Estate Collateral constitute Non-Mortgageable Leases, then the Issuer shall cause Notes PropCo to be formed as promptly as practicable, and, in lieu of such mortgages, the applicable Non-Mortgageable Leases (such interests ceasing to be Notes Priority Real Estate Collateral, the “Notes Priority PropCo Assets”) shall be contributed to the Notes PropCo. In the event that Notes PropCo is formed, it shall grant a lease or license to the applicable Restricted Subsidiary of the Issuer to use the Notes Priority PropCo Assets on terms consistent with Exhibit F in each case within the time period described in clause (a).

SECTION 11.4.  Notes Collateral Agent.

(a)  The Notes Collateral Agent shall have all the rights, benefits, privileges, protections, indemnities and immunities provided in the Security Documents and, additionally, shall have all the rights, benefits, privileges, protections, indemnities and immunities provided to the “Trustee” under Article VII.

(b)  Subject to Section 7.1, none of the Notes Collateral Agent, Trustee, Paying Agent or Registrar nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Notes Liens, or any defect or deficiency as to any such matters.

(c)  Except as required or permitted by the Security Documents, and the Intercreditor Agreements, the Holders, by accepting a Note, acknowledge that the Notes Collateral Agent will not be obligated:

   (i)  to act upon directions purported to be delivered to it by any Person, except in accordance with the Security Documents and the Intercreditor Agreements;
(ii) to foreclose upon or otherwise enforce any Lien granted pursuant to the Security Documents; or
(iii) to take any other action whatsoever with regard to any or all of the Notes Liens, Security Documents, Intercreditor Agreements or Collateral.

(d) The Notes Collateral Agent may be removed and replaced in the same manner as the Trustee, as provided the Notes Collateral Agreement and the MYT Third Lien Notes Pledge Agreement.

SECTION 11.5. Authorization of Actions to Be Taken.

(a) Each Holder, by its acceptance thereof, consents and agrees to the terms of each Security Document, as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Trustee and Notes Collateral Agent to enter into the Security Documents to which each is a party, authorizes and empowers the Trustee and Notes Collateral Agent to execute and deliver the Intercreditor Agreements and authorizes and empowers the Trustee and Notes Collateral Agent to bind the Holders as set forth in the Security Documents to which each is a party and the Intercreditor Agreements and to perform their respective obligations and exercise their respective rights and powers thereunder.

(b) The Trustee is authorized and empowered to receive for the benefit of the Holders any funds collected or distributed to the Notes Collateral Agent under the Security Documents to which the Trustee is a party and, subject to the terms of the Security Documents, to make further distributions of such funds to the Holders according to the provisions of this Indenture.

(c) Subject to the provisions of Sections 7.1, 7.2, the Intercreditor Agreements and the Security Documents, the Trustee may, in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders, the Notes Collateral Agent to take all actions it deems necessary or appropriate in order to, upon the occurrence and continuance of an Event of Default:

(i) foreclose upon or otherwise enforce any or all of the Liens granted pursuant to the Security Documents;

(ii) enforce any of the terms of the Security Documents to which the Notes Collateral Agent is a party; or

(iii) collect and receive payment of any and all Obligations.

Following an Event of Default, subject to the Intercreditor Agreements and at the Issuer’s sole cost and expense, the Trustee is hereby authorized and empowered by each Holder (by its acceptance thereof) to, subject to Sections 7.1 and 7.2 institute and maintain, or direct the Notes Collateral Agent to institute and maintain, such suits and proceedings as it may deem reasonably expedient to protect or enforce the Liens
granted under the Security Documents to which the Notes Collateral Agent or Trustee is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of the Security Documents or this Indenture, and such suits and proceedings as the Trustee may deem reasonably expedient, at the Issuer’s sole cost and expense, to preserve or protect its interests and the interests of the Holders in the Collateral, including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Liens granted under the Security Documents or be prejudicial to the interests of Holders or the Trustee.


(a) Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents and the Intercreditor Agreements. In addition, the Issuer and the Subsidiary Guarantors will be entitled to the release of assets included in the Collateral from the Liens securing the Notes, and the Trustee shall (or, if the Trustee is not then the Notes Collateral Agent, shall direct the Notes Collateral Agent) release the same from such Liens at the Issuer’s sole cost and expense, under any one or more of the following circumstances without the need for any further action by any Person:

(i) as to any property or assets to enable the Issuers or the Subsidiary Guarantors to consummate the disposition of such property or assets to the extent not prohibited and otherwise in accordance with Section 3.7; provided, however, that if such property or assets, immediately prior thereto, were subject to any Lien securing any Obligations of the Issuers or Subsidiary Guarantors and such property or assets continue after such disposition to be subject to a Lien securing any such Obligations, no such release shall occur with respect to such property or assets;

(ii) in the case of the property and assets of a Restricted Subsidiary that is a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Subsidiary Guarantee of the Notes;

(iii) as described under Article IX of this Indenture.

(b) The security interests in all Collateral securing the Notes also will be released upon payment in full of the principal of, together with accrued and unpaid interest on, the Notes and all other Obligations under this Indenture, the Notes, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest are paid, or upon the Issuers’ exercise of a legal defeasance option or covenant defeasance option under this Indenture as described under Article VIII.

(c) Upon the written request of the Issuer pursuant to an Officer’s Certificate and Opinion of Counsel stating that all conditions precedent hereunder and
under the Security Documents have been met, and upon receipt of any necessary or proper instruments of termination, satisfaction or release prepared by the Issuer or the Subsidiary Guarantors, as the case may be, the Notes Collateral Agent, without the consent of any Holder or the Trustee and at the expense of the Issuer or the Subsidiary Guarantors, shall execute, deliver or acknowledge such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this or the Security Documents.

SECTION 11.7. Filing, Recording and Opinions.

(a) The Issuer will comply with the provisions of Sections 314(b) and 314(d) of the TIA, in each case following qualification of this Indenture pursuant to the TIA. Any certificate or opinion required by Section 314(d) of the TIA may be made by an Officer of the Issuer except in cases where Section 314(d) of the TIA requires that such certificate or opinion be made by an independent engineer, appraiser or other expert, who shall be reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary herein, the Issuer and the Subsidiary Guarantors will not be required to comply with all or any portion of Section 314(d) of the TIA if they determine, in good faith, after consultation with counsel (which may be internal counsel), that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including “no action” letters or exemptive orders, all or any portion of Section 314(d) of the TIA is inapplicable to the released Collateral. Following such qualification, to the extent the Issuer is required to furnish to the Trustee an Opinion of Counsel pursuant to Section 314(b)(2) of the TIA, the Issuer will furnish such opinion not more than 60 but not less than 30 days prior to each October 15, commencing October 15, 2019.

Any release of Collateral permitted by Section 11.6 and this Section 11.7 will be deemed not to impair the Liens under this Indenture and the Security Documents in contravention thereof and any Person that is required to deliver an Officer’s Certificate or Opinion of Counsel pursuant to Section 314(d) of the TIA, shall be entitled to rely upon the foregoing as a basis for delivery of such certificate or opinion. The Trustee and the Notes Collateral Agent may, to the extent permitted by Section 7.1 and 7.2, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and Opinion of Counsel.

(b) If any Collateral is released in accordance with this Indenture or any Security Document at a time when the Trustee is not itself also the Notes Collateral Agent and if the Issuer has delivered the certificates and documents required by the Security Documents and Section 11.6, the Trustee will deliver all documentation received by it in connection with such release to the Notes Collateral Agent.

SECTION 11.8. Powers Exercisable by Receiver or Trustee. In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article XI upon the Issuer or a Subsidiary Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed
the equivalent of any similar instrument of the Issuer or a Subsidiary Guarantor or of any officer or officers thereof required by the provisions of this Article XI and if the Trustee or the Notes Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee or the Notes Collateral Agent, as the case may be.

SECTION 11.9. Voting. In connection with any matter under the Security Agreement requiring a vote of holders of Secured Obligations (as defined in the Security Agreement), the holders of such Secured Obligations shall be treated as a single class and the Holders shall cast their votes in accordance with this Indenture. The amount of the Notes to be voted by the Holders will equal the aggregate outstanding principal amount of the Notes. Following and in accordance with the outcome of the applicable vote under this Indenture, the Trustee shall vote the same proportion of the Notes in respect of any vote under the Security Agreement.

SECTION 11.10. Subject to the Intercreditor Agreements. This Indenture is entered into with the benefit of and subject to the terms of the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement. By accepting a Note, each Holder is authorizing the Trustee and the Notes Collateral Agent to enter into the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement on its behalf. Holders will be permitted to take enforcement action with respect to the Collateral only to the extent permitted under and in accordance with the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement.

ARTICLE XII

Mutual Releases

Certain capitalized terms used in this Article XII are specifically defined for purposes of this section and are set forth at the end of this Article XII.

SECTION 12.1. Releases by the Company Releasing Parties. Effective as of the Effective Date, each Company Releasing Party, on behalf of itself, and to the extent a Company Releasing Party is not party to this Indenture, the Issuers or Subsidiary Guarantors on behalf of such Company Releasing Party, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Company Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties, that the Issuers, Subsidiary Guarantors or any of the Company Releasing Parties would have been legally entitled to assert in their or its own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Equity Security in, a Company Releasing Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents,
any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Company Releasing Parties set forth above do not release any party or Entity from any post Effective Date obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Company Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding the foregoing or anything to the contrary in this Indenture, nothing in this Indenture shall or shall be deemed to (or is intended to) limit any of the Company Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under the Bankruptcy Code, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of this Indenture, the Transaction Support Agreement, the Definitive Documents, or any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt, the release by the Company Releasing Parties in this Section 12.1 is granted by or on behalf of each of the Company Releasing Parties in their capacities as Issuers or Subsidiary Guarantors, and on behalf of each of their Related Parties, in each case, in accordance with the terms and conditions set forth in this Indenture.

SECTION 12.2. Releases by the Stakeholder Releasing Parties. Effective as of the Effective Date, by accepting the Notes and the benefits of this Indenture, each Stakeholder Releasing Party, solely in its capacity as such, severally and not jointly, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the

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Stakeholder Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties or the Stakeholder Releasing Parties, that the Trustee or any of the Stakeholder Releasing Parties would have been legally entitled to assert in its or their own right (whether individually or collectively) or on behalf of the holders of any Claim against, or Equity Security in, a Company Releasing Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Stakeholder Releasing Parties set forth above do not release any party or Entity from any post Effective Date obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Stakeholder Releasing Party hereby agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding the foregoing or anything to the contrary in this Indenture, nothing in the releases or this Indenture shall or shall be deemed to (or is intended to) limit any of the Stakeholder Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under the Bankruptcy Code, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of this Indenture, the Transaction Support Agreement, the Definitive Documents, the Commitment Letter, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt, the release
by the Stakeholder Releasing Parties in this Section 12.2 is hereby granted by or on behalf of each of the Stakeholder Releasing Parties in accordance with the terms and conditions set forth in this Indenture solely in their capacities as Holders with respect to Notes that they hold, and on behalf of their Related Parties, only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party.

SECTION 12.3. No Additional Representations and Warranties. Each Releasing Party hereby agrees and acknowledges that, except as expressly provided in this Indenture and the Definitive Documents, no Released Party, in any capacity, has warranted or otherwise made any representations concerning any Released Claim (including any representation or warranty concerning the existence, non-existence, validity, or invalidity of any Released Claim). Notwithstanding the foregoing, nothing contained in this Indenture is intended to impair or otherwise derogate from any of the representations, warranties, or covenants expressly set forth in this Indenture or any of the Definitive Documents.

SECTION 12.4. Release of Unknown Claims. Each of the Releasing Parties hereby expressly acknowledges that although ordinarily a general release may not extend to any Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, it has carefully considered and taken into account in determining to enter into the releases set forth under Article XII the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Holder, by its holding of a Note, and, on behalf of each Company Releasing Party, the Issuers and Subsidiary Guarantors, expressly waive and relinquish any and all rights such Releasing Party may have or conferred upon it under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provide that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the releases set forth under Article XII or which may in any way limit the effect or scope of such releases with respect to the Released Claims, which such Releasing Party did not know or suspect to exist in such Releasing Party’s favor at the time of providing such releases, which in each case if known by it may have materially affected its settlement with any Released Party, including any rights under Section 1542 of the California Civil Code or any analogous applicable state or federal law or regulation. Each of the Releasing Parties hereby expressly acknowledges that the releases and covenants not to sue contained in this Indenture are effective regardless of whether those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or foreseen or unforeseen.

To the extent that the releases set forth above include releases to which Section 1542 of the California Civil Code or similar provisions of other applicable law applies, it is the intention of each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party that the releases described under Article XII are to be effective as a bar to any and all Claims and Causes of Action of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified in this Indenture. In furtherance of this intention, each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party hereto expressly waives any and all rights and
benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law, which are as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. Thus, notwithstanding the provisions of Section 1542 of the California Civil Code, and for the purpose of implementing a full and complete release and discharge of the Released Parties, each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party expressly acknowledges that this Indenture is intended to include in its effect all of the Claims, Causes of Action and liabilities which the Releasing Parties and each Holder (in its capacity as a holder of the Notes) does not know or suspect to exist in their favor as of the Effective Date, and this Indenture contemplates extinguishment of all such Claims, Causes of Action and liabilities.

SECTION 12.5. Covenant to Refrain from Certain Actions. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS INDENTURE, FROM AND AFTER THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES HEREBY AGREES AND COVENANTS NOT TO, AND SHALL NOT, AND SHALL NOT ASSIST OR OTHERWISE AID ANY OTHER PERSON TO, (A) COMMENCE OR CONTINUE, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION, OR OTHER PROCEEDING; (B) ENFORCE, ATTACH, COLLECT, OR RECOVER IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (C) CREATE, PERFECT, OR ENFORCE ANY LIEN OR ENCUMBRANCE; (D) ASSERT A SETOFF, RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND; (E) COMMENCE OR CONTINUE IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, OR (F) ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF ANY CLAIM OR CAUSE OF ACTION, IN EACH CASE, ON ACCOUNT OF OR WITH RESPECT TO ANY RELEASED CLAIM OR ANY CLAIM OR CAUSE OF ACTION THAT WILL BE A RELEASED CLAIM ON THE EFFECTIVE DATE. NOTHING IN THIS INDENTURE SHALL OR BE DEEMED TO (OR IS INTENDED TO) LIMIT ANY OF THE STAKEHOLDER RELEASING PARTIES’ RIGHTS, OR THE COMPANY RELEASING PARTIES’ RIGHTS, AS APPLICABLE, TO ASSERT OR PROSECUTE ANY AFFIRMATIVE DEFENSES OR OTHERWISE RAISE ANY DEFENSE OR TAKE ANY ACTION TO DEFEND ITSELF OR THEMSELVES, INCLUDING ANY DEFENSE AVAILABLE UNDER THE BANKRUPTCY CODE, IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION (WHETHER DIRECT OR INDIRECT) BROUGHT BY ANY PERSON RELATING TO ANY OF THE CLAIMS OR CAUSES OF ACTION ARISING FROM, IN WHOLE OR IN PART, THE RELEASED CLAIMS OR (X) THE FORMULATION,
SECTION 12.6. Turnover of Subsequently Recovered Assets. Subject to the occurrence of the Effective Date, in the event that the Trustee, the Issuers, Subsidiary Guarantors or any Releasing Party (including any successor or assignee thereof) receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against Parent or the MYT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), the Trustee, the Collateral Agent, the Issuers, Subsidiary Guarantors or such Releasing Party shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MYT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of Parent, Parent or the applicable MYT Entity. Parent or the applicable MYT Entity shall distribute any such recoveries turned over or assigned to it in accordance with the MYT Waterfall, to the extent applicable. Notwithstanding anything to the contrary contained in this Indenture (but subject to the immediately following paragraph below), Parent shall be entitled to enforce the provisions of this paragraph on behalf of Parent or any MYT Entity. The Releasing Parties, the Issuers and Subsidiary Guarantors, the Trustee and the Collateral Agent will be bound by the provisions set forth under this Section 12.6 notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

Notwithstanding anything to the contrary contained in this Indenture, (i) the immediately foregoing paragraph will only apply to the Stakeholder Releasing Parties in their capacities as Holders with respect to Notes that they hold, the Trustee in its capacity as Trustee, the Collateral Agent in its capacity as Collateral Agent, and each of the Company Releasing Parties in their capacities as Issuers or Subsidiary Guarantors, and will not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor in possession or any similar financing and (ii) to the extent a Releasing Party receives consideration on account of a Claim secured by assets or property of any Company Party or its subsidiaries (other than, for the avoidance of doubt, the Specified Claims or any such assets or property contributed to or otherwise obtained by any Company Party or its subsidiaries on account of the Specified Claims), such consideration will not be subject to the immediately foregoing paragraph.

SECTION 12.7. Definitions. The capitalized terms below shall have the following meanings as used in this Article XII.
“Bankruptcy Code” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Effective Date, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

“Claim” means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Commitment Letter” means that certain Backstop Commitment Letter, dated March 25, 2019, by and among the Sponsors and the Ad Hoc Committee of Unsecured Noteholders.

“Company Releasing Party” means each of the Company Parties and, to the maximum extent permitted by law, each of the Company Parties on behalf of its Related Parties.

“Consenting Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions, including (i) the material documents

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governing the Second Lien Notes (including the Second Lien Notes Indenture), (ii) the material documents governing the Third Lien Notes (including this Indenture and the 8.750% Third Lien Indenture), (iii) the material documents governing the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock (including the applicable Certificates of Designation and material organizational documents), and (iv) the Extended Term Loan Agreement, and (v) all other material customary documents delivered in connection with transactions of this type (including any and all material documents necessary to implement the Recapitalization Transactions).

“Effective Date” means the date of consummation of the Recapitalization Transactions (no later than 11:59 p.m. Eastern Standard Time).

“Entity” means any Person, individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Body or any agency or political subdivision of any Governmental Body, or any other entity, whether acting in an individual, fiduciary, or other capacity.

“Equity Security” means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).

“Governmental Body” means any U.S. or non-U.S. federal, state, municipal, or other government, or other department, commission, board, bureau, agency, public authority, or instrumentality thereof, or any other U.S. or non-U.S. court or arbitrator.

“Holder” means the Person in whose name a Note is registered; provided that it may include the “beneficial owner” of an interest in a Note.

“Nancy Transaction” means, collectively, (a) the formation of Nancy Holdings LLC, a Delaware limited liability company, (b) all designations prior to the TSA Execution Date by any Company Party or any of its Related Parties of Nancy Holdings LLC as an “unrestricted” subsidiary under the Original Indenture, the Pre-Transactions Term Loan Agreement, or the ABL Credit Agreement (as in effect immediately prior to the Effective Date), (c) all contributions, investments, conveyances, or transfers of any real properties or any interests associated with such real properties by any Company Party or any of its Related Parties in or to Nancy Holdings LLC prior to the TSA Execution Date, (d) all leases of real properties or any interests associated with such real properties between Nancy Holdings LLC as lessor, and any Company Party as lessee, entered into prior to the TSA Execution Date, and (e) all acts or omissions taken
prior to the Effective Date by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing.

“Original Indenture” means the Indenture, dated as of October 21, 2013, as supplemented by the First Supplemental Indenture, dated October 25, 2013 (as amended, supplemented, waived or otherwise modified) governing the 8.000% Senior Cash Pay Notes due 2021 among Mariposa Merger Sub LLC and Borrower, Inc. as issuers, and U.S. Bank National Association, as trustee.

“Recapitalization Transactions” means the consensual recapitalization of certain of the Company Parties’ outstanding indebtedness and equity interests consisting of the entry into the Extended Term Loan Agreement, the consummation of the Exchange Offers, the issuance of the New Second Lien Notes and the Third Lien Notes and the issuance of the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock on terms and conditions consistent with the Transaction Support Agreement.

“Related Parties” means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity. For the avoidance of doubt, the MYT Entities are Related Parties of the Sponsors; provided, however, that any Related Party of a Holder is subject to and bound by the terms of the mutual releases set forth under this Indenture only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party.

“Released Claim” means, with respect to any Releasing Party, any Claim, Cause of Action, or any other debt, obligation, right, suit, damage, judgment, action, remedy, or liability which is released by such Releasing Party described under Article XII.

“Released Party” means, collectively, (a) each of the Company Parties, (b) each of the Consenting Noteholders, (c) the Sponsors and the Related Parties of each of the foregoing Persons in clauses (a), (b) and (c) of this definition.

“Releasing Party” means collectively, (a) the Stakeholder Releasing Parties and (b) the Company Releasing Parties.

“Sponsor” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

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“Stakeholder Releasing Party” means to the maximum extent permitted by law, (i) each Holder (in its capacity as a holder of Notes) and (ii) each of the Sponsors on behalf of their respective Related Parties.

“TSA Execution Date” means March 25, 2019, the date on which the Transaction Support Agreement was executed.

**ARTICLE XIII**

**Miscellaneous**

SECTION 13.1. **Notices.** Notices given to Holders by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices from Holders given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices from Holders personally delivered will be deemed given at the time delivered by hand. Notices from Holders given by publication will be deemed given on the first day on which publication is made and notices from Holders given by facsimile will be deemed given when receipt is acknowledged. Notices from Holders given by overnight air courier guaranteeing next day delivery will be deemed given the next Business Day after timely delivery to the courier. Notices from the Issuer or Trustee or Notes Collateral Agent to Holders will be deemed given at the time delivered electronically in accordance with the Applicable Procedures of the Depositary.

Any notice or communication will be in writing and delivered in person, by facsimile or mailed by first-class mail addressed as follows:

if to the Issuers or any Subsidiary Guarantor:

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
c/o Ares Management
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Facsimile: (310) 201-4170
Attention: Dennis Gies; Eric Waxman; Andrew Paik
Email: gies@aresmgmt.com; ewaxman@aresmgmt.com; apaik@aresmgmt.com
With copies to:

Neiman Marcus Group LTD LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214) 743-7611
Attention: Tracy M. Preston
Email: Tracy_Preston@neimanmarcus.com

Kirkland & Ellis
2029 Century Park East
Los Angeles, CA 90067
Facsimile: (310) 552-5900
Attention: Philippa Bond, P.C.; David M. Nemecek, P.C.
Email: pippa.bond@kirkland.com; david.nemecek@kirkland.com

if to the Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Tele: (302) 636-6432
Email: tmorris@wilmingtontrust.com

With copies to:

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attn: Ronald A. Hewitt
Fax: (212) 841-1010
Email: rhewitt@cov.com

if to the Notes Collateral Agent:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE  19890
Attn: Neiman Marcus Notes Administrator
Tele: (302) 636-6432
Email: tmorris@wilmingtontrust.com
The Issuers or the Trustee or the Notes Collateral Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder will be mailed to the Holder at the Holder’s address as it appears on the registration books of the Registrar and will be sufficiently given if so mailed within the time prescribed. Any notice or communication will also be so mailed or delivered to any Person described in TIA § 313(c), to the extent required by the TIA.

Failure to deliver a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

The Trustee and the Notes Collateral Agent agree to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee or the Notes Collateral Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee or the Notes Collateral Agent in its discretion elects to act upon such instructions, the Trustee’s or the Notes Collateral Agent’s understanding of such instructions will be deemed controlling. The Trustee and the Notes Collateral Agent will not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s or the Notes Collateral Agent’s reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee or the Notes Collateral Agent, including without limitation the risk of the Trustee or the Notes Collateral Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise), such notice will be sufficiently given if delivered or caused to be delivered electronically in accordance with the Applicable Procedures of the Depositary.
SECTION 13.2. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture (except in connection with (x) the original issuance of Notes on the date hereof and (y), with respect to clause (b) below, the execution of any amendment or supplement adding a new Guarantor under this Indenture), the Issuers will furnish to the Trustee:

(a) an Officer’s Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 13.3. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) will comply with the provisions of TIA § 314(e) and also will include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officer’s Certificate or on certificates of public officials.

SECTION 13.4. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 13.5. Days Other than Business Days. If a payment date is not a Business Day, payment will be made on the next succeeding day that is a Business Day, and no interest will accrue for the intervening period. If a regular Record Date is not a Business Day, the Record Date will not be affected.
SECTION 13.6. **Governing Law.** This Indenture, the Notes and the Guarantees will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction.

SECTION 13.7. **Jurisdiction and Service.** In relation to any legal action or proceedings arising out of or in connection with this Indenture, the Notes or the Guarantees, each Subsidiary Guarantor that is organized under laws other than those of the United States or a state or territory thereof or the District of Columbia hereby (a) irrevocably submits to the jurisdiction of the federal and state courts in the Borough of Manhattan in the City, County and State of New York, United States (b) waives, to the fullest extent permitted by law, any objection to any suit, action or proceeding that may be brought in connection with this Indenture, the Notes or the Guarantees in such courts on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum, (c) designates and appoints Issuer as their authorized agent upon which process may be served in any such suit, action or proceeding that may be instituted in any such court, and (d) agrees that service of any process, summons, notice or document by U.S. registered mail addressed to the Issuer, with written notice of said service to such Person at the address of the Issuer set forth in Section 13.1, will be effective service of process for any such legal action or proceeding brought in any such court.

SECTION 13.8. **Waiver of Jury Trial.** EACH OF THE ISSUERS, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTES DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 13.9. **No Recourse Against Others.** No manager, managing director, incorporator, director, officer, employee or holder of any Equity Interests of the Issuer, Corporate Co-Issuer, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Subsidiary Guarantees or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

SECTION 13.10. **Successors.** All agreements of the Issuers and each Subsidiary Guarantor in this Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Indenture will bind its successors.

SECTION 13.11. **Multiple Originals.** The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to
SECTION 13.12. **Variable Provisions.** The Issuers initially appoint the Trustee as Paying Agent and Registrar and Notes Custodian with respect to any Global Notes.

SECTION 13.13. **Table of Contents; Headings.** The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and will not modify or restrict any of the terms or provisions hereof.

SECTION 13.14. **Force Majeure.** In no event will the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee will use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.15. **USA Patriot Act.** The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act the Trustee and the Trust Officers, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this agreement agree that they will provide the Trustee and the Trust Officers with such information as they may request in order to satisfy the requirements of the USA Patriot Act.

SECTION 13.16. **Communication by Holders with Other Holders.** Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Registrar and anyone else will have the protection of TIA § 312(c).

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NEIMAN MARCUS GROUP LTD LLC, as the Issuer

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

MARIPOSA BORROWER, INC., as Corporate Co-Issuer

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President and Secretary

THE NMG SUBSIDIARY LLC, as New Co-Issuer Subsidiary

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President and Secretary

THE NEIMAN MARCUS GROUP LLC, as LLC Co-Issuer

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

[Signature Page to 8.000% Third Lien Notes Indenture]
GUARANTORS
BERGDORF GOODMAN INC.
BERGDORF GRAPHICS, INC.
BG PRODUCTIONS, INC.
NM BERMUDA, LLC
NM FINANCIAL SERVICES, INC.
NM NEVADA TRUST
NMGP, LLC
WORTH AVENUE LEASING COMPANY

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NMG GLOBAL MOBILITY, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President, General Counsel and Secretary

NEMA BEVERAGE CORPORATION
NEMA BEVERAGE HOLDING CORPORATION
NEMA BEVERAGE PARENT CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to 8.000% Third Lien Notes Indenture]
GUARANTORS

NMG CALIFORNIA SALON LLC
NMG FLORIDA SALON LLC
NMG SALONS LLC
NMG TEXAS SALON LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Chief Executive Officer and President

[Signature Page to 8.000% Third Lien Notes Indenture]
GUARANTORS

NMG TERM LOAN PROPCO LLC
NMG NOTES PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to 8.000% Third Lien Notes Indenture]
NM ENTITIES

MYT PARENT CO.
MYT HOLDING CO.
MYT INTERMEDIATE HOLDING CO.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to 8.000% Third Lien Notes Indenture]
By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Notes Collateral Agent

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

[Signature Page to 8.000% Third Lien Notes Indenture]
[FORM OF FACE OF NOTE]

Global Note Legend, if applicable
Guarantor Legend, if applicable
Private Placement Legend, if applicable
Temporary Regulation S Legend, if applicable
OID Legend, if applicable

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Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, INC.
The NMG Subsidiary LLC

8.000% Third Lien Senior Secured Notes due 2024

Neiman Marcus Group LTD LLC, a Delaware limited liability company, The Neiman Marcus Group LLC, a Delaware limited liability company, Mariposa Borrower, Inc., a Delaware corporation, and The NMG Subsidiary LLC, a Delaware limited liability company promise to pay to Cede & Co., or registered assigns, the initial principal amount set forth on the Schedule of Increases or Decreases in the Global Note attached hereto, as revised by the Schedule of Increases or Decreases in the Global Note attached hereto, on October 25, 2024.

Interest Payment Dates: April 15 and October 15.

Record Dates: April 1 and October 1.

Additional provisions of this Note are set forth on the other side of this Note.

(1) Insert on Global Notes only
(2) 144A —
     Reg S —
     IAI —

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THE NEIMAN MARCUS GROUP LTD LLC, as the Issuer

By:

Name: ____________________________
Title: ____________________________

MARIPOSA BORROWER, INC., as Corporate Co-Issuer

By:

Name: ____________________________
Title: ____________________________

THE NMG SUBSIDIARY LLC, as New Co-Issuer Subsidiary

By:

Name: ____________________________
Title: ____________________________

THE NEIMAN MARCUS GROUP LLC, as LLC Co-Issuer

By:

Name: ____________________________
Title: ____________________________

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WILMINGTON TRUST, NATIONAL ASSOCIATION

as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: ________________________________
Title: Authorized Signatory
Date: A-4
1. **Interest**

   Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer and their successors and assigns under the Indenture hereinafter referred to, the “Co-Issuers” and, together with the Issuer, the “Issuers”) promise to pay interest on the principal amount of this Note at the rate per annum shown above. The Issuers will pay interest semiannually on April 15 and October 15 of each year, with the first interest payment to be made on October 15, 2019. Interest on the Notes will accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from June 7, 2019. Interest on the Notes will accrue at the rate of 8.000% per annum, payable in cash. The Issuers will pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Notes to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Issuers will pay interest on overdue principal at 2.0% per annum in excess of the above rate and will pay interest on overdue installments of interest at such higher rate to the extent lawful.

2. **Method of Payment**

   By no later than 10:00 a.m. (New York City time) on the date on which any principal of, premium, if any, or interest on any Note is due and payable, the Issuers will irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Holders at the close of business on the April 1 and October 1 next preceding the Interest Payment Date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuers will pay principal, premium, if any, and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by the Paying Agent by the transfer of immediately available funds to the accounts specified by the Depositary. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, provided that payment by wire transfer of immediately available funds will be required with respect to

   (3) With respect to the Initial Notes.

   (4) With respect to the Initial Notes.
principal of, interest and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Paying Agent by no later than the record date for such payment. The Issuers will make all payments in respect of a Definitive Note (including principal, premium, if any, and interest) through the Paying Agent by mailing a check to the registered address of each Holder thereof.

3. **Paying Agent and Registrar**

Initially, Wilmington Trust, National Association, duly organized and existing under the laws of the United States of America and having a Corporate Trust Office at 1100 North Market Street, Wilmington, Delaware, 19890 (“Trustee”), will act as Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Holder. The Issuers or any of their Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. **Indenture**

The Issuers issued the Notes under an Indenture dated as of June 7, 2019 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”), among the Issuers and the Trustee. The terms of the Notes include those stated in the Indenture. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Securities Act for a statement of those terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

The Notes are senior unsubordinated obligations of the Issuers. This Note is one of the 8.000% Third Lien Senior Secured Notes due 2024 referred to in the Indenture.

5. **Guarantee**

To guarantee the due and punctual payment of the principal, premium, if any, and interest (including post-filing or post-petition interest) on the Notes and all other Guaranteed Obligations when and as the same will be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Subsidiary Guarantors will unconditionally Guarantee, jointly and severally, such Guaranteed Obligations pursuant to and subject to the limitations described in Article X of the Indenture.

6. **Security**

The Indenture Obligations of the Issuers and the Guarantors are secured by Liens on the Collateral pursuant to the terms of the Security Documents. The actions of the Trustee, the Notes Collateral Agent and the Holders and the application of proceeds from the enforcement of any remedies with respect to such Collateral are
limited pursuant to the terms of the Security Documents and the Intercreditor Agreements.

7. **Optional Redemption**

   (a) On and after the Issue Date, the Issuers may redeem the 8.000% Third Lien Senior Secured Notes, at their option, in whole at any time or in part from time to time, upon notice as described in Section 5.4 of the Indenture, at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest, if any, to (but not including) the Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on October 25(5) of the years set forth below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>102.000%</td>
</tr>
<tr>
<td>2019 and thereafter</td>
<td>100.000%</td>
</tr>
</tbody>
</table>

   The Issuers may redeem the 8.750% Third Lien Notes without redeeming the Notes and may redeem the Notes without redeeming the 8.750% Third Lien Notes.

   (c) In connection with any redemption of Notes, any such redemption may, at the Issuers’ discretion, be subject to one or more conditions precedent as provided in Section 5.4 of the Indenture.

   (d) Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable Redemption Date.

   (e) Any redemption pursuant to this paragraph 7 will be made pursuant to the provisions of Article V of the Indenture.

8. **Mandatory Call Right Redemption**

   The Notes will be subject to the mandatory Call Right Redemption, pursuant to Section 5.9 of the Indenture.

9. **Mandatory Redemption Using MYT Secondary Sale Proceeds**

   The Notes may be subject to mandatory redemption pursuant to Section 5.10 of the Indenture.

(5) With respect to the Initial Notes.
10. **Change of Control; Asset Sales**

   (a) If a Change of Control occurs, Holders of the Notes may have the right to cause the Company to offer to repurchase the Notes as provided in Section 3.9 of the Indenture.

   (b) In the event of an Asset Sale, Holders of the Notes may have the right to cause the Company to offer to repurchase the Notes as provided in Sections 3.7 and 5.8 of the Indenture.

11. **Intercreditor Agreements**

    By accepting a Note, each Holder is authorizing the Trustee and the Notes Collateral Agent to enter into the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement on its behalf. Holders will be permitted to take enforcement action with respect to the Collateral only to the extent permitted under and in accordance with the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement.

12. **Denominations; Transfer; Exchange**

    The Notes will be issuable only in minimum denominations of $2,000.00 and integral multiples of $1.00 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes for a period beginning 15 Business Days before an Interest Payment Date and ending on such Interest Payment Date.

13. **Persons Deemed Owners**

    The registered Holder of this Note may be treated as the owner of it for all purposes, provided that, notwithstanding anything to the contrary in this Note, solely for purposes of determining whether any notice, direction, action to be taken or consent to be given under the Indenture is authorized, provided or given (as the case may be) by a sufficient aggregate principal amount of Notes, an owner of a beneficial interest in a Global Note shall be treated as a Holder, and the Trustee shall accept reasonable evidence of such beneficial interest provided by such owner (which may be in the form of “screenshots” of such owner’s position).

14. **Unclaimed Money**

    If money for the payment of the principal of or premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Issuers at their request unless an abandoned property law designates another person. After any such payment, Holders entitled to the money must look only to the Issuers and not to the Trustee for payment.
15. **Discharge and Defeasance**

Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Notes and the Indenture if the Issuers irrevocably deposit in trust with the Trustee money or U.S. Government Obligations (sufficient, without reinvestment, in the opinion of a nationally-recognized certified public accounting firm) for the payment of principal, premium (if any) and interest on the Notes to redemption or maturity, as the case may be.

16. **Amendment, Waiver**

The Indenture and the Notes may be amended or waived as set forth in Article IX of the Indenture.

17. **Defaults and Remedies**

Events of Default will be as set forth in Article VI of the Indenture.

Holders may only enforce the Indenture or the Notes as provided in the Indenture.

18. **Trustee Dealings with the Issuers**

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

19. **No Recourse Against Others**

No manager, managing director, director, officer, employee, incorporator or Holder of any Equity Interests in the Issuers, any Subsidiary or any Parent Entity, as such, will not have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Indenture or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release will be part of the consideration for the issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

20. **Authentication**

This Note will not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.
21. **Abbreviations**

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

22. **CUSIP Numbers**

Pursuant to a recommendation promulgated by the Committee on Uniform Note Identification Procedures the Issuers have caused CUSIP numbers to be printed on the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers placed thereon.

23. **Successor Entity**

When a successor entity assumes, in accordance with the Indenture, all the obligations of its predecessor under the Notes and the Indenture, and immediately before and thereafter no Default or Event of Default exists and all other conditions of the Indenture are satisfied, the predecessor entity will be released from those obligations.

24. **Governing Law**

This Note will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction that would indicate the applicability of the law of any other jurisdiction.

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To assign this Note, fill in the form below:

I or we assign and transfer this Note to

______________________________  (Print or type assignee’s name, address and zip code)

______________________________  (Insert assignee’s soc. sec. or tax I.D. No.)

and irrevocably appoint______________________________  agent to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date:  ____________________________  Your Signature:  ____________________________

Signature Guarantee:  ____________________________  (Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.
The initial principal amount of the Note will be $ [ ]. The following increases or decreases in this Global Note have been made:

<table>
<thead>
<tr>
<th>Date of Exchange</th>
<th>Amount of decrease in Principal Amount of this Global Note</th>
<th>Amount in increase in Principal amount of this Global Note</th>
<th>Principal amount of this Global Note following such decrease or increase</th>
<th>Signature of authorized signatory of Trustee or Notes Custodian</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 3.7 or 3.9 of the Indenture, check the box:

- [ ] 3.7
- [ ] 3.9

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 3.7 or 3.9 of the Indenture, state the amount in principal amount (must be in denominations of $2,000.00 or integral multiples of $1.00 in excess thereof): $

Date: ___________________________ Your Signature: ___________________________

(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: ___________________________

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.
FORM OF CERTIFICATE OF TRANSFER

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214)-743-7611
Attention: Tracy M. Preston

Wilmington Trust National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Email: tmorris@wilmingtontrust.com
Facsimile: (302) 636-4149

Re: 8.000% Third Lien Senior Secured Notes due 2024
(CUSIP )

Reference is hereby made to the Indenture, dated as of June 7, 2019, as amended or supplemented from time to time (this “Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary”) and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party thereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (in such capacity, the “Trustee”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”). Capitalized terms used but not defined herein will have the meanings given to them in the Indenture.

The (the “Transferor”) owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $ in such Note[s] or interests (the “Transfer”), to (the “Transferee”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. o Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note pursuant to Rule 144A.

The
Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2. **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3. **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or an Unrestricted Global Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.** The Transfer is being effected in compliance with the
transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) o such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) o such Transfer is being effected to the Issuers or a subsidiary thereof;

or

(c) o such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) o such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit E to the Indenture and (2) if such Transfer is in respect of a principal amount of Notes at the time of transfer of less than $2,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

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4. Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.

(a) Check if Transfer is pursuant to Rule 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) Check if Transfer is pursuant to Regulation S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) Check if Transfer is pursuant to other exemption. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the
transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

________________________________________________________________________

[Insert Name of Transferor]

By:

Name:

Title:

Dated: ____________________________________________________________________

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1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) o a beneficial interest in the:

(i) o 144A Global Note (CUSIP [ ], or

(ii) o Regulation S Global Note (CUSIP [ ], or

(iii) o IAI Global Note (CUSIP [ ], or

(b) o a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) o a beneficial interest in the:

(i) o 144A Global Note (CUSIP [ ], or

(ii) o Regulation S Global Note (CUSIP [ ], or

(iii) o Unrestricted Global Note (CUSIP [ ], or

(iv) o IAI Global Note (CUSIP [ ], or

(b) o a Restricted Definitive Note; or

(c) o an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.
Re: 8.000% Third Lien Senior Secured Notes due 2024
(CUSIP )

Reference is hereby made to the Indenture, dated as of June 7, 2019, as amended or supplemented from time to time (this “Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”) and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party thereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee, WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”). Capitalized terms used but not defined herein will have the meanings given to them in the Indenture.

(the “Owner”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $ in such Note[s] or interests (the “Exchange”). In connection with the Exchange, the Owner hereby certifies that:

C-1
1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note**

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the “Securities Act”), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.** In connection with the Owner’s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.
Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note. In connection with the Owner’s Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes.

(a) Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note. In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner’s own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note. In connection with the Exchange of the Owner’s Restricted Definitive Note for a beneficial interest in the [CHECK ONE] _144A Global Note, _ Regulation S Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in
the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.
THIS [-] SUPPLEMENTAL INDENTURE, dated as of [-], 20[-] (this “Supplemental Indenture”), is by and among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (in such capacity, the “Trustee”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”).

W I T N E S S E T H

WHEREAS, the Issuers and the Trustee are parties to an indenture dated as of June 7, 2019 (the “Indenture”), providing for the issuance of the Issuers’ 8.00% Third Lien Senior Secured Notes due 2024 (the “Notes”);

WHEREAS, Section 3.11 (Additional Guarantors) of the Indenture provides that under certain circumstances the New Guarantors will execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantors will unconditionally guarantee all of the Issuers’ obligations under the Notes and the Indenture on the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 9.1 (Amendments Without Consent of Holders) of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuers, the New Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Capitalized Terms. Capitalized terms used herein without definition will have the meanings assigned to them in the Indenture.

2. Agreements to Become Guarantors. Each of the New Guarantors hereby unconditionally guarantees the Issuers’ obligations for the due and punctual payment of the principal of, premium, if any, and interest on all the Notes and the performance and observance of each other obligation and covenant set forth in the Indenture to be performed or observed on the part of the Issuers, on the terms and subject to the conditions set forth in Article X (Guarantees) of the Indenture and agrees to be bound by all other provisions of the Indenture and the Notes applicable to a Subsidiary Guarantor therein.

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3. **Ratification of Indenture; Supplemental Indenture Part of Indenture.** Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof will remain in full force and effect. This Supplemental Indenture will form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered will be bound hereby.

4. **No Recourse Against Others.** No manager, managing director, director, officer, employee, incorporator or holder of any Equity Interests in the Issuers, any Subsidiary or any Parent Entity, as such, will have any liability for any obligations of the Issuers or the New Guarantors under the Notes, the Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes, by accepting a Note, waives and releases all such liability. This waiver and release are part of the consideration for issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

5. **Notices.** For purposes of Section 13.1 (Notices) of the Indenture, the address for notices to each of the New Guarantors will be:

   Neiman Marcus Group LTD LLC
   One Marcus Square
   1618 Main Street
   Dallas, TX 75201
   Facsimile: (214)-743-7611
   Attention: Tracy M. Preston

6. **Governing Law.** This Supplemental Indenture will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction.

7. **Counterparts.** The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a “pdf” or “tif”) will be effective as delivery of a manually executed counterpart thereof.

8. **Effect of Headings.** The section headings herein are for convenience only and will not affect the construction hereof.

9. **The Trustee.** The Trustee will not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by each of the New Guarantors.

[remainder of page intentionally blank]
IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

THE NEIMAN MARCUS GROUP LTD LLC, as the Issuer

By:

Name: [ ]
Title: [ ]

MARIPOSA BORROWER, INC., as Corporate Co-Issuer

By:

Name: [ ]
Title: [ ]

THE NMG SUBSIDIARY LLC, as New Co-Issuer Subsidiary

By:

Name: [ ]
Title: [ ]

THE NEIMAN MARCUS GROUP LLC, as LLC Co-Issuer

By:

Name: [ ]
Title: [ ]

[ ], as a New Guarantor

By:

Name: [ ]
Title: [ ]

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WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By:

Name: [ ]
Title: [ ]

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Notes Collateral Agent

By:

Name: [ ]
Title: [ ]

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FORM OF CALL NOTICE

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214)-743-7611
Attention: Tracy M. Preston

Wilmington Trust National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Email: tmorris@wilmingtontrust.com
Facsimile: (302) 636-4149

Re: Exercise of Call Right under the Third Lien Notes Indenture with respect to 8.000% Third Lien Senior Secured Notes due 2024

Reference is hereby made to (i) that certain Credit Agreement, dated as of October 25, 2013 (as amended by (a) that certain Refinancing Amendment, dated as of March 13, 2014 and (b) that certain Extension Amendment and Amendment No. 2 to the Credit Agreement, dated as of June 7, 2019, and as further amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Amended Credit Agreement”), by and among Mariposa Intermediate Holdings LLC, Neiman Marcus Group LTD LLC, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent and (ii) that certain indenture, dated as of June 7, 2019, among Wilmington Trust National Association, the issuers party thereto and the guarantors party thereto from time to time (as amended, restated, supplemented or otherwise modified from time to time, the “Third Lien Notes Indenture”). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Amended Credit Agreement, the Amendment, and the Third Lien Notes Indenture, as applicable.

The undersigned 2019 Extending Term Lenders (the “Calling Lenders”) hereby exercise the Call Right pursuant to Section 2.18 of the Amended Credit Agreement and in accordance with Section 5.9 of the Third Lien Notes Indenture, which Call Right shall be consummated on , 20 or such other date as the Calling Lenders and the Borrowers may agree, subject to the terms of the Amended Credit Agreement and the Third Lien Notes Indenture (the “Call Date”).
[NAME OF LENDER](6)

By:

Name: ____________________________
Title: ____________________________

(6) To be signed by Calling Lenders or a representative thereof.

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[FORM OF PROPCO GRANT]

SUBLEASE

THIS SUBLEASE (this “Sublease”) is made and entered into as of the day of , 2019, by and between [NMG NOTES PROPCO LLC] (7)/[NMG TERM LOAN PROPCO LLC](8), a Delaware limited liability company (hereinafter called “Sublandlord”), and , a (hereinafter called “Subtenant”);

W I T N E S S E T H:

WHEREAS, Sublandlord is a wholly-owned subsidiary of Subtenant;

WHEREAS, Subtenant was party as tenant to that certain [lease, sublease or sub-sublease], dated [   ] with as landlord (“Landlord”), as more particularly described on Exhibit A annexed hereto and made a part hereof (hereinafter called the “Prime Lease”);

WHEREAS, Subtenant, as the prior tenant under the Prime Lease, leased the demised premises located at (the “Leased Premises”);

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant, the Leased Premises, of which Subtenant is currently in possession and on which Subtenant is currently operating a [Neiman Marcus] [Bergdorf Goodman] store (hereinafter, the “Store”), all upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. Demise. Use. Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord the Leased Premises for the term and rental and upon the other terms and conditions hereinafter set forth, to be used solely for the purposes permitted under the Prime

(7) Use for PropCo Assets
(8) Use for New Term Loan Assets

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2. **Term.** The term (the "**Term**") of this Sublease shall commence on , 2019 (the "**Commencement Date**") and, unless sooner terminated pursuant to the provisions hereof, shall terminate on the earlier of the one-year anniversary of the Commencement Date (such date, and each applicable subsequent anniversary following an extension pursuant to the proviso to this sentence, the "**Scheduled Expiry Date**") and the prior termination of the term of the Prime Lease for any reason whatsoever; provided, the Term shall automatically be extended by an additional year after the Scheduled Expiry Date (subject to prior termination of the Prime Lease) if neither party has delivered to the other written notice of its intent to terminate this Sublease at least ten (10) business days prior to the Scheduled Expiry Date.

3. **Base Rent.**

   (a) Subtenant shall pay to Landlord directly on behalf of Sublandlord annual fixed rental (hereinafter called "**Base Rent**") for the Leased Premises equal to the [Base Rent] (as defined in the Prime Lease) payable by Sublandlord to Landlord under the Prime Lease. Base Rent shall be due and payable pursuant to the terms and provisions of the Prime Lease.

   (b) All Base Rent and Additional Rent (as defined below) shall be paid directly to Landlord at the address designated under the Prime Lease or by notice from Landlord or at such other place as Sublandlord may designate by notice to Subtenant.

4. **Additional Rent; Payments; Interest.**

   (a) In addition to Base Rent, Subtenant shall also pay to Sublandlord all other charges, costs, expenses, fees and other amounts, including real property taxes and assessments, sewer rents, utilities, common area charges, and percentage or contingent rent, including late payments, interest, and costs and fees of collection, including attorney fees (collectively "**Additional Rent**") payable by Sublandlord under the Prime Lease. Without limiting the foregoing, Subtenant shall maintain and provide to Landlord all reports and accountings with respect to rent, issues and profits and percentage rent of Subtenant with respect to the Leased Premises required under the Prime Lease.

   (b) Each amount due pursuant to Subsection 4(a) above and each other amount payable by Subtenant hereunder, unless a date for payment of such amount is provided for elsewhere in this Sublease, shall be due and payable no later than the date on which any such amount is due and payable under the Prime Lease.

   (c) All amounts other than Base Rent payable to, or on behalf of, Sublandlord under this Sublease shall be deemed to be additional rent due under this Sublease. All past due installments of Base Rent and additional rent shall bear interest from the date that is the earlier of the date provided in the Prime Lease for the applicable payment or five (5) business days following receipt of written notice thereof from Sublandlord until paid at the rate per annum equal to the greater of the rate provided in the Prime Lease or F-2.
three percent (3%) in excess of the Prime Rate (as hereinafter defined) (the “Default Rate”) in effect from time to time, which rate shall change from time to time as of the effective date of each change in the Prime Rate, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged. For the purposes of this Sublease, the term “Prime Rate” shall mean the base rate on corporate loans at large U.S. money centers or commercial banks as published from time to time by the Wall Street Journal.

(d) As and to the extent provided in the Prime Lease or as Landlord and Subtenant may otherwise agree, Subtenant shall pay Landlord on the due dates as provided in the Prime Lease or as otherwise agreed by the parties, for all services requested by Subtenant which are billed by Landlord directly to Subtenant rather than Sublandlord, all of which shall constitute Additional Rent.

5. **Condition of Leased Premises.** Subtenant, as the present occupant and operator of the Leased Premises, acknowledges and agrees that it takes the Leased Premises “as is”, “where is” and “with all faults”, and that Sublandlord does not make any warranties, representations or promises with respect to the Leased Premises or the Prime Lease of any kind whatsoever, express or implied, including without limitation with respect to state of title, physical condition or environmental condition, or fitness for any particular use. Subtenant’s taking possession of the Leased Premises pursuant to this Sublease shall be conclusive evidence as against Subtenant that the Leased Premises were in good order and satisfactory condition when Subtenant took possession. No promise of Sublandlord to alter, remodel or improve the Leased Premises, except as may be expressly provided herein, and no representation respecting the condition of the Leased Premises have been made by Sublandlord to Subtenant. Upon the expiration of the term hereof, or upon any earlier termination of the term hereof or of Subtenant’s right to possession (including any rejection of this Sublease in bankruptcy), Subtenant shall surrender the Leased Premises in the condition required pursuant to the Prime Lease (including environmental matters).

6. **The Prime Lease.**

(a) This Sublease and all rights, privileges and interests of Subtenant hereunder and with respect to the Leased Premises are subject to all of the terms, conditions, covenants, warranties, representations and provisions of the Prime Lease. Notwithstanding any provision to the contrary in the Assignment, as between Sublandlord and Subtenant, Subtenant hereby assumes and agrees to perform faithfully and be bound by, with respect to the Leased Premises, all of Sublandlord’s obligations, warranties, representations, covenants, agreements, provisions and liabilities under the Prime Lease and all terms, conditions, provisions and restrictions contained in the Prime Lease. Without limitation of the foregoing:

(i) Subtenant shall not make any changes, alterations or additions in or to the Leased Premises except as otherwise expressly provided in the Prime Lease or herein;
(ii) If Subtenant desires to take any other action and the Prime Lease would require that Sublandlord obtain the consent of Landlord before undertaking any action of the same kind, Subtenant shall not undertake the same without the prior written consent of Landlord and Sublandlord. Sublandlord may condition its consent on the consent of Landlord being obtained and may require Subtenant to contact Landlord directly for such consent. All such consents shall be at the sole cost and expense of Subtenant;

(iii) Sublandlord shall have the right during all normal business hours upon reasonable prior notice to Subtenant to enter upon and inspect the Leased Premises. Without limiting the foregoing, all rights given to Landlord and its agents and representatives by the Prime Lease to enter and/or inspect the Leased Premises shall inure to the benefit of Sublandlord and their respective agents and representatives with respect to the Leased Premises;

(iv) Sublandlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Landlord under the Prime Lease;

(v) Subtenant shall maintain insurance of the kinds and in the amounts required to be maintained by Sublandlord under the Prime Lease; and

(vi) Subtenant shall not do anything or suffer or permit anything to be done which could result in a default or breach under the Prime Lease or permit the Prime Lease, with the passage of time or the service of notice or both, to be cancelled or terminated (or which could limit or prohibit Sublandlord from exercising any option or right of renewal, first negotiation, first refusal or right of expansion under the Prime Lease).

(b) In addition to the other covenants and obligations under this Sublease and the Prime Lease as incorporated herein, and without limitation of the foregoing, Sublandlord agrees as follows, subject in each case to the due and punctual performance and observance of all covenants and obligations of Subtenant hereunder:

(i) Sublandlord shall not do anything which could reasonably be expected to result in a default under the Prime Lease; provided, however, that Sublandlord shall not be in default of this covenant to the extent the default under the Prime Lease is caused or attributable (in whole or in part) by Subtenant, its shareholders, partners, members, directors, officers, employees, agents, customers or invitees.

(ii) Sublandlord shall not amend, modify or terminate the Prime Lease, without the prior written consent of Subtenant, which may be withheld in its sole discretion to the extent the same could increase Subtenant’s liabilities or obligations under this Sublease.

(iii) If any action to be taken by Subtenant or any other matter would require the consent or approval of Sublandlord under this Sublease, but not
Landlord under the Prime Lease, Sublandlord’s consent or approval shall not be unreasonably withheld, conditioned or delayed. If any action to be taken by Subtenant or any other matter would require the consent or approval of Landlord under the Prime Lease, (i) Sublandlord shall be deemed to have consented to or approved such request if Landlord consents to or approves the same, and (ii) Sublandlord shall be deemed not to have consented to or approved such request if Landlord does not consent to or approve the same.

(iv) Sublandlord shall not assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Sublease or any interest in this Sublease, whether voluntarily, by operation of law or otherwise (including a merger or transfer of voting control in Sublandlord), in each case without the prior written consent of Subtenant, which may be withheld in its sole discretion.

(c) Notwithstanding anything contained herein or in the Prime Lease which may appear to be to the contrary, Sublandlord and Subtenant hereby agree as follows:

(i) Subtenant shall not assign, mortgage, pledge, hypothecate, or otherwise transfer or permit the transfer of this Sublease or any interest of Subtenant in this Sublease, directly or indirectly, by operation of law or otherwise, or permit the use of the Leased Premises or any part thereof by any persons other than Subtenant and Subtenant’s employees, or sublet the Leased Premises or any part thereof;

(ii) in the event of any condemnation or casualty damage or destruction of the Leased Premises, Sublandlord shall have no obligation to restore the Leased Premises, all such obligations (if any) of Sublandlord as the tenant under the Prime Lease (if any) to be performed by Subtenant; provided that neither rental nor additional rent or other payments hereunder shall abate or be suspended by reason of any condemnation, damage to or destruction of the Leased Premises or any part thereof, unless, and then only to the extent that, rental and additional rent and such other payments actually abate under the Prime Lease with respect to the Leased Premises on account of such event;

(iii) Subtenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Leased Premises;

(iv) Subtenant shall not have any right to exercise or have Sublandlord exercise any option under the Prime Lease, including, without limitation, any option or right of first refusal, first negotiation or first offer to extend the term of the Prime Lease or lease additional space; and

(v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of the Prime Lease shall, in all instances, govern and control.
(d) It is expressly understood and agreed that Sublandlord does not assume and shall not have any of the obligations or liabilities of Landlord under the Prime Lease and that Sublandlord is not making the representations or warranties, inducements, rent or other concessions or abatements, allowances, tenant improvements or landlord’s work, if any, made by Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Landlord under the Prime Lease, Sublandlord’s sole obligation with respect thereto shall be to request the same, upon written request from Subtenant, and to use reasonable efforts to obtain the same from Landlord. Sublandlord shall not be liable in any respect, in damages or otherwise, nor shall rent abate hereunder, for or on account of any failure by Landlord to perform the obligations and duties imposed on it under the Prime Lease.

(e) Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Landlord, unless Subtenant attorns to Landlord by written instrument.

(f) Nothing contained in this Sublease shall be construed to release the Sublandlord of any of its obligations or liabilities owed to Landlord under the Prime Lease.

7. **Default by Subtenant.**

(a) Upon the happening of any of the following:

(i) Subtenant fails to pay any Base Rent or Additional Rent within five (5) days after the date it is due;

(ii) Subtenant fails to pay any other amount due from Subtenant hereunder and such failure continues for five (5) business days after notice thereof from Sublandlord to Subtenant;

(iii) Subtenant fails to perform or observe any other covenant, obligation or agreement set forth in this Sublease and such failure continues until the earlier of (1) ten (10) business days after notice thereof from Sublandlord to Subtenant or (2) any earlier date specified for default under the Prime Lease, any Superior Interest or any Ancillary Document, as the case may be; or

(iv) any other event occurs which involves Subtenant or the Leased Premises or any part thereof and which would constitute a default under the Prime Lease if it involved Sublandlord (or any agent, representative, officer, director, manager or shareholder of Subtenant) or the Leased Premises, subject to any notice and cure periods thereunder;

Subtenant shall be deemed to be in default hereunder, and Sublandlord may exercise, without any further demand or notice, and without limitation of any other rights and remedies available to it hereunder or at law or in equity, all of which rights are hereby expressly reserved, any and all of the equivalent rights and remedies of Landlord set forth in the Prime Lease with respect to the Leased Premises in the event of a default by
Sublandlord thereunder (including without limitation the right to terminate this Sublease and recover possession of the Leased Premises free of all rights and interests of Subtenant).

(b) In the event Subtenant fails or refuses to make any payment or perform any covenant, obligation or agreement to be performed hereunder by Subtenant, Sublandlord may make such payment or undertake to perform such covenant, obligation or agreement (but shall not have any obligation to Subtenant to do so). In such event, all amounts so paid and all amounts expended in undertaking such performance, together with all costs, expenses and reasonable attorneys’ fees incurred by Sublandlord or Landlord in connection therewith, together with interest at the Default Rate, shall be additional rent hereunder.

8. **Nonwaiver.** Failure of Sublandlord to declare any default or delay in taking any action, or partial exercise of any rights or remedies, in connection therewith shall not waive such default. No receipt of moneys or performance of obligations by Sublandlord from Subtenant after the termination in any way of the term or of Subtenant’s right of possession hereunder or after the giving of any notice of termination or eviction shall reinstate, continue or extend the term or Subtenant’s right of occupancy or possession or affect any notice given to Subtenant or any suit commenced or judgment entered prior to receipt of such moneys or performance of obligations.

9. **Cumulative Rights and Remedies.** All rights and remedies of Sublandlord under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

10. **Waiver of Claims and Indemnity.**

(a) Subtenant hereby releases and waives any and all claims against Landlord and Sublandlord and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Leased Premises by Subtenant other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under applicable law.

(b) Subtenant agrees to indemnify, defend and hold harmless Landlord and its beneficiaries, Sublandlord and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, liabilities, costs and expenses of every kind and nature, including reasonable attorneys’ fees and litigation expenses, arising out of or with respect to or from Subtenant’s use, possession or occupancy (or rights thereto) of the Leased Premises (including such use, possession or occupancy by Subtenant prior to the commencement of the Term in its capacity as prior tenant under the Prime Lease), or any events or occurrences on, under, or about the Leased Premises, Subtenant’s construction or authorization of any work or leasehold improvements in the Leased Premises or from any breach or default on the part of Subtenant in the performance of any agreement, covenant, obligation, warranty or representation of Subtenant to be performed or performed under this Sublease or pursuant
to the terms of this Sublease, or from any act or neglect of Subtenant or its agents, officers, employees, guests, servants, invitees or customers in or about the Leased Premises, other than by reason of gross negligence or willful misconduct on the part of any of the foregoing indemnitees. In case any action or proceeding is brought against any of said indemnified parties, Subtenant covenants, if requested by Sublandlord, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Sublandlord (and, if provided in the Prime Lease, by Landlord).

(c) Subtenant acknowledges that prior to the assignment to, and assumption by, Sublandlord of the Prime Lease, Subtenant was the tenant under the Prime Lease, and agrees that all of Subtenant’s liabilities and obligations under this Sublease, including, without limitation, Subtenant’s indemnification obligations under Section 10(b), shall apply to the extent such liabilities or obligations arise from any matter first arising or accruing during Subtenant’s tenancy and occupancy of the Leased Premises under the Prime Lease (the “Subtenant Occupancy Period”). Sublandlord acknowledges and agrees that such obligations of Subtenant shall not apply to any matter first arising or accruing during the period of time (i) prior to the Subtenant Occupancy Period, or (ii) after the expiration or earlier termination of the Term of this Sublease, except to the extent such liabilities or obligations expressly survive such expiration or termination.

11. Waiver of Subrogation. Anything in this Sublease to the contrary notwithstanding, Sublandlord and Subtenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Subtenant hereby waives any and all rights of recovery, claims, actions or causes of action against Landlord and its agents and employees for any loss or damage that may occur to the Leased Premises, or any improvements thereto, or any personal property of any person therein, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies.

12. Successors and Assigns. This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublandlord and shall be binding upon and inure to the benefit of the successors of Subtenant and, to the extent any such assignment may be approved, Subtenant’s assigns. The provisions of Subsection 6(e) and Sections 10 and 11 hereof shall inure to the benefit of the successors and assigns of Landlord.

13. Entire Agreement. This Sublease contains all the terms, covenants, conditions and agreements between Sublandlord and Subtenant relating in any manner to the rental, use and occupancy of the Leased Premises. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublandlord and Subtenant.

(a) In the event any notice from the Landlord or otherwise relating to the Prime Lease is delivered to the Leased Premises or is otherwise received by Subtenant, Subtenant shall, as soon thereafter as possible deliver such notice to Sublandlord if such notice is written or advise Sublandlord thereof by telephone if such notice is oral.

(b) Notices and demands required or permitted to be given by either party to the other with respect hereto or to the Leased Premises shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided, however, that all notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:

if to Sublandlord:
One Marcus Square
1618 Main Street
Dallas, Texas 75201
Attention: Tracy M. Preston, Esq.
Facsimile: (214) 743-7611

if to Subtenant:
One Marcus Square
1618 Main Street
Dallas, Texas 75201
Attention: Tracy M. Preston, Esq.
Facsimile: (214) 743-7611

Notices and demands shall be deemed to have been given two (2) days after mailing, if mailed, or, if made by personal delivery or by overnight air courier service, then upon such delivery. Either party may change its address for receipt of notices by giving notice to the other party.

15. Electronic Transmission; Counterparts. Sublandlord and Subtenant may deliver executed signature page(s) to this Sublease by electronic transmission to the other party, which electronic copy shall be deemed to be an original executed signature page. This Sublease may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

16. Superior Interests; Ancillary Documents. Except as expressly provided herein to the contrary, Subtenant acknowledges and agrees that this Sublease is expressly subject and subordinate to, and Subtenant shall observe and perform, Sublandlord’s obligations with respect to, (a) all superior fee, leasehold and mortgage or security interests affecting the Leased Premises (collectively, “Superior Interests”) existing as of the date hereof until such time as such Superior Interests are terminated or released, (b) all future Superior Interests to the extent expressly provided in Superior Interests existing as of the date hereof until such time such future.
Superior Interests are terminated or released, and (c) all ancillary agreements and documents (including, without limitation, reciprocal easement and/or operating agreements affecting the Lease Premises as of the date hereof (including any of the same identified on Exhibit A, collectively, the "Ancillary Documents")), as all such Superior Interests and Ancillary Documents may hereinafter be amended or supplemented from time to time.

[Signature Pages Follow]

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IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

SUBLANDLORD:

[NMG NOTES PROPCO LLC] /[NMG TERM LOAN PROPCO LLC]

By:

Its:

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SUBTENANT:

By:

Its:
Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, INC.
The NMG Subsidiary LLC
as Issuers

and

the Subsidiary Guarantors party hereto

8.750% Third Lien Senior Secured Notes due 2024

________________________________________
INDENTURE
Dated as of June 7, 2019

________________________________________
WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
As Notes Collateral Agent
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**ARTICLE I**  
Definitions and Incorporation by Reference

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**ARTICLE II**  
The Notes

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INDENTURE, dated as of June 7, 2019 as amended or supplemented from time to time (this “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), and THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), and THE NMG SUBSIDIARY LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party hereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (in such capacity, the “Trustee”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of the Notes (as defined herein):

ARTICLE I
Definitions and Incorporation by Reference

SECTION 1.1. Definitions.

“144A Global Note” means a global note substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

“2028 Debentures” means the 7.125% senior debentures due 2028 issued by The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) pursuant to the 2028 Debentures Indenture.

“2028 Debentures Collateral” means (i) the Extended Term Loan Priority Real Estate Collateral, (ii) the Original Term Loan Priority Collateral, (iii) the Notes Priority Real Estate Collateral, (iv) the Notes PropCo Equity Interests and (v) the Extended Term Loan PropCo Equity Interests, in each of case (i) to (v), consisting solely of assets if and to the extent required by the 2028 Debentures Letter Agreement in effect on the Issue Date and/or the “equal and ratable clause” set forth in the 2028 Debentures Indenture in effect on the Issue Date.

“2028 Debentures Indenture” means the indenture dated as of May 27, 1998, by and between The Neiman Marcus Group LLC (f/k/a Neiman Marcus Group, Inc.) and Wilmington Savings Fund Society, FSB, as trustee, as supplemented and/or otherwise modified from time to time, including on or about the date hereof.

“2028 Debentures Letter Agreement” means that certain Letter Agreement, dated as of April 10, 2019, by and among TNMG LLC and certain holders of the 2028 Debentures signatory thereto.
“2028 Debentures Liens” means Liens on the 2028 Debentures Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the 2028 Debentures Obligations.

“2028 Debentures Obligations” means the Indebtedness and the related Obligations under the 2028 Debentures and the other Indebtedness Documents related to the 2028 Debentures.

“8.000% Third Lien Notes” means $730,534,000 aggregate principal amount of the Issuers’ 8.000% Third Lien Notes due 2024 issued on the Issue Date.

“8.000% Third Lien Indenture” means the indenture governing the 8.000% Third Lien Notes.

“ABL Agent” means Deutsche Bank AG New York Branch as Administrative Agent under the ABL Credit Agreement, together with its successors and assigns, and any subsequent or successor administrative agent under the ABL Credit Agreement.

“ABL Availability” means, as of any time, the amount available for borrowing by the Issuers and the Subsidiary Guarantors under the ABL Credit Agreement then in effect.

“ABL Credit Agreement” means that certain Revolving Credit Agreement, dated as of October 25, 2013 (as amended, restated, amended and restated, supplemented, extended, renewed or otherwise modified from time to time), as amended by a certain Fourth Amendment on the Issue Date (the “Issue Date ABL Credit Agreement”) among the Issuer, the Corporate Co-Issuer, the guarantors from time to time party thereto, the financial institutions named therein and the ABL Agent, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder (to the extent permitted under Section 3.3) or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders. Notwithstanding the foregoing, in order for any instrument (other than the Issue Date ABL Credit Agreement, as amended, supplemented, modified or waived from time to time) to be an “ABL Credit Agreement” under this Indenture, the Issuer shall designate such instrument in writing to the Trustee as an “ABL Credit Agreement.”
“ABL Intercreditor Agreement” means the ABL/Term Loan/Notes Intercreditor Agreement, dated as of the Issue Date, among the Notes Collateral Agent, on behalf of the holders of Third Lien Notes, the Extended Term Loan Agent, the ABL Agent and the Second Lien Notes Collateral Agent, on behalf of the holders of the Second Lien Notes, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“ABL Liens” means Liens on the Collateral having the Required Collateral Lien Priority for Liens securing the ABL Obligations.

“ABL Obligations” means the Indebtedness and the related Obligations under the ABL Credit Agreement and the other Indebtedness Documents related to the ABL Credit Agreement.

“ABL Priority Collateral” means all of the following Collateral:

(1) all accounts, but excluding rights to payment for any property that, but for this clause (1), would constitute Term/Notes Priority Collateral that has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

(2) all chattel paper (including tangible chattel paper and electronic chattel paper) to the extent evidencing, governing, securing or otherwise related to accounts or inventory;

(3) (x) all deposit accounts and money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein and (y) all securities, security entitlements and securities accounts, in each case, to the extent constituting cash or Cash Equivalents or representing a claim to Cash Equivalents; provided that the foregoing shall not include (A) the asset sale proceeds account and all cash, checks and other property held therein or credited thereto and (B) any money, cash, checks other negotiable instruments, funds and other evidences of payment that, but for this clause (3), constitute identifiable Term/Notes Priority Proceeds;

(4) all inventory;

(5) to the extent involving or governing any of the items referred to in the preceding clauses (1) through (4), all documents, general intangibles (including all payment intangibles but excluding intellectual property), instruments (including promissory notes), commercial tort claims (it being understood that a commercial tort claim does not “involve” or “govern” any of clauses (1) through (4) solely because a claim for money damages is made) and letter-of-credit rights;

(6) to the extent evidencing or governing any of the items referred to in the preceding clauses (1) through (5), all supporting obligations;

(7) all books and records relating to the foregoing (including all books, databases, customer lists, engineer drawings, and records, whether tangible or electronic, which contain any information relating to any of the foregoing); and
all collateral security and guarantees with respect to any of the foregoing and all cash, money, instruments, securities, financial assets, deposit accounts and insurance payments directly received as proceeds of any ABL Priority Collateral (“ABL Priority Proceeds”); provided, however, that no proceeds of ABL Priority Proceeds will constitute ABL Priority Collateral unless such proceeds of ABL Priority Proceeds would otherwise constitute ABL Priority Collateral.

“Acquired Indebtedness” means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is Incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Ad Hoc Committee of Unsecured Noteholders” means that certain ad hoc committee of Consenting Pre-Transactions Unsecured Noteholders represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and Houlihan Lokey.

“Additional Notes” means additional Notes (other than the Initial Notes) issued from time to time under this Indenture in accordance with this Indenture, it being understood that any Notes issued in exchange for or in replacement of any Initial Notes shall not be Additional Notes.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For the avoidance of doubt, (i) no holder of MYT Holdco Series A Preferred Stock shall be deemed to be an Affiliate of the Issuers or the Subsidiary Guarantors solely due to its holdings of MYT Holdco Series A Preferred Stock and (ii) no holder of the Third Lien Notes shall be deemed to be an Affiliate of the Issuers or the Subsidiary Guarantors solely due to the pledge of the MYT Holdco Common Equity (or the exercise of remedies with respect to such pledge).

“After-Pledged Property” means any property (other than property that constitutes the Collateral as of the Issue Date) of an Issuer and any Subsidiary Guarantor that is required under the Notes Documents to be pledged as Collateral to secure the Notes Obligations.

“Agents” means Notes Collateral Agent, Paying Agent and Registrar.
“Applicable Procedures” means, with respect to any transfer, exchange, payment, redemption, offer, communications delivered or other activity of the Depositary, Euroclear and Clearstream on behalf of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer, exchange, payment, redemption, offer, communications delivered or other activity.

“Asset Sale” means:

1. the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets of the Issuer or any Restricted Subsidiary; or

2. the issuance or sale of Equity Interests (other than preferred stock of Restricted Subsidiaries issued in compliance with Section 3.3 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Issuer or another Restricted Subsidiary) (whether in a single transaction or a series of related transactions),

each of the foregoing referred to in this definition as a “disposition”).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

1. a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the Issuer and its Restricted Subsidiaries (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

2. the sale, conveyance, lease or other disposition of all or substantially all of the assets of the Issuers in compliance with Section 4.1 or any disposition that constitutes a Change of Control;

3. any Restricted Payment that is permitted to be made, and is made, under Section 3.4 or any Permitted Investment;

4. dispositions of assets or issuances or sales of Equity Interests of any Restricted Subsidiary with an aggregate Fair Market Value in any calendar year of less than $15.0 million;

5. any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Restricted Subsidiary to the Issuer or by the Issuer or a Restricted Subsidiary to another Restricted Subsidiary;
the creation of any Lien permitted under this Indenture;

the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

[Reserved];

[Reserved];

of cash or Cash Equivalents) of comparable or greater market value, as determined in good faith by the Issuer;

any exchange of assets for Related Business Assets (including a combination of Related Business Assets and a de minimis amount of cash or Cash Equivalents) of comparable or greater market value, as determined in good faith by the Issuer;

course of business of the Issuer;

exclusive licenses, sublicenses or cross-licenses of intellectual property or other general intangibles in the ordinary course of business of the Issuer and the Restricted Subsidiaries;

the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events and (except for purposes of calculating Net Cash Proceeds of any Asset Sale under Section 3.7(b) and Section 3.7(c)) dispositions necessary or advisable (as determined by the Issuer in good faith) in order to consummate any acquisition of any Person, business or assets;

[Reserved]; and

to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business,
provided that to the extent the property being transferred constitutes Term/Notes Priority Collateral, such replacement property will constitute Term/Notes Priority Collateral.

For the avoidance of doubt, the unwinding of Hedge Agreements will not be deemed to constitute an Asset Sale.


“Bankruptcy Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, examinership, insolvency, reorganization, administration, compromise, scheme of arrangement, voluntary arrangement, or similar federal, state or foreign law for the relief of debtors, adjustment of debts or affecting the rights of creditors generally.

“Beneficial Owner” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “Beneficial Ownership,” “Beneficially Owns” and “Beneficially Owned” have a corresponding meaning.

“Board of Directors” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “directors” means members of the Board of Directors.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City or the place of payment are authorized or required by law to close.

“Call Right” means the right of the lenders under the Extended Term Loan Agreement to finance and cause the redemption by the Issuers of the Third Lien Obligations (or, if less than $200.0 million principal amount of Third Lien Obligations are then outstanding, the Second Lien Obligations, following the redemption in full of the Third Lien Obligations), at par, in cash, in an aggregate principal amount equal to $200.0 million, upon the occurrence and during the continuance of an event of default under the Extended Term Loan Agreement, which $200.0 million shall be treated under such Extended Term Loan Agreement as additional Extended Term Loans, including by being secured ratably with all other Extended Term Loans by the same assets and with the same Required Collateral Lien Priority; provided that such additional Extended Term Loans shall have a “first-out” right relative to the other Extended Term Loans, with respect to claims in respect of the Notes Priority Real Estate Collateral and Notes PropCo Equity Interests.
“Call Right Cap Recovery” has the meaning assigned to such term in the Junior Lien Intercreditor Agreement.

“Call Right Collateral” means the Notes Priority Real Estate Collateral and the Notes PropCo Equity Interests.

“Capital Stock” means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Lease Obligation” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance or capital leases on a balance sheet of such Person under GAAP (as in effect on the Issue Date, notwithstanding any modification or interpretative change thereto after the Issue Date and excluding the effect to any treatment of leases under Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect)) and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“Cash Equivalents” means:

(1) dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local national currencies held by it from time to time in the ordinary course of business and not for speculation;

(2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;

(3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any
commercial bank having capital, surplus and undivided profits of not less than $250.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;

(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A-1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons (other than the Sponsors) with a rating of at least “A-2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “A-2” or “P-2” from either S&P or Moody’s (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in national currencies other than those set forth in clause (1) above; provided that such amounts are converted into any currency listed in clause (1) above as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.
“Cash Management Obligations” means obligations owed by any Issuer or any Subsidiary Guarantor to any other Person in respect of or in connection with Cash Management Services.

“Cash Management Services” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management and similar services and any automated clearing house transfer of funds.

“Change of Control” means the occurrence of any of the following events:

(a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more of the Permitted Holders, acquires Beneficial Ownership of Voting Stock of the Issuer representing more than 50% of the aggregate ordinary voting power for the election of directors of the Issuer (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested); or

(b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Issuer and its Restricted Subsidiaries, taken as a whole, to any Person other than one or more of the Permitted Holders.

“Clearstream” means Clearstream Banking, Sociéte Anonyme.


“Collateral” means Extended Term Loan Priority Real Estate Collateral, the Extended Term Loan PropCo Equity Interests, the Original Term Loan Priority Collateral, the ABL Priority Collateral, the Notes Priority Real Estate Collateral, the Notes PropCo Equity Interests and 50.0% of the MYT Holdco Common Equity (pledged pursuant to the MYT Third Lien Notes Pledge Agreement). The Collateral does not include any Excluded Assets.

“Collateral Asset Sale” means an Asset Sale of (i) any Collateral or (ii) any assets of Notes PropCo or Extended Term Loan PropCo.

“Company Order” means a written request or order signed in the name of the Issuers by any Officer of each of the Issuers.

“Company Parties” means, collectively, Neiman Marcus Group, Inc. and each of its Subsidiaries that has executed and delivered the Transaction Support Agreement.

“Consignment Inventory” means any Inventory (as defined in the UCC) held by a grantor on a consignment basis, which Inventory is not owned by a grantor (and
“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the Issuer, acting in good faith, identifies such proceeds as such in writing to the Notes Collateral Agent.

“Consolidated EBITDA” means, with respect to the Issuer for any period, the Consolidated Net Income of the Issuer for such period:

1. increased, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:
   a. provision for Tax Distributions based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes, paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of Tax Distributions actually made to the holders of Equity Interests of the Issuer or any Parent Entity in respect of such period (in each case, to the extent attributable to the operations of the Issuer and its Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Issuer; plus
   b. Consolidated Interest Expense; plus
   c. cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Issuer or any Restricted Subsidiary; plus
   d. all depreciation and amortization charges and expenses; plus
   e. all:
      i. losses, charges, fees, costs and expenses relating to the Transactions;
      ii. transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Indenture, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the Incurrence, modification or repayment of Indebtedness permitted to be Incurred under this Indenture (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions; and
expenses for such period; plus

(f) any expense or deduction attributable to minority equity interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Issuer; plus

(g) the amount of indemnities, fees, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 3.8; plus

(h) earn-out obligations incurred in connection with any acquisition of any business, assets or Person in accordance with the terms of this Indenture or other Investment; plus

(i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of the Issuer and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of the Issuer or any Permitted Parent in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; plus

(j) all non-cash losses, charges and expenses, including any write-offs or write-downs; provided that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period:

(i) the Issuer may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated; and

(ii) to the extent the Issuer does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; plus

(k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; and

(2) decreased, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Issue Date). For the avoidance of doubt, amortization of tenant and developer allowances will not be deducted pursuant to this clause (2).
“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

1. the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capitalized Lease Obligations and net payments and receipts (if any) pursuant to Hedging Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, any expenses resulting from the discounting of the 2028 Debentures as a result of the purchase accounting treatment of the Original Transactions (as defined in the Extended Term Loan Agreement) and the Transactions and all discounts, commissions, fees and other charges associated with any receivables facility), plus

2. consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued, plus

3. any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been guaranteed by the referent Person, less

4. interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Issue Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Issue Date by 365 and then dividing such product by the number of days from and including the Issue Date to and including the last day of such period.

For purposes of this definition, interest on Capitalized Lease Obligations will be deemed to accrue at the interest rate reasonably determined by the Issuer to be the rate of interest implicit in such Capitalized Lease Obligations in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP and before any deduction for preferred stock dividends; provided that:

1. all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, consolidation, integration or other similar charges and expenses, contract termination costs, excess pension charges, system establishment charges, start-up
or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments (including any transition-related expenses incurred before, on or after the Issue Date), will be excluded;

(2) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded;

(3) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by an Officer of the Issuer) will be excluded;

(4) all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded;

(5) all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded;

(6) (a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof;

(7) the cumulative effect of a change in accounting principles during such period will be excluded;

(8) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to any acquisition consummated before or after the Issue Date, and the amortization, write-down or write-off of any amounts thereof, net of Taxes, will be excluded;

(9) all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded;

(10) all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit

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plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

(11) any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

(12) accruals and reserves for liabilities or expenses that are established or adjusted as a result of the Transactions within 12 months after the Issue Date will be excluded;

(13) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

(14) any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(15) (a) the non-cash portion of “straight-line” rent expense will be excluded and (b) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(16) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount:

(a) has not been denied by the applicable carrier in writing; and

(b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed with such 365-day period);

provided that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

(17) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);
(a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities in an aggregate amount not to exceed $20.0 million for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded; and

(b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded; and

(19) non-cash charges for deferred tax asset valuation allowances will be excluded.

“Consolidated Total Assets” means, as of any date, the total assets of the Issuer and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“continuing” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“Contractual Performance Amount” means, with respect to an Event of Default, an amount equal to the redemption price of all then outstanding Notes, calculated in accordance with Paragraph 7 of the form of Note set forth in Exhibit A hereto (including accrued and unpaid interest thereon), as if the date such Event of Default occurred was a redemption date for purposes thereof.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Notes Collateral Agent (or other bailee for perfection pursuant to the Intercreditor Agreements) with control of any such accounts, in form and substance reasonably satisfactory to the Notes Collateral Agent, and such other parties thereto in accordance with the Intercreditor Agreements.

“Corporate Co-Issuer” has the meaning set forth in the preamble hereto.

“Corporate Trust Office” will be at the address of the Trustee specified in Section 13.1 or such other address as to which the Trustee may give notice to the Issuers or Holders pursuant to the procedures set forth in Section 13.1.

“Credit Agreement” means:

(1) the Extended Term Loan Agreement; and

(2) whether or not the Extended Term Loan Agreement remains outstanding, if designated by the Issuer in writing to the Trustee to be included in the definition of “Credit Agreement,” one or more:
(a) debt facilities, indentures or commercial paper facilities providing for revolving credit loans, term loans, notes, debentures, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit;

(b) debt securities, notes, mortgages, guarantees, collateral documents, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers’ acceptances); or

(c) instruments or agreements evidencing any other Indebtedness, including Capitalized Lease Obligations, in each case, with the same or different borrowers or issuers,

in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased (provided that such increase in borrowings is permitted under this Indenture), replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors.

“Credit Support” means, with respect to any Person and any Indebtedness or other Obligations, (i) such Person’s guarantee of or becoming a direct or indirect obligor with respect to, such Indebtedness or other Obligations, (ii) such Person’s pledge or other hypothecation of its assets to directly or indirectly secure or provide recourse with respect to such Indebtedness or other Obligations, (iii) such Person becoming directly or indirectly liable for such Indebtedness or other Obligations or (iv) such Person providing any other form of direct or indirect credit support for such Indebtedness or other Obligations (including by means of a “keepwell” or other similar commitment).

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Customary Intercreditor Agreement” means (a) to the extent executed in connection with the incurrence of Pari Passu Lien Indebtedness, a customary intercreditor agreement in form and substance reasonably acceptable to the Notes Collateral Agent and the Issuer, which agreement shall provide that the Liens on the Collateral securing such Pari Passu Lien Indebtedness shall be Pari Passu Liens, and (b) to the extent executed in connection with the incurrence of Junior Lien Indebtedness, a customary intercreditor agreement in form and substance reasonably acceptable to the Notes Collateral Agent and the Issuer, which agreement shall provide that the Liens on the Collateral securing such Junior Lien Indebtedness shall be Junior Liens.

“Default” means any event which, but for the giving of notice, lapse of time or both, would be, an Event of Default.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.6, substantially in the form of Exhibit A hereto except that such Note will not bear the Global Note Legend and will not have the “Schedule of Exchanges of Interests in the Global Note” attached thereto.
“Depositary” means, with respect to the Global Notes, The Depository Trust Company and any successor thereto.

“Designated Non-cash Consideration” means the Fair Market Value of non-cash consideration received by the Issuer or any Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate of the Issuer, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of the Issuer or any Parent Entity, as applicable (other than Excluded Equity), that is issued after the Issue Date for cash and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate of the Issuer, on the issuance date thereof, the cash proceeds of which are contributed to the capital of the Issuer (if issued by Parent or any other Parent Entity).

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is puttable, redeemable or exchangeable), in each case, at the option of the holder thereof or upon the happening of any event:

1. matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; provided that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Equity Interests than the asset sale and change of control provisions applicable to the Notes and any purchase requirement triggered thereby may not become operative until compliance with the asset sale and change of control provisions applicable to the Notes (including the purchase of any Notes tendered pursuant thereto)), or

2. is convertible or exchangeable for Indebtedness or Disqualified Stock, or

3. is redeemable at the option of the holder thereof, in whole or in part,

in each case prior to the date that is 91 days after the earlier of the maturity date of the Notes and the date the Notes are no longer outstanding; provided that only the portion of Equity Interests that so mature or are mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; and provided, further, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and provided, further, that any class of Equity Interests of such Person that by its terms...
authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“Domestic Subsidiary” means any Restricted Subsidiary that is not a Foreign Subsidiary.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear system.

“Event of Default” has the meaning ascribed in Section 6.1.


“Exchange Offers” means the offers to exchange the Third Lien Notes for Unsecured Notes as described in the Exchange Offering Memorandum.

“Excluded Assets” means:

(a) all Excluded Equity Interests;

(b) all leasehold Real Property interests that do not constitute the Issuer’s or its Subsidiaries’ interests in full line stores, Bergdorf Goodman store real properties or warehouse or distributions centers;

(c) all fee simple Real Property interests acquired after the Issue Date with a fair market value (as determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement)) of less than or equal to $2.5 million on a per property basis;

(d) assets of any Foreign Subsidiary that is existing as of the Issue Date to the extent such Foreign Subsidiary is not required to become a Subsidiary Guarantor;

(e) assets of any Foreign Subsidiaries or FSHCO, in each case, that is created or acquired after the Issue Date (“Exempted Future Foreign Assets”) with respect to which the grant of Liens thereon securing the Notes Obligations, the Extended Term...
Loan Obligations or the Non-Participating Term Loan Exchange Obligations would result in materially adverse tax consequences or materially adverse regulatory consequences (in each case, “Material Adverse Consequences”), in each case, as reasonably determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement) (it being understood for purposes of the foregoing that any asset may be deemed an Exempted Future Foreign Asset due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019);

(f) any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;

(g) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;

(h) any Excluded Account (as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(i) vehicles and any other assets subject to certificates of title;

(j) any letter of credit rights to the extent not perfected as supporting obligations by the filing of a UCC financing statement on the primary Collateral;

(k) any Issuer’s or Subsidiary Guarantor’s right, title or interest in any lease, license, contract or agreement to which such entity is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than the Issuer or any Subsidiary), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity);

(l) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained);

(m) any Commercial Tort Claim (as defined in the UCC) with an asserted or nominal value not in excess of $5.0 million;
(n) any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Issuer and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement);

(o) (a) any assets and proceeds thereof subject to a Lien permitted under clause (3) of the definition of “Permitted Liens” to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Notes Collateral Agent or (b) any assets subject to a Lien permitted by clause (7) of the definition of “Permitted Liens” so long as the documents providing for such Lien do not permit such assets to be pledged to the Notes Collateral Agent;

(p) the Specified Credit Card Receivables, any Specified Credit Card Payments and any Specified In-Store Credit Card Payments (in each case, as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(q) the Capital One Credit Card Receivables Accounts (as defined on the Issue Date in the Extended Term Loan Collateral Agreement);

(r) any Consignment Inventory and any Consignment Proceeds; or

(s) any Leased-Department Inventory and any Leased-Department Proceeds (in each case, as defined on the Issue Date in the Extended Term Loan Collateral Agreement).

In the event any asset described above (1) is an asset described in clauses (a) through (g) or clauses (i) through (n) above and is pledged for the benefit of creditors under any Obligations (other than the Notes Obligations), or (2) is an asset described in clause (h) or clauses (p) through (s) above and is pledged for the benefit of any Obligation listed in the Required Collateral Lien Priority table (other than the Notes Obligations), in each case of clause (1) and (2), such asset shall be pledged as After-Pledged Property with respect to the Notes with the Required Collateral Lien Priority; provided, however, in the case of clause (1), any such asset pledged for the benefit of a third-party creditor under any Obligations (other than an Obligation listed in the Required Collateral Lien Priority table) may be pledged on a first-priority basis to such third-party creditor, followed by subordinated Liens in favor of the Notes Obligations otherwise in accordance with the Required Collateral Lien Priority, but reducing the priority of each Lien described in such Required Collateral Lien Priority table by one level of Lien priority and giving effect to the first-priority Liens of such third-party creditor on such subject asset).

An Officer of the Issuer shall evaluate whether the Material Adverse Consequences still apply to any Exempted Future Foreign Assets pursuant to clause (e) above on no less than a quarterly basis. An Exempted Future Foreign Asset shall no longer be an Excluded Asset under clause (e) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences
“Excluded Equity” means:

(a) Disqualified Stock;

(b) any Equity Interests issued or sold to a Restricted Subsidiary or any employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries (to the extent such employee stock ownership plan or trust has been funded by the Issuers or any Restricted Subsidiaries); and

(c) any Equity Interest that has already been used or designated (x) as (or the proceeds of which have been used or designated as) Designated Preferred Stock, or (y) to increase the amount available under clause (15) of the definition of “Permitted Investments.”

“Excluded Equity Interests” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

(a) interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of a pledge to secure the Notes Obligations);

(b) Equity Interests in not-for-profit subsidiaries;

(c) to the extent applicable law requires that a Subsidiary of such pledging Issuer or Subsidiary Guarantor issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by Persons other than the such Issuer or Subsidiary Guarantor, such qualifying shares, nominee shares or similar shares held by Persons other than the Issuer or Subsidiary Guarantor, as applicable;

(d) any Equity Interests (including Equity Interests in captive insurance subsidiaries) if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); provided that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or

(e) any Equity Interests of Foreign Subsidiaries or FSHCOs ("Excluded Foreign Equity Interests") in each case with respect to which the grant of Liens thereon securing the Notes Obligations, the Extended Term Loan Obligations or the Non-Participating Term Loan Exchange Obligations would result in Material Adverse
Consequences, in each case, as reasonably determined by an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent (in its capacity as collateral agent under the Extended Term Loan Agreement) (it being understood for purposes of the foregoing that any Equity Interests may be deemed to be Excluded Foreign Equity Interests due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019).

An Officer of the Issuer shall re-evaluate whether the Material Adverse Consequences still apply to any Excluded Foreign Equity Interests pursuant to clause (e) above on no less than a quarterly basis. An Excluded Foreign Equity Interest shall no longer be an Excluded Foreign Equity Interest under clause (e) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences no longer apply to such Excluded Foreign Equity Interest and (B) the date a Lien on such Excluded Foreign Equity Interest is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors.

“Excluded Subsidiary” means any:

(a) (i) Unrestricted Subsidiary, (ii) captive insurance Subsidiary, and (iii) not-for-profit Subsidiary;

(b) Subsidiary that is not a Wholly Owned Subsidiary of the Issuer, only to the extent such Subsidiary was created, formed or acquired in connection with a Permitted Acquisition;

(c) Foreign Subsidiary or FSHCO acquired or created after the Issue Date and with respect to which (i) an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent have determined that making such Subsidiary a Subsidiary Guarantor is not practicable (including as a result of local law in the jurisdiction in which such Subsidiary is organized or other applicable law, rule or regulation), or (ii) an Officer of the Issuer reasonably and in good faith and the Extended Term Loan Agent determine that the burden or cost (including as a result of any adverse changes in applicable tax laws) of providing a guarantee from such Subsidiary outweigh the benefit of the guaranty afforded thereby (it being understood for purposes of each of the foregoing that any such Subsidiary Guarantee may be released due to material adverse U.S. federal income tax consequences only if such consequences arise as a result of a change in law occurring after the Issue Date, including, for the avoidance of doubt, a change to the Final Regulations under section 956 of the Code, published on May 23, 2019); and

(d) Subsidiary if acting as a Subsidiary Guarantor, or its Guarantee, would (i) be prohibited by law or regulation or (ii) require a governmental or third-party consent, approval, license or authorization;
in each case, unless the Issuer determines in its sole discretion, upon written notice to the Notes Collateral Agent, that any of the foregoing Persons should not be an Excluded Subsidiary until the date on which the Issuer has informed the Notes Collateral Agent that it elects to have such Person be an Excluded Subsidiary; provided that the Subsidiary Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

With respect to any Foreign Subsidiary or FSHCO that is an Excluded Subsidiary under clause (c) above, an Officer of the Issuer shall re-evaluate whether the conditions described in sub clause (i) or (ii) that caused such Foreign Subsidiary or FSHCO to be an Excluded Subsidiary under clause (c) above (the "Exclusion Conditions") still are applicable to such Foreign Subsidiary or FSHCO no less than quarterly. A Foreign Subsidiary or FSHCO shall no longer be an Excluded Subsidiary under clause (c) above upon the earliest to occur of (A) the tenth Business Day after an Officer determines that the Exclusion Conditions no longer apply to such Foreign Subsidiary or FSHCO, (B) the date a Lien on such Foreign Subsidiary or FSHCO is granted to secure any other Obligations of the Issuers or the Subsidiary Guarantors and (C) the date such Foreign Subsidiary or FSHCO provides Credit Support for any Indebtedness of the Issuers or any Subsidiary Guarantors.

“Extended Post-Closing Period” means the Initial Post-Closing Period automatically extended by an additional 30 days.

“Extended Term Loan Agent” means Credit Suisse AG, as Administrative Agent under the Extended Term Loan Agreement, together with its successors or assigns, and any subsequent administrative agent under the Extended Term Loan Agreement.

“Extended Term Loan Agreement” means the amended or amended and restated credit agreement to be entered into on or around the Issue Date (the “Issue Date Extended Term Loan Agreement”) among the Issuer, the LLC Co-Issuer, the New Co-Issuer Subsidiary, the financial institutions named therein and the Extended Term Loan Agent, amending or amending and restating in its entirety the Pre-Transactions Term Loan Agreement, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, in each case as amended, restated, supplemented, waived, renewed or otherwise modified from time to time, and (if designated by the Issuer) as replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including (if designated by the Issuer) any agreement or indenture or commercial paper facilities with banks or other institutional lenders or investors extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder permitted under Section 3.3 or altering the maturity thereof or adding Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders. Notwithstanding the foregoing, in order for any instrument (other than the Issue Date Extended Term Loan Agreement, as amended, supplemented, modified or
waived from time to time) to be an “Extended Term Loan Agreement” under this Indenture, the Issuer shall designate such instrument in writing to the Trustee as an “Extended Term Loan Agreement.”

“Extended Term Loan Liens” means Liens on the Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the Extended Term Loan Obligations.

“Extended Term Loan Obligations” means the Indebtedness and related Obligations under the Extended Term Loan Agreement and the Obligations under other Indebtedness Documents related to the Extended Term Loans (but not including, for the avoidance of doubt, Non-Participating Term Loan Obligations and Non-Participating Term Loan Exchange Obligations).

“Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Issuer formed to hold the Extended Term Loan Priority PropCo Assets.

“Extended Term Loan PropCo Equity Interests” means the Equity Interests of Extended Term Loan PropCo.

“Extended Term Loans” means the term loans extended by the lenders under the Extended Term Loan Agreement beyond the maturity date contemplated by the Pre-Transactions Term Loan Agreement (but not including, for the avoidance of doubt, Non-Participating Term Loans and Non-Participating Term Loan Exchange Indebtedness).

“Fair Market Value” means, with respect to any asset or property, the price that could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction (as determined in good faith by the senior management or the Board of Directors of the Issuer, whose determination will be conclusive for all purposes under this Indenture and the Notes).

“First Lien” means, with respect to any Collateral, the Lien on such Collateral securing the Extended Term Loan Obligations as of the Issue Date and any Lien on such Collateral that has the same priority as that of the Lien on such Collateral securing the Extended Term Loan Obligations as of the Issue Date, including any Lien thereon securing the 2028 Debentures Obligations to the extent such Lien is pari passu with the Lien thereon securing the Extended Term Loan Obligations, as applicable.

“Foreign Subsidiary” means a Restricted Subsidiary not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia.

“FSHCO” means any Domestic Subsidiary substantially all the assets of which are Equity Interests or Indebtedness of one or more Foreign Subsidiaries that are treated as controlled foreign corporations within the meaning of Section 957 of the Code.
“GAAP” means, generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies); provided that the Issuer may at any time elect by written notice to the Trustee to fix GAAP as in effect on the date specified in such notice and, upon any such notice, references herein to GAAP will thereafter be construed to mean for all purposes of this Indenture (other than for financial reporting purposes):

(a) for periods beginning on and after the date specified in such notice, GAAP as in effect on the date specified in such notice; and

(b) for prior periods, GAAP as in effect from time to time during such periods. Notwithstanding anything to the contrary above or in the definition of Capitalized Lease Obligations, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Issue Date, only those leases that would result or would have resulted in Capitalized Lease Obligations on the Issue Date (assuming for purposes hereof that they were in existence on the Issue date) will be considered capital leases and all calculations under this Indenture will be made in accordance therewith.

“Global Note Legend” means the legend set forth in Section 2.1(c), which is required to be placed on all Global Notes issued under this Indenture.

“Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto issued in accordance with Section 2.1 or Section 2.6.

“Governmental Authority” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“guarantee” means, as to any Person, a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means any guarantee of the Obligations of the Issuers under this Indenture and the Notes in accordance with the provisions of this Indenture.

“Hedge Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; provided
that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Issuer or any of its Subsidiaries will be a Hedge Agreement.

“Holder” means the Person in whose name a Note is registered on the Registrar’s books; provided that it may include the “beneficial owner” of an interest in a Note.

“Hudson Yards Indebtedness” means the deferred financing obligations reflected on the balance sheet of the Issuer related to its ownership for accounting purposes of a portion of the Issuer’s retail property at Hudson Yards.

“IAI Global Note” means a global note substantially in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes resold to IAI investors.

“IAI investors” means institutional “accredited investors” (as defined in Rules 501(a)(1), (2), (3) or (7) under the Securities Act) who are not QIBs.

“Immaterial Subsidiary” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter for which Required Financial Statements have been delivered, have assets with a value in excess of 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% of total revenues of the Issuer and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Issuer for which Required Financial Statements have been delivered, did not have assets with a value in excess of 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Issuer and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“Incur” means, with respect to any Indebtedness, Capital Stock or Lien, to issue, assume, guarantee, incur or otherwise become liable for, or subject to, such Indebtedness, Capital Stock or Lien, as applicable; provided that any Indebtedness, Capital Stock or Lien of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Person at the time it becomes a Subsidiary, and “Incurrence” shall have a corresponding meaning.

“Indebtedness” means, with respect to any Person, without duplication:

1. all obligations of such Person for borrowed money;
2. all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;

all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;

all Capitalized Lease Obligations of such Person;

all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;

the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;

the principal component of all obligations of such Person in respect of bankers' acceptances;

all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and

the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

(a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;

(b) prepaid or deferred revenue arising in the ordinary course of business;

(c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or

(d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

"Indebtedness Documents" means, with respect to any Indebtedness, all agreements and instruments governing such Indebtedness, all evidences of such
“Indebtedness” or “Credit Support thereof, all security documents for such Indebtedness (and documents and filings related thereto) and any intercreditor or similar agreements related thereto.

“Indenture” has the meaning set forth in the preamble hereto.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another Person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates own at least 10% of the outstanding Equity Interests of such Person or entity (measured by voting power, economic value or number).

“Indirect Participant” means a Person who holds a beneficial interest in a Global Note through a Participant.

“Initial Notes” means the $497,849,150 aggregate principal amount of the 8.750% Third Lien Senior Secured Notes due 2024 of the Issuers issued under this Indenture on the Issue Date.

“Initial Post-Closing Period” means the period which ends 90 days after the Issue Date.

“Intercreditor Agreements” means the ABL Intercreditor Agreement, the Junior Lien Intercreditor Agreement, any other Customary Intercreditor Agreement, the Extended Term Loan Subordination Agreement and the Notes PropCo Subordination Agreement.

“Interest Coverage Ratio” means, as of any date, the ratio of (1) the Consolidated EBITDA of the Issuer for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Issuer for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Issuer or Preferred Stock of the Issuer or any Restricted Subsidiary made during such period; provided that, in the event that the Issuer classifies Indebtedness Incurred on the date of determination as, in part, Ratio Debt and, in part, Permitted Debt (other than Permitted Refinancing Indebtedness), any calculation of Consolidated Interest Expense pursuant to this definition will not include any such Permitted Debt.

“Interest Payment Date” means, in the case of the Initial Notes, April 15 and October 15 of each year, commencing on October 15, 2019 and, in the case of any Additional Notes, such interest payment dates as may be designated by the Issuer in accordance with the provisions of Section 2.2 and, in each case, ending at the Stated Maturity of the Notes.
“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency.

“Investment Grade Securities” means:

1. securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
2. securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Issuer and its Subsidiaries;
3. corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
4. investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees of Indebtedness), advances or capital contributions (excluding accounts receivable, trade credit and advances or other payments made to customers, dealers, suppliers and distributors and payroll, commission, travel and similar advances to officers, directors, managers, employees, consultants and independent contractors made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Equity Interests of any Restricted Subsidiary, or any Restricted Subsidiary issues any Equity Interests, in either case, such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Equity Interests of and all other Investments in such Restricted Subsidiary retained. In no event will a guarantee of an operating lease of the Issuer or any Restricted Subsidiary be deemed an Investment.

The amount of any Investment outstanding at any time (including for purposes of calculating the amount of any Investment outstanding at any time under any provision of Section 3.4 and for all other purposes of Section 3.4) will be the original cost of such Investment (determined, in the case of any Investment made with assets of the Issuer or any Restricted Subsidiary, based on the Fair Market Value of the assets invested), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Issuer or a Restricted Subsidiary in
respect of such Investment, and in the case of an Investment in any Person, will be net of any Investment by such Person in the Issuer or any Restricted Subsidiary.

“Issue Date” means June 7, 2019.

“Issue Date Extended Term Loan Amount” means the aggregate principal amount of Extended Term Loans outstanding immediately after the completion of the Transactions on the Issue Date.

“Issue Date Remaining Unsecured Notes Amount” means the aggregate principal amount of the Remaining Unsecured Notes outstanding immediately after the completion of the Transactions on as of the Issue Date.

“Junior Lien Indebtedness” means Indebtedness that is secured only by Junior Liens on the Collateral.

“Junior Lien Intercreditor Agreement” means the Junior Lien Intercreditor Agreement, dated as of the Issue Date, among the Notes Collateral Agent, on behalf of the holders of Third Lien Notes, and the collateral agents holding the First Liens and the Second Liens, among others, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“Junior Lien Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents governing Junior Lien Indebtedness.

“Junior Liens” means Liens on the Collateral, which Liens on any item of Collateral rank junior to the Notes Liens on such item of Collateral pursuant to a Customary Intercreditor Agreement.

“Lien” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) 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; provided that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

“Liquidated Damages Amount” has the meaning ascribed in Section 6.2.

“Management Agreements” means each of (i) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager III, LLC, a Delaware limited liability company, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., (ii) that certain Management Services Agreement, dated as of October 25, 2013, by and among ACOF Operating Manager IV, LLC, a Delaware limited liability company, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., and (iii) that certain Management Services Agreement, dated as of October 25, 2013, by and among CPPIB Equity Investments Inc., a corporation incorporated under the Canada Business Corporations Act, The Neiman Marcus Group LLC and Neiman Marcus Group, Inc., in each case, as in effect on the Issue Date, as
amended, amended and restated, supplemented or otherwise modified in a manner not adverse to the Holders in any material respect.

“Management Group” means the group consisting of the directors, executive officers and other management personnel of the NM Group on the Issue Date or who became directors, officers or management personnel of NM Group or any direct or indirect parent of NM Group, as applicable, and its Subsidiaries following the Issue Date (other than in connection with a transaction that would otherwise be a Change of Control if such persons were not included in the definition of “Permitted Holders”), or (in each case) family members thereof, or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date Beneficially Own or have the right to acquire, directly or indirectly, Equity Interests of the Issuer or any Permitted Parent.

“Mariposa Intermediate” means Mariposa Intermediate Holdings LLC, a Delaware limited liability company, and its successors.

“Maturity Date” means October 25, 2024.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“MYT Account” means a segregated account of MYT Parent for the benefit of the trustee for the Second Lien Notes on behalf of the holders of the Second Lien Notes, pledged to secure the Second Lien Notes. Upon the maturity of the Second Lien Notes or their earlier retirement, replacement or redemption in full, the proceeds held in the MYT Account shall be released to the MYT Guarantor Entities or their assignees for application in accordance with the provisions of the MYT Waterfall.

“MYT Alternate Security” means any security that is acceptable in the sole discretion of holders of at least 66-2/3% of the aggregate principal amount of the outstanding Second Lien Notes.

“MYT Asset Sale” means any direct or indirect sale, disposition, monetization or other transfer of any assets or property of the MYT Entities (whether directly or indirectly or synthetically, including through derivative transactions) to an Independent Third Party.

Notwithstanding the preceding, none of the following items will be deemed to be a MYT Asset Sale:

1. a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the MYT Entities (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);
dispositions of assets or property with an aggregate Fair Market Value in any calendar year of less than $5.0 million;

any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Subsidiary of the MYT Holdco to the MYT Holdco or by the MYT Holdco or a Subsidiary of the MYT Holdco to another Subsidiary of MYT Holdco;

the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business, liquidation of inventory in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the MYT Entities, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes; and

dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events.

“MYT Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.

“MYT Completed Disposition” means any transaction or series of transactions (a) that results in the sale or transfer of 100% of the operating business of the MYT Entities, in each case, to an Independent Third Party, (b) the proceeds of which are applied in accordance with the MYT Waterfall and (c) after giving effect to which Neiman Marcus Group, Inc., MYT Parent and the Sponsors (including any portfolio company thereof) retain no direct or indirect interest (economic or otherwise) in any of the MYT Operating Entities or assets (or the operating business of any of the MYT Entities immediately prior to such transaction), whether in the form of debt, equity, warrants, exchangeable or convertible securities, derivatives, phantom units, tracking stock, earn-outs, purchase price adjustments, other contractual rights or other instruments.

“MYT Covenants” means the covenants contained in Section 3.03 and 3.04 of the MYT Third Lien Notes Pledge Agreement.

“MYT Deposit Event” means (i) the irrevocable deposit of net cash proceeds of MYT Secondary Sales or distributions in respect of the equity of MYT Holdco in the MYT Account in an aggregate amount that is not less than (x) $200.0
million less (y) the aggregate amount of Qualified LCs that have been provided and (ii) the provision of such Qualified LCs.

“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement, dated the Issue Date, among MYT Parent, the MYT Guarantor Entities and Ankura Trust Company, LLC as trustee and Second Lien Notes Collateral Agent, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“MYT Guarantor Entities” means, collectively, and together with their respective successors, MYT Holdco, MYT Intermediate Holdco, Mariposa Luxembourg I S. à r.l., Mariposa Luxembourg II S. à r.l. and New MYT Dutch HoldCo (and each other Person who is required to become a MYT Guarantor Entity pursuant to the terms of the MYT Guarantee and Collateral Agreement).

“MYT Holdco” means MYT Holding Co., a direct Wholly Owned Subsidiary of MYT Parent, a newly formed Delaware corporation, together with its successors.

“MYT Holdco Common Equity” means the common Equity Interests of the MYT Holdco.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.

“MYT Limited Guarantee” means the guarantee provided by each of the MYT Guarantor Entities pursuant to the MYT Guarantee and Collateral Agreement.

“MYT Limited Guarantee Collateral” means the “Collateral,” as defined in the MYT Guarantee and Collateral Agreement.

“MYT Operating Entities” means (i) NMG Germany GmbH, (ii) mytheresa.com GmbH (Germany), (iii) mytheresa.com Service GmbH (Germany), (iv) Theresa Warenvertrieb GmbH (Germany) and (v) the Subsidiaries of any of the foregoing described in clauses (i) through (iv).

“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.

“MYT Secondary Sale” means (i) the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in the MYT Holdco) of equity interests of the MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party, other than a primary sale of equity interests for cash whose net cash proceeds are contributed to or retained by the MYT Entities or (ii) any MYT Asset Sale other than a Qualified MYT Asset Sale.

“MYT Third Lien Notes Pledge Agreement” means the Pledge Agreement dated as of the Issue Date among MYT Parent, MYT Holdco and Wilmington Trust, National Association, on behalf of the holders of the Third Lien Notes.

“MYT Waterfall” means Sections 3.01 and 3.02 of the MYT Third Lien Notes Pledge Agreement.

“MyTheresa Designation” means, collectively, all designations by any of the Company Parties or any of their related parties prior to the execution date of the Transaction Support Agreement of any of the MYT Entities as “unrestricted” subsidiaries under the indentures governing the Unsecured Notes, the Pre-Transactions Term Loan Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Company Party or any of its related parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Company Party (including but not limited to NMG International LLC, a Delaware limited liability company) prior to the execution date of the Transaction Support Agreement to or for the benefit of any other Company Parties of (1) any Equity Interests in the MYT Entities, (2) any indebtedness owed by the MYT Entities to any Company Party (including but not limited to NMG International LLC), and (3) any and all other Claims or Equity Interests of any Company Party (including but not limited to NMG International LLC) in the MYT Entities, and all acts or omissions taken by any Company Party or any of its related parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1) to (3) above.
"Net Cash Proceeds" means the aggregate cash proceeds (using the Fair Market Value of any Cash Equivalents) received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses incurred as a result thereof, Taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to Section 3.7(b) or (c), as applicable) to be paid as a result of such transaction, any costs associated with unwinding any related Hedge Agreements in connection with such transaction and any deduction of appropriate amounts to be provided by the Issuer or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"New MYT Dutch HoldCo" means a Dutch B.V. to be formed after the Issue Date, wholly-owned subsidiary of MYT Intermediate Holding Co. and direct parent of NMG Germany GmbH as a result of a merger by absorption of Mariposa Luxembourg II S.à r.l. into Mariposa Luxembourg I S.à r.l. and a subsequent merger by absorption of Mariposa Luxembourg I S.à r.l. into such newly formed Dutch B.V.

"NM Group" means, collectively, Neiman Marcus Group, Inc. and its Subsidiaries.

"Non-Mortgageable Leases" means all leasehold Real Properties subject to provisions restricting the mortgaging, assignment or other creation of a security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by an Officer of the Issuer) to be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest; provided that no leasehold Real Property shall be a Non-Mortgageable Lease if it is not treated as a Non-Mortgageable Lease.
under any of the Indebtedness Documents governing any Indebtedness of the Issuer or any Restricted Subsidiary.

“Non-Participating Term Loan Collateral” means the Original Term Loan Priority Collateral and the ABL Priority Collateral.

“Non-Participating Term Loan Exchange Indebtedness” means Indebtedness incurred by the Issuers, or by any of them or any Subsidiary Guarantor, under the Extended Term Loan Agreement or otherwise to Refinance any of the Non-Participating Term Loans, in an aggregate principal amount not exceeding 100% of the aggregate principal amount of the Non-Participating Term Loans actually Refinanced by, such Indebtedness and guarantees of such Indebtedness by the Issuers and/or Subsidiary Guarantors; so long as any such Indebtedness (i) otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Non-Participating Term Loans (except that such Indebtedness and guarantees thereof may be unsecured, secured with Extended Term Loan Liens or secured with Liens junior to the Extended Term Loan Liens any or all of on the Collateral and guaranteed by any Person that guarantees the Extended Term Loans, including the Notes PropCo and the Extended Term Loan PropCo), (ii) has no amortization, (iii) is not subject to any “most-favored nation” provision, (iv) has a maturity date no earlier than the maturity date of the Extended Term Loans on the Issue Date, (v) has a cash interest rate not exceeding that of the Extended Term Loans on the Issue Date and (vi) is subordinated in right of payment or “waterfall” priority to the Extended Term Loan Obligations.

“Non-Participating Term Loan Exchange Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to the Non-Participating Term Loan Exchange Indebtedness.

“Non-Participating Term Loan Liens” means Liens on the Non-Participating Term Loan Collateral, securing the Non-Participating Term Loan Obligations, which Liens have the Required Collateral Lien Priority for Liens securing the Non-Participating Term Loan Obligations.

“Non-Participating Term Loans” means term loans outstanding under the Pre-Transactions Term Loan Agreement on the Issue Date that the lenders decline to exchange into Extended Term Loans (but not including, for the avoidance of doubt, any Non-Participating Term Loan Exchange Indebtedness).

“Non-Participating Term Loan Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to the Non-Participating Term Loans.

“Non-U.S. Person” means a Person who is not a U.S. Person.

“Note Party” means each Issuer and each Subsidiary Guarantor.

“Notes” means the Initial Notes and the Additional Notes, all of which will be treated as a single class for all purposes, except as otherwise provided, and unless
the context otherwise requires, all references to the Notes will include the Initial Notes and any Additional Notes.

“Notes Collateral Agent” means Wilmington Trust, National Association, in its capacity as such, until a successor replaces it and, thereafter, means the successor.

“Notes Collateral Agreement” means that certain Third Lien Notes Collateral Agreement, dated as of the Issue Date, by and among the Issuers, the Subsidiary Guarantors, the Notes Collateral Agent, the Trustee and the trustee under the 8.000% Third Lien Indenture, as such agreement may be amended, modified, supplemented or restated from time to time in accordance with its terms.

“Notes Custodian” means the custodian with respect to the Global Note (as appointed by the Depositary), or any successor Person thereto and will initially be the Trustee.

“Notes Documents” means this Indenture, the Notes, the Subsidiary Guarantees, the Security Documents, the Intercreditor Agreements and any other Indebtedness Documents related thereto.

“Notes Liens” means Liens on the Collateral securing the Notes Obligations, which Liens have the Required Collateral Lien Priority for Liens securing the Third Lien Notes Obligations.

“Notes Obligations” means the Indebtedness and the related Obligations of the Issuers and the Subsidiary Guarantors under the Notes Documents.

“Notes Priority Real Estate Collateral” consists of the assets known as (1) Tysons Galleria (Store 1023) located at 2255 International Drive, McLean, Virginia 22102, (2) Topanga Plaza (Store 1105) located at 6550 Topanga Canyon Boulevard, Woodland Hills, California 91303, (3) Walnut Creek (Store 1110) located at 1275 Broadway Plaza, Walnut Creek, California 94596, (4) Fort Lauderdale (Store 1018) located at 2442 East Sunrise Boulevard, Fort Lauderdale, Florida 33304, (5) Troy (Store 1033) located at 2705 West Big Beaver Road, Troy, Michigan 48084, (6) Coral Gables (Store 1034) located at 390 San Lorenzo Avenue, Coral Gables, Florida 33146, (7) Charlotte (Store 1102) located at 4400 Sharon Road, Charlotte, North Carolina 28211 and (8) Austin (Store 1101) located at 3400 Palm Way, Austin, Texas 78758, each of which is not collateral for the Pre-Transactions Term Loan Obligations as of the Issue Date.

“Notes Priority Real Estate Recovery” means the occurrence of either (a) the exercise and consummation of the Call Right or (b) the recovery by the holders of the Third Lien Obligations and the Second Lien Obligations of $200.0 million, in the aggregate, on the realization of (x) Liens securing such Third Lien Obligations and Second Lien Obligations on (i) the Notes Priority Real Estate Collateral and (ii) the Notes PropCo Equity Interests and (y) guarantees of the Second Lien Obligations and Third Lien Obligations by Notes PropCo (including the Subsidiary Guarantee by Notes PropCo).
“Notes PropCo” means NMG Notes PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Issuer formed to hold the Notes Priority PropCo Assets.

“Notes PropCo Equity Interests” means the Equity Interests of Notes PropCo.

“Obligations” means any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

“Officer” means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary (or any person serving the equivalent function of any of the foregoing) of such Person (or of the general partner of such Person) or any individual designated as an “Officer” for purposes of this Indenture by the Board of Directors of such Person (or the Board of Directors of the general partner of such Person).

“Officer’s Certificate” means a certificate signed on behalf of the Issuer by an Officer of the Issuer that meets the requirements set forth in this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuers.

“Original Term Loan Priority Collateral” means assets of the Issuers and the Subsidiary Guarantors constituting collateral for the Obligations under the Pre-Transactions Term Loan Agreement immediately prior to the Issue Date, which assets include, among other things, seven owned real properties and substantially all personal property (including substantially all intellectual property) of the Issuers and the Subsidiary Guarantors other than the ABL Priority Collateral and Excluded Assets. The Original Term Loan Priority Collateral does not include the Extended Term Loan Priority Real Estate Collateral, the Extended Term Loan PropCo Equity Interests, the Notes Priority Real Estate Collateral or the Notes PropCo Equity Interests.

“Parent” means Neiman Marcus Group, Inc., a corporation organized under the laws of the State of Delaware, and its successors.

“Parent Entity” means any direct or indirect parent of the Issuer.

“Pari Passu Lien Indebtedness” means Indebtedness that is secured only by Pari Passu Liens on the Collateral; provided that if such Indebtedness is guaranteed by Notes PropCo or Extended Term Loan PropCo, such guarantees provided by Notes
PropCo and Extended Term Loan PropCo shall be unsecured and rank pari passu in right of payment with the Notes PropCo Guarantee and the Extended Term Loan PropCo Guarantee, respectively.

“Pari Passu Lien Obligations” means the Indebtedness and the related Obligations under the Indebtedness Documents related to Pari Passu Lien Indebtedness.

“Pari Passu Liens” means Liens on the Collateral, which Liens on any item of Collateral shall rank pari passu to the Notes Liens on such item of Collateral (but without regard to the control of remedies), pursuant to a Customary Intercreditor Agreement.

“Participant” means, with respect to the Depositary, Euroclear or Clearstream a Person who has an account with the Depositary, respectively (and, with respect to the Depositary, will include Euroclear or Clearstream).

“Permanent Regulation S Global Note” means a permanent Global Note in the form of Exhibit A hereto bearing the Global Note Legend, the Guarantor Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Temporary Regulation S Global Note upon expiration of the Restricted Period.

“Permitted Acquisition” means the purchase or other acquisition, by merger, consolidation, amalgamation or otherwise, by the Issuer or its Restricted Subsidiaries of Equity Interests in, the assets of (including all or substantially all the assets constituting a business unit, division, product line or line of business of), any Person, including minority investments and joint ventures (or any subsequent investment made in a Person, business unit, division, product line or line of business previously acquired in a Permitted Acquisition); provided, that joint ventures (x) may not be consummated with affiliates of Mariposa Intermediate, the Issuers, or their Subsidiaries and (y) must be bona fide operating businesses reasonably related to the Issuer’s business and any such acquisition, minority investment or joint venture may not constitute an investment in debt or equity of Mariposa Intermediate or its Subsidiaries.

“Permitted Asset Swap” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Issuer or any of its Restricted Subsidiaries and another Person; provided that any cash or Cash Equivalents received must be applied in accordance with Section 3.7.

“Permitted Debt” has the meaning assigned to it in Section 3.3(h).

“Permitted Holders” means each of:

(1) the Sponsors;
any member of the Management Group (or any controlled Affiliate thereof of which members of the Management Group hold at least 50% of the Voting Stock and 50% of the economic value);

(3) any other holder of a direct or indirect Equity Interest in Parent that holds such Equity Interest as of the Issue Date;

(4) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in clauses (1), (2) or (3) above are members; provided that (a) without giving effect to the existence of such group or any other group, the Persons described in clauses (1), (2) and (3) above, collectively, Beneficially Owned Voting Stock representing 50% or more of the aggregate ordinary voting power of the Voting Stock of the Issuer (or any Permitted Parent) then held by such group and (b) if the Beneficial Ownership described in subclause (a) is shared with any Person other than the Persons described in clauses (1), (2) and (3) above, the Persons described in clauses (1), (2) and (3) above hold at least 50% of the economic value of the equity securities of the Issuer (or Permitted Parent, as the case may be) then held by such group; and

(5) any Permitted Parent.

Any Person or group, together with its Affiliates, whose acquisition of Beneficial Ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

“Permitted Investments” means:

(1) Investments made in order to consummate or complete the Transactions;

(2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Issuer or any Restricted Subsidiary not to exceed $25.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made); provided that loans and advances to consultants in the form of upfront payments made in connection with employment or consulting arrangements entered into in the ordinary course of business shall not be subject to such $25.0 million cap;

(3) Investments in (i) the Issuers or Subsidiary Guarantee...
Notes Obligations, provided further in case of both subclause (i) and (ii) that Investments in Subsidiaries that are not Wholly Owned Subsidiaries shall be on arm’s length terms;

(4) [Reserved];

(5) Cash Equivalents and Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made:

(6) Investments arising out of the receipt by the Issuer or any of its Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 3.7;

(7) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(8) Investments acquired as a result of a foreclosure by the Issuer or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(9) Hedging Agreements;

(10) Investments existing on, or contractually committed as of, the Issue Date and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (10) is not increased at any time above the amount of such Investments existing or committed on the Issue Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Issue Date or as otherwise permitted under this definition or under Section 3.4, provided that Investments outstanding as of the Issue Date which were Incurred or allocated under a specific clause of the definition of “Permitted Investments” under the indentures governing the Remaining Unsecured Notes as of immediately prior to the Issue Date shall be deemed to be incurred on the Issue Date under the corresponding specific clause of the definition of “Permitted Investments” under this Indenture and not under this clause (10);

(11) Investments resulting from pledges and deposits that are Permitted Liens;

(12) intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries Incurred pursuant to Section 3.3(b)(xxi);

(13) acquisitions of obligations of one or more officers or other employees of any Parent Entity, the Issuer or any Subsidiary of the Issuer in connection with such officer’s or employee’s acquisition of Equity Interests of any Parent Entity, so
(14) Guarantees of operating leases (for the avoidance of doubt, excluding Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(15) Investments to the extent that payment for such Investments is made with Equity Interests (other than Excluded Equity) of the Issuer;

(16) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 3.4;

(17) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers consistent with past practices;

(18) Guarantees permitted under Section 3.3;

(19) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Issuer or any Restricted Subsidiary;

(20) Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(21) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(22) [Reserved];

(23) intercompany current liabilities owed to joint ventures Incurred in the ordinary course of business in connection with the cash management operations of the Issuer and its Subsidiaries;

(24) (a) Investments in Permitted Acquisitions in an aggregate amount, taken together with all other Investments made pursuant to this clause (24) and the aggregate principal amount of any Indebtedness Incurred or assumed under clause (xii) of the definition of “Permitted Debt” that are at the time outstanding, not to exceed $300.0 million less the aggregate consideration paid by TNMG LLC prior to the Issue Date in respect of that certain investment made by TNMG LLC pursuant to that certain Unit Purchase Agreement, dated as of April 17, 2019, by and among FashionPhile Group, LLC, TNMG LLC and the other parties party thereto (the “FashionPhile Consideration”) (not including any consideration consisting of common equity of
Mariposa Intermediate, proceeds of common equity issued by Mariposa Intermediate and contributed to Issuer or contributions to Mariposa Intermediate’s common equity capital further contributed to Issuer, and not including any transaction costs of the Issuer and its Restricted Subsidiaries associated with such Permitted Acquisition; provided that affiliates of Mariposa Intermediate, the Issuers, or their Subsidiaries (including any Sponsor but excluding Mariposa Intermediate, the Issuers, and their Subsidiaries) may co-invest in any such joint venture with an unaffiliated third party on terms substantially similar to the terms of the applicable Issuers’ or Subsidiary’s investment without such affiliates’ investments being subject to the caps set forth herein; provided, further, however, that (1) no individual Permitted Acquisition transaction or series of related transactions shall, together with the aggregate principal amount of any Indebtedness Incurred or assumed under clause (xii) of the definition of “Permitted Debt” that is at the time outstanding, exceed $150.0 million plus, after such Permitted Acquisition is made, an additional incremental aggregate amount of $25.0 million in such Permitted Acquisition (subject to the aggregate cap of $300.0 million of this clause (24)), and (2) no Permitted Acquisition transaction may be made if pro forma ABL Availability would be less than $300.0 million;

(b) Any Wholly Owned Subsidiary acquired pursuant to subclause (a) of this clause (24) must become a Subsidiary Guarantor, and assets acquired pursuant to Permitted Acquisitions (including 100% of all equity interests, which shall not, for the avoidance of doubt, constitute Excluded Assets) must be included in the Collateral in each case in accordance with the terms and conditions set forth in the Security Documents; provided however that any non-Wholly Owned Subsidiary or any minority-owned entity or joint venture entity so acquired pursuant to this clause shall be permitted to utilize this clause to permit such entity to fund its ratable share of investments in other bona fide operating businesses, in each case, subject to the $300.0 million aggregate cap, $150.0 million per transaction cap and $25.0 million incremental cap set forth above, and for purposes of clarity, a third party owner (that is not Mariposa Intermediate or any of its Subsidiaries) of a non-Wholly Owned Subsidiary, minority-owned entity or joint venture entity shall not be required to pledge its equity interests in such entity as Collateral;

(25) [Reserved];

(26) Investments that are made with the net proceeds of common equity issued by or contributed to Mariposa Intermediate and contributed to the Issuer; and

(27) additional Investments; provided that the aggregate Fair Market Value of such Investments made since the Issue Date that remain outstanding (with all such Investments being valued at their original Fair Market Value and without taking into account subsequent increases or decreases in value) does not exceed $25.0 million, plus any returns of capital actually received by the Issuer or any Restricted Subsidiary in respect of such Investments; provided that any Investments pursuant to this clause (27) cannot be in any Parent Entity or its subsidiaries (other than an Issuer or Subsidiary Guarantor or its subsidiaries), including any MYT Entity, and the Investment shall take the form of an intercompany loan which shall be pledged to secure the Notes Obligations
“Permitted Liens” means, with respect to any Person:

(1) (a) Extended Term Loan Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (i) of the definition of “Permitted Debt” and Extended Term Loan Obligations related thereto;

(b) ABL Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (ii) of the definition of “Permitted Debt” and ABL Obligations related thereto;

(c) Second Lien Notes Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (iii)(B) of the definition of “Permitted Debt” and the Second Lien Notes Obligations related thereto;

(d) 2028 Debentures Liens on the 2028 Debentures Collateral, securing Indebtedness Incurred in accordance with clause (iii) (C) of the definition of “Permitted Debt” and the 2028 Debentures Obligations related thereto;

(e) Third Lien Notes Liens on the Collateral, securing (i) Indebtedness Incurred in accordance with clause (iii)(D)(2) of the definition of “Permitted Debt” and Remaining Unsecured Notes Exchange Obligations related thereto and (ii) Permitted Refinancing Indebtedness incurred in respect of such Indebtedness and Obligations related to such Permitted Refinancing Indebtedness;

(f) (i) Non-Participating Term Loan Liens on the Non-Participating Term Loan Collateral, securing Indebtedness Incurred in accordance with clause (iii)(E)(1) of the definition of “Permitted Debt” and Non-Participating Term Loan Obligations related thereto, and (ii) Extended Term Loan Liens, Pari Passu Liens or Junior Liens on the Collateral, securing Non-Participating Term Loan Exchange Indebtedness Incurred in accordance with clause (iii)(E)(2) of the definition of “Permitted Debt” and Non-Participating Term Loan Exchange Obligations related thereto;

(g) (i) Third Lien Notes Liens on the Collateral securing Indebtedness Incurred in accordance with clause (iii)(A)(1) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto and (ii) Pari Passu Liens on the Collateral, securing Indebtedness Incurred in accordance with clause (iii)(A)(2) of the definition of Permitted Debt and Pari Passu Lien Obligations related thereto;

(2) Liens existing on the Issue Date; provided that Liens outstanding as of the Issue Date that were incurred or allocated under a specific Liens clause under the indentures governing the Remaining Unsecured Notes shall be deemed to be incurred on the Issue Date under the corresponding Liens clause under this Indenture, and not under this clause (2);
(3) Liens securing Indebtedness Incurred in accordance with clause (v) of the definition of “Permitted Debt;” provided that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(4) [Reserved];

(5) (a) Liens on assets of Foreign Subsidiaries that are not Subsidiary Guarantors and (b) Junior Liens on assets of Foreign Guarantors, in either case securing Indebtedness Incurred in accordance with clause (xxi) of the definition of “Permitted Debt”;

(6) Liens securing Permitted Refinancing Indebtedness incurred in accordance with clause (xxiv) of the definition of “Permitted Debt” (with respect to clauses (iv) and (xxiv) of the definition of “Permitted Debt”); provided that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto) and are no higher priority than the original Lien;

(7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Issuer or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Issuer or any of its Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) [Reserved];

(9) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in good faith by appropriate proceedings and for which reserves have been set aside in accordance with GAAP;

(10) Liens disclosed by the title insurance commitments or policies delivered on or subsequent to the Issue Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Indenture); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing judgments that do not constitute an Event of Default pursuant to Section 6.1(g) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which the Issuer or any affected Restricted Subsidiary, has set aside on its books reserves in accordance with GAAP with respect thereto;
(12) Liens imposed by law, including landlord’s, carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, to the Issuer or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

(13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers’ compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Issuer or any Restricted Subsidiary;

(14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capitalized Lease Obligations), the delivery of merchandise or services with factors (to company suppliers), vendors, shippers, brand partners, credit insurers and other service providers (but not to secure Indebtedness or receivables or capital lease financing), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) Incurred, in each case, by the Issuer or any Restricted Subsidiary in the ordinary course of business, including those Incurred to secure health, safety and environmental obligations in the ordinary course of business;

(15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capitalized Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use, ownership or operation of real property, servicing agreements, development agreements, site plan agreements and other similar encumbrances Incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Issuer or any Restricted Subsidiary;

(16) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business;

(17) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Issuer or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations Incurred in the ordinary course of business of the Issuer or any Restricted Subsidiary or (b) relating to purchase orders and other
agreements entered into with customers of the Issuer or any Restricted Subsidiary in the ordinary course of business;

(18) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(19) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(20) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(21) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(22) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(23) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(24) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(25) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(26) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(27) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(28) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;

(29) Liens arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights of set-off or similar rights;
Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

Junior Liens on the Collateral securing Indebtedness permitted to be Incurred pursuant to Section 3.3(q) and related Junior Lien Obligations; and

Junior Liens or Pari Passu Liens on the Collateral securing additional obligations in an aggregate outstanding principal amount not to exceed the $50.0 million; provided that the cash interest rate on any such obligations may not exceed 8.0% per annum.

For purposes of determining compliance with this definition, (x) a Lien need not be Incurred solely by reference to one category of Permitted Liens described in this definition but may be Incurred under any combination of such categories (including in part under one such category and in part under any other such category), (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Issuer will, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition, and (z) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (1) or (32) above (giving effect to the Incurrence of such portion of such Indebtedness), the Issuer, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (1) or (32) above and thereafter the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition. Notwithstanding the foregoing, (A) all Extended Term Loan Liens shall be Incurred under clause (1)(a) of this definition, (B) all ABL Liens shall be Incurred under clause (1)(b) of this definition, (C) all Second Lien Notes Liens securing Second Lien Notes Incurred under clause (iii)(B) of the definition of “Permitted Debt” and the Second Lien Notes Obligations related thereto shall be Incurred under clause (1)(c) of this definition, (D) all 2028 Debentures Liens shall be Incurred under clause (1)(d) of this definition, (E) all Third Lien Notes Liens securing Indebtedness Incurred under clause (iii)(D)(2) or (iii)(D)(4) of the definition of “Permitted Debt” and the Third Lien Notes Obligations related thereto shall be Incurred under clause (1)(e) of this definition, (F) all Non-Participating Term Loan Liens shall be Incurred under clause (1)(f)(i) of this definition, (G) all Liens securing Non-Participating Term Loan Exchange Obligations shall be Incurred under clause (1)(f)(ii) of this definition, (H) all Third Lien Notes Liens securing Third Lien Notes Incurred under clause (iii)(A)(1) of the definition of “Permitted Debt” and related Third Lien Notes Obligations shall be Incurred under clause (1)(g)(i) of this definition and (I) all Pari Passu Liens shall be Incurred under clause (1)(g)(ii) of this definition, and, in each case of subclauses (A) through (I) above, such Liens may not be later reallocated. Notwithstanding anything to the contrary in any Notes Document, Permitted Liens shall not include Liens securing Indebtedness or Obligations on the MYT Holdco Common Equity that is pledged to secure the Notes.
Obligations pursuant to the MYT Third Lien Notes Pledge Agreement (other than Permitted Liens Incurred under clause (1)(e) or (1)(g) above).

“Permitted Parent” means any Parent Entity for so long as it is controlled only by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof; provided that such Parent Entity was not formed in connection with, or in contemplation of, a transaction (other than the Transactions) that would otherwise constitute a Change of Control.

“Permitted PropCo Guaranteed Obligations” means the (i) the Extended Term Loan Obligations, (ii) the Third Lien Notes Obligations, (iii) the Second Lien Notes Obligations, (iv) the ABL Obligations, (v) the Non-Participating Term Loan Exchange Obligations and (vi) the 2028 Debentures Obligations.

“Permitted Refinancing Indebtedness” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “Refinance” or a “Refinancing”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); provided that:

1. the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses);

2. the final maturity of such Permitted Refinancing Indebtedness is equal to or later than the maturity of the Indebtedness so Refinanced and the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Maturity Date were instead due on the date that is one year following the Maturity Date; provided that no Permitted Refinancing Indebtedness Incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced;

3. if the Indebtedness being Refinanced is subordinated, as to any assets, in right of payment or lien priority to the Notes Obligations, such Permitted Refinancing Indebtedness is subordinated, as to such assets, in right of payment or lien priority to such Notes Obligations on terms at least as favorable to the lenders as those contained in the documentation governing the Indebtedness being Refinanced;

4. no Permitted Refinancing Indebtedness will have different obligors, or greater (including higher ranking priority) Guarantees or security, than the Indebtedness being Refinanced (and, for the avoidance of doubt, any Liens securing such...
Permitted Refinancing Indebtedness may not extend to additional assets or be higher in priority than the Liens securing the Indebtedness being Refinanced; and

(5) in the case of a Refinancing of Indebtedness that is secured by any Collateral and subject to specified Required Collateral Lien Priority, the applicable Liens securing such Permitted Refinancing Indebtedness do not have a higher priority than the Required Collateral Lien Priority applicable to the Notes Liens and a debt representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of the Junior Lien Intercreditor Agreement and, if applicable, the ABL Intercreditor Agreement.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Maturity Date after the date of original Incurrence thereof.

Notwithstanding the foregoing: (a) Indebtedness incurred to Refinance the Remaining Unsecured Notes must be Remaining Unsecured Notes Exchange Indebtedness; (b) Indebtedness incurred to Refinance the Non-Participating Term Loans must be Non-Participating Term Loan Exchange Indebtedness; (c) Indebtedness incurred to Refinance the Third Lien Notes and the related Third Lien Notes Obligations must be unsecured Indebtedness, Junior Lien Indebtedness or Pari Passu Lien Indebtedness; (d) Indebtedness incurred to Refinance any Indebtedness guaranteed by Notes PropCo may not have the benefit of a guarantee by Notes PropCo that has a higher priority in right of payment than the guarantee by Notes PropCo of the Indebtedness being Refinanced; and (e) Indebtedness incurred to Refinance any Indebtedness guaranteed by Extended Term Loan PropCo may not have the benefit of a guarantee by Extended Term Loan PropCo that has a higher priority in right of payment than the guarantee by Extended Term Loan PropCo of the Indebtedness being Refinanced.

“Person” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“Preferred Stock” means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution or winding up.

“Pre-Transactions Term Loan Agreement” means that certain term loan credit agreement, dated as of October 25, 2013, among Mariposa Intermediate Holdings LLC, the Issuer (as successor by merger to Mariposa Merger Sub LLC), the subsidiaries of the Issuer from time to time party thereto, Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent, and the lenders party thereto from time to time, as amended, amended and restated, supplemented or otherwise modified prior to (but not on or after) the Issue Date (and which Pre-Transactions Term Loan Agreement, for the avoidance of doubt, is not the Extended Term Loan Agreement).

“Pre-Transactions Term Loan Lenders” means the lenders party to the Pre-Transactions Term Loan Agreement.
“Pre-Transactions Term Loan Obligations” means the Indebtedness and related Obligations under the Pre-Transactions Term Loan Agreement and the Obligations under other Indebtedness Documents related to the Pre-Transactions Term Loans.

“Pre-Transactions Term Loans” means the term loans by the lenders under the Pre-Transactions Term Loan Agreement.

“Pro Forma Basis” means, as of any date, that pro forma effect will be given to the Transactions, any Investment, any issuance, Incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued or Incurred as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated) and all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, in each case that have occurred during the four consecutive fiscal quarter period of the Issuer being used to calculate such financial ratio (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Issuer and its Restricted Subsidiaries to be realized based upon actions taken or reasonably expected to be taken within 12 months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Issuer and provided further that such adjustments shall not exceed 10% of Consolidated EBITDA (after giving effect to such application or adjustment) of the Issuer for the applicable four fiscal quarter period.

“QIB” means any “qualified institutional buyer” (as defined in Rule 144A).

“Qualified LCs” means one or more letters of credit issued by a reputable bank or trust company that is organized under the laws of the United States of America or any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act)) supporting the guarantee of the Second Lien Notes by the MYT Guarantor Entities, in an aggregate amount equal to the difference between (x) $200.0 million and (y) the amount of net cash proceeds of MYT Secondary Sales that has been irrevocably deposited in the MYT Account.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are

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reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities; provided that (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.

“Rating Agency” means:

(1) each of Moody’s and S&P; and

(2) if Moody’s or S&P ceases to rate the Notes for reasons outside of the Issuer’s control, a “nationally recognized statistical rating organization” within the meaning of Section 3 of the Exchange Act selected by the Issuer or any Parent Entity as a replacement agency for Moody’s or S&P, as the case may be.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interest in real property owned in fee or leased, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Record Date” for the interest payable on any applicable Interest Payment Date means, in the case of the Initial Notes, April 1 and October 1 immediately preceding such Interest Payment Date (whether or not a Business Day) and, in the case of any Additional Notes, such record date (whether or not a Business Day) as may be designated by the Issuers in accordance with the provisions Section 2.2, in each case, next preceding such Interest Payment Date.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Regulation S Global Note” means a Temporary Regulation S Global Note or Permanent Regulation S Global Note, as applicable.

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any assets received by the Issuer or a Restricted Subsidiary in exchange for assets transferred by the Issuer or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless such Person is, or upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Remaining Unsecured Notes” means any 8.00% senior cash pay notes due 2021 and 8.75%/9.50% senior PIK toggle notes due 2021 that remain outstanding following the consummation of the Exchange Offers.

“Remaining Unsecured Notes Exchange Indebtedness” means:
(a) additional Third Lien Notes Incurred to Refinance any of the Remaining Unsecured Notes and guarantees of such additional Third Lien Notes by the Subsidiary Guarantors; or

(b) unsecured Indebtedness Incurred to Refinance any of the Remaining Unsecured Notes and guarantees of such unsecured Indebtedness by the Subsidiary Guarantors;

so long as, in each case of (a) and (b), any such Indebtedness (i) otherwise qualifies as Permitted Refinancing Indebtedness with respect to the Remaining Unsecured Notes (except that such additional Third Lien Notes and guarantees thereof may be secured with Third Lien Notes Liens on the Collateral and guaranteed by any Person that guarantees the Third Lien Notes, including the Notes PropCo and the Extended Term Loan PropCo), (ii) has no amortization, (iii) is not subject to any “most-favored nation” provision, (iv) has a maturity date no earlier than the maturity date of the Third Lien Notes issued on the Issue Date, (v) in the case of (a), has a cash interest rate not exceeding the cash interest rate on the Third Lien Notes issued in the Exchange Offer for the same class of Unsecured Notes and (vi) in the case of (b), has a cash interest rate not exceeding the cash interest rate on the relevant class of Remaining Unsecured Notes outstanding as of the Issue Date.

“Remaining Unsecured Notes Exchange Obligations” means the Indebtedness and the related Obligations under the Remaining Unsecured Notes Exchange Indebtedness and the other Indebtedness Documents related to the Remaining Unsecured Notes Exchange Indebtedness.

“Required Collateral Lien Priority” means, with respect to any Lien on any Collateral, that such Lien on such Collateral has the priority indicated in the table below, based on the category of asset subject to such Lien listed at the top of each column and the Obligations secured by such Lien listed at the beginning of each row:
(i) Second Lien Notes Liens on MYT Limited Guarantee Collateral will be released following the earliest to occur of (i) a MYT Deposit Event and (ii) the provision of MYT Alternate Security pursuant to the terms of the MYT Guarantee and Collateral Agreement.

(ii) Recovery not to exceed $200.0 million, together with recovery for Second Lien Notes Obligations.

(iii) Recovery not to exceed $200.0 million, together with recovery for Third Lien Notes Obligations.

(iv) Priority shall be pari passu with the Extended Term Loan Liens and the Non-Participating Term Loan Exchange Liens (or if there are no Extended Term Loan Liens or Non-Participating Term Loan Exchange Liens, (i) with respect to the Call Right Collateral prior to the Call Right Cap Recovery, the 2028 Debenture Obligations will retain its Lien priority thereon (i.e., third priority) and (ii) with respect to the Extended Term Loan Priority Real Estate Collateral, Original Term Loan Priority Collateral, and the Equity Interests in the Extended Term Loan PropCo, the Lien priority provided for the 2028 Debentures will be pari passu with the highest priority Lien remaining on the relevant asset) solely on assets if and to the extent required by the 2028 Debentures Indenture as in effect on the Issue Date.

(v) To the extent no Extended Term Loan Obligations or Non-Participating Term Loan Exchange Obligations are outstanding, if the Call Right Cap Recovery has occurred, priority will be pari passu with the highest priority Lien remaining on the relevant asset, solely on assets if and to the extent required by the 2028 Debentures Indenture.

“Required PropCo Guarantee Priority” means, with respect to any guarantee of Permitted PropCo Guaranteed Obligations by Notes PropCo or Extended Term Loan PropCo, that such guarantee has the priority indicated in the table below in respect of contractual right of payment, based on the Obligations guaranteed by Notes PropCo and Extended Term Loan PropCo (as the case may be) listed at the beginning of each row:

<table>
<thead>
<tr>
<th>Obligations</th>
<th>Priority of Guarantee by Notes PropCo (pre-Notes Priority Real Estate Recovery)</th>
<th>Priority of Guarantee by Notes PropCo (post-Notes Priority Real Estate Recovery)</th>
<th>Priority of Guarantee by Extended Term Loan PropCo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended Term Loan Obligations and Non-Participating Term Loan Exchange Liabilities</td>
<td>3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Second Lien Notes Obligations</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Third Lien Notes Obligations</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>2028 Debentures Obligations</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>ABL Obligations</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Non-Participating Term Loan Obligations</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
</tr>
</tbody>
</table>

To the extent no Extended Term Loan Obligations nor any Non-Participating Term Loan Exchange Obligations are outstanding, after a Call Right Cap...
Recovery the priority of the guarantee by Notes PropCo of 2028 Debenture Obligations shall match the priority of the senior-most remaining guarantee.

“Required Financial Statements” means the financial statements required to be delivered under Section 3.2.

“Restricted Definitive Note” means a Definitive Note bearing the Private Placement Legend.

“Restricted Global Note” means a Global Note bearing the Private Placement Legend.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Period” means the 40-day distribution compliance period as defined in Regulation S.

“Restricted Subsidiary” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Indenture, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Issuer.

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Rule 903” means Rule 903 promulgated under the Securities Act.

“Rule 904” means Rule 904 promulgated under the Securities Act.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor to the rating agency business thereof.

“SEC” means the Securities and Exchange Commission.

“Second Lien” means, with respect to any Collateral, the Lien on such Collateral securing the Second Lien Notes Obligations and any Lien on such Collateral that has the same priority as that of the Lien on such Collateral securing the Second Lien Notes Obligations.

“Second Lien Notes” means the 14.0% Second Lien Notes due 2024 to be issued by the Issuers on the Issue Date.

“Second Lien Notes Collateral Agent” means Ankura Trust Company, LLC, in its capacity as such, until a successor replaces it and, thereafter, means the successor.
“Second Lien Notes Indenture” means the Indenture, dated as of the Issue Date, among the Issuers, the Subsidiary Guarantors and Ankura Trust Company, LLC, as trustee and collateral agent, governing the Second Lien Notes.

“Second Lien Notes Liens” means Liens on the Collateral, which Liens have Required Collateral Lien Priority for Liens securing the Second Lien Notes Obligations.

“Second Lien Notes Obligations” means the Indebtedness and related Obligations under the Second Lien Notes and the other Indebtedness Documents related to the Second Lien Notes.

“Second Lien Obligations” means, with respect to any Collateral, the Second Lien Notes Obligations and any other Indebtedness or other Obligations secured by a Second Lien thereon.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Security Documents” means the Notes Collateral Agreement, the MYT Third Lien Notes Pledge Agreement, the Intercreditor Agreements the Copyright Security Agreement and the Trademark Security Agreement related to the Notes and mortgages, intellectual property security notices and any other agreements, filings and instruments granting, perfecting or otherwise evidencing the Notes Liens.

“Senior Priority Obligations” means, with respect to the Net Cash Proceeds of a Collateral Asset Sale of any asset, (i) if such asset is not an asset of Notes PropCo or Extended Term Loan PropCo, Indebtedness that is secured by a Lien on such asset that ranks senior to the Notes Liens on such asset (after taking into account the Notes Priority Real Estate Recovery, if applicable), (ii) if such asset is an asset of Notes PropCo, Indebtedness that is guaranteed by Notes PropCo on a basis senior to the Notes PropCo Guarantee (after taking into account the Notes Priority Real Estate Recovery, if applicable), and (iii) if such asset is an asset of Extended Term Loan PropCo, Indebtedness that is guaranteed by Extended Term Loan PropCo on a basis senior to the Extended Term Loan PropCo Guarantee; provided that, in no event shall Remaining Unsecured Notes Obligations be Senior Priority Obligations.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” of the Issuer within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Similar Business” means any business engaged or proposed to be engaged in by the Issuer and its Restricted Subsidiaries on the Issue Date and any business or other activities that are similar, ancillary, complementary, incidental or related to, or an extension, development or expansion of, the businesses in which the Issuer and its Restricted Subsidiaries is engaged on the Issue Date.
“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Indebtedness” means (i) any Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors that are subordinated in right of payment to any of the Notes Obligations, (ii) any unsecured Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors (including the Remaining Unsecured Notes), (iii) any Indebtedness or related Obligations of the Issuers or the Subsidiary Guarantors (including Junior Lien Obligations) that are secured by Liens on the Collateral ranking junior to the Notes Liens, and (iv) the Non-Participating Term Loan Obligations; provided that Non-Participating Term Loan Obligations shall not be deemed to be Subordinated Indebtedness with respect to repayments of such Indebtedness from Net Cash Proceeds of Non-Participating Term Loan Collateral securing such Indebtedness (to the extent the Non-Participating Term Loan Liens on such Non-Participating Term Loan Collateral are senior in priority to the Notes Liens on such Non-Participating Term Loan Collateral) in accordance with Section 3.7. For the avoidance of doubt, (i) the ABL Obligations, the Extended Term Loan Obligations, the Non-Participating Term Loan Exchange Obligations, the Second Lien Notes Obligations and the 2028 Debentures Obligations shall not be deemed to be Subordinated Indebtedness and (ii) for purposes of the application of Section 3.7 with respect to any asset, (A) any Obligations guaranteed by the holder of such asset on a basis that is junior to the relevant guarantee of the Notes Obligations and (B) any Obligations secured by a Lien on such asset ranking junior to the Lien on such asset securing the Notes Obligations, in each case, shall be Subordinated Indebtedness.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person.

“Subsidiary Guarantee” means the guarantee of the Guaranteed Obligations that is required to be provided pursuant to Section 3.11 and Article X, including the Notes PropCo Guarantee and the Extended Term Loan PropCo Guarantee.
“Subsidiary Guarantor” means any Subsidiary of the Issuers that provides a guarantee of the Guaranteed Obligations, as required by Section 3.11 and Article X, including Notes PropCo and Extended Term Loan PropCo.

“Taxes” means all present and future taxes, levies, imposts, deductions, duties, assessment, fees, withholdings (including backup withholding) or other charges imposed by any government or taxing authority, including any interest, additions to tax or penalties with respect thereto.

“Temporary Regulation S Global Note” means a temporary Global Note in the form of Exhibit A bearing the Global Note Legend, the Guarantor Legend, the Private Placement Legend, and the Temporary Regulation S Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903.

“Temporary Regulation S Legend” means the legend set forth in Section 2.1(e).

“Term/Notes Priority Collateral” means all Collateral other than ABL Priority Collateral.

“Term/Notes Priority Proceeds” means all cash, money, instruments, securities, financial assets, deposit accounts and insurance payments directly received as proceeds of any Term/Notes Priority Collateral.

“Third Lien Notes” means the Notes and the 8.000% Third Lien Notes.

“Third Lien Notes Liens” means Liens on the Collateral, which Liens have the Required Collateral Lien Priority for Liens securing the Third Lien Obligations.

“Third Lien Notes Obligations” means the Indebtedness and related Obligations under the Third Lien Notes and the other Indebtedness Documents related to the Third Lien Notes.

“Third Lien Obligations” means, with respect to any Collateral, the Notes Obligations and any other Indebtedness or other Obligations secured by a Third Lien thereon.


“Transaction Support Agreement” means that certain transaction support agreement, dated March 25, 2019, by and among Neiman Marcus Group, Inc. and each of its Subsidiaries signed thereunder, the Sponsors, certain Pre-Transactions Term Loan Lenders signed thereunder (the “Consenting Pre-Transactions Term Loan Lenders”), nominees, investment managers, advisors or subadvisors to funds and/or accounts, or
trustees of trusts, that hold certain of the Issuer’s Unsecured Notes signed thereunder (the “Consenting Pre-Transactions Unsecured Noteholders”).

“Transactions” means the issuance of the Third Lien Notes and the Guarantees thereof, the issuance of the Second Lien Notes and the Guarantees thereof, the amendment or amendment and restatement of the Pre-Transactions Term Loan Agreement into the Extended Term Loan Agreement and the borrowing thereunder, the issuance of the MYT Holdco Preferred Stock and other transactions as contemplated by the terms of the Transaction Support Agreement.

“Trust Officer” means any officer within the corporate trust administration department of the Trustee, with direct responsibility for performing the Trustee’s duties under this Indenture and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such person’s knowledge of and familiarity with the particular subject.

“Trustee” has the meaning set forth in the preamble hereto.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“Unrestricted Definitive Note” means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

“Unrestricted Global Note” means a permanent Global Note substantially in the form of Exhibit A attached hereto that bears the Global Note Legend and the Guarantor Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear the Private Placement Legend.

“Unrestricted Subsidiary” means, at any time that such Person is a Subsidiary of the Issuer, any MYT Entity in the event any MYT Entity is required to be contributed to the Issuer or its subsidiaries in accordance with any settlement, judgment, court order or other resolution of a claim, cause of action or litigation with respect to the MyTheresa Distribution. In the event any such MYT Entity is required to be contributed to the Issuer or its subsidiaries in accordance with the immediately preceding sentence, 100% of the Equity Interests of the top-tier MYT Entity (the “Contributed MYT Equity Interests”) held by the Issuer or any of its Subsidiary Guarantors immediately following such contribution shall be required to be pledged as Collateral to the Notes Collateral Agent to secure the Third Lien Notes Obligations on a third-priority basis, subject to
(i) the first-priority Liens on such Contributed MYT Equity Interests securing the Extended Term Loan Obligations and the 2028 Debentures Obligations and Non-Participating Term Loan Exchange Obligations (if any), (ii) the second-priority Liens on such Contributed MYT Equity Interests securing the Second Lien Notes Obligations and (iii) the fourth-priority Liens on such Contributed MYT Equity Interests securing the ABL Obligations; provided, however, that notwithstanding the foregoing, such pledge of Contributed MYT Equity Interests shall not affect the MYT Waterfall or the MYT Covenants; provided, further, however that in the event such Contributed MYT Equity Interests are required to be distributed in accordance with Section 3.4(b)(xiv), then any such equity pledges or Liens granted on such Contributed MYT Equity Interests contemplated by this definition of “Unrestricted Subsidiary” shall be automatically and immediately released without any further action by any party.

“Unsecured Notes” means the 8.00% senior cash pay notes due 2021 and the 8.75%/9.50% senior PIK toggle notes due 2021 of the Issuer and Corporate Co-Issuer.

“U.S. Government Obligations” means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in each case, are not callable or redeemable at the option of the issuer thereof, and will also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness or Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such
Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by 

(2) the sum of all such payments.

“Wholly Owned Restricted Subsidiary” is any Wholly Owned Subsidiary that is a Restricted Subsidiary.

“Wholly Owned Subsidiary” of any Person means a direct or indirect Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares or interests required pursuant to applicable law) will at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.2. Other Definitions.

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SECTION 1.3. **Rules of Construction.** Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) “or” is not exclusive;

(d) “including” means including without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) the word “will” has the same meaning as “shall” and denotes a mandatory requirement;
references to sections of, or rules under, the Securities Act or Exchange Act will be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture;

the words “herein,” “hereof” and “hereunder” and any other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision; and

notwithstanding anything to the contrary in this Indenture, solely for purposes of determining whether any notice, direction, action to be taken or consent to be given under this Indenture is authorized, provided or given (as the case may be) by a sufficient aggregate principal amount of Notes, an owner of a beneficial interest in a Global Note shall be treated as a Holder, and the Trustee shall accept evidence of such beneficial interest provided by such owner (which may be in the form of “screenshots” of such owner’s position).

ARTICLE II

The Notes

SECTION 2.1. Form and Dating.

The Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A hereto, the terms of which are incorporated in and made a part hereof. The Notes may have notations, legends or endorsements approved as to form by the Issuers, and required by law, stock exchange rule, agreements to which the Issuers are subject or usage. Each Note will be dated the date of its authentication. The Notes will be issuable only in minimum denominations of $2,000.00 and integral multiples of $1.00 in excess thereof.

Additional Notes may be issued only in compliance with this Indenture, including Sections 3.3 and 3.5 of this Indenture. The Issuers will have the right to designate the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Notes, which may differ from the maturity date, interest rate and optional redemption provisions applicable to the Initial Notes. Additional Notes that differ with respect to maturity date, interest rate or optional redemption provisions from the Initial Notes will constitute a different series of Notes from the Initial Notes. Additional Notes that have the same maturity date, interest rate and optional redemption provisions as the Initial Notes will be treated as the same series as the Initial Notes unless otherwise designated by the Issuers. Except as otherwise provided in Section 9.2(a), the Initial Notes and any Additional Notes issued under this Indenture will vote and consent together on all matters as one class and no series of Notes will have the right to vote or consent as a separate class on any matter. The Issuers will also have, subject to the
provisions of Section 9.2(a), the right to vary the application of the provisions of this Indenture to any series of Additional Notes.

(c) The Notes will initially be issued in the form of one or more Global Notes and The Depository Trust Company ("DTC"), its nominees, and their respective successors, will act as the Depositary with respect thereto. Each Global Note will represent such of the outstanding Notes as will be specified therein and each will provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Notes Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.6. Each Global Note (i) will be registered in the name of the Depositary for such Global Note or the nominee of such Depositary, (ii) will be delivered by the Trustee to such Depositary or held by the Trustee as Notes Custodian for the Depositary pursuant to such Depositary’s instructions, (iii) will bear a Global Note Legend in substantially the following form:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS NOTE IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A
NOMINEE OF SUCH SUCCESSOR DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

and (iv) will bear a Guarantor Legend in substantially the following form:

(A) THE GUARANTEE BY EXTENDED TERM LOAN PROPCO OF THE GUARANTEED OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE “EXTENDED TERM LOAN SUBORDINATION AGREEMENT”) DATED AS OF JUNE 7, 2019 AMONG THE COLLATERAL AGENT, EXTENDED TERM LOAN PROPCO AND THE OTHER PARTIES THERETO, TO THE SENIOR PRIORITY GUARANTEE OBLIGATIONS (AS DEFINED THEREIN); AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT; AND (B) THE GUARANTEE BY NOTES PROPCO OF THE GUARANTEED OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE “NOTES PROPCO SUBORDINATION AGREEMENT”) DATED AS OF JUNE 7, 2019 AMONG THE COLLATERAL AGENT, NOTES PROPCO AND THE OTHER PARTIES THERETO, TO THE SENIOR PRIORITY GUARANTEE OBLIGATIONS (AS DEFINED THEREIN); AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE NOTES PROPCO SUBORDINATION AGREEMENT.

(d) Except as permitted by Section 2.6(g), any Note not registered under the Securities Act will bear the following private placement legend (the “Private Placement Legend”) on the face thereof:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES
ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF, THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF ANY ADDITIONAL NOTES AND THE LAST DATE ON WHICH AN ISSUER OR ANY AFFILIATE OF THE ISSUERS WAS THE OWNER OF THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE), ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”), TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF NOTES OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

BY ITS ACQUISITION OF THIS NOTE, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS NOTE CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN,
INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, WITHIN THE MEANING OF 29 C.F.R. SECTION 2510.3-103 AS MODIFIED BY SECTION 3(42) OF ERISA OR OTHERWISE OR (2) THE ACQUISITION AND HOLDING OF THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

(e) The Temporary Regulation S Global Note will bear a legend in substantially the following form:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED NOTES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THIS NOTE (OR ANY PREDECESSOR OF SUCH NOTE) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S, (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE
ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF NOTES OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUERS’ AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

BY ITS ACQUISITION OF THIS NOTE, THE HOLDER THEREOF WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS NOTE CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, “SIMILAR LAWS”), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, WITHIN THE MEANING OF 29 C.F.R. SECTION 2510.3-103 AS MODIFIED BY SECTION 3(42) OF ERISA OR OTHERWISE OR (2) THE ACQUISITION AND HOLDING OF

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THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

(f) Each Global Note and each Definitive Note issued at a more than de minimis discount to its redemption price at maturity (and all Notes issued in exchange therefor or substitution thereof) will bear an OID Legend in substantially the following form (the “OID Legend”):

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE. A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY FOR SUCH NOTE BY SUBMITTING A REQUEST FOR SUCH INFORMATION TO THE ISSUERS AT THE FOLLOWING ADDRESS: NEIMAN MARCUS GROUP LTD INC., ONE MARCUS SQUARE, 1618 MAIN STREET, DALLAS, TX 75201, ATTENTION: LEGAL DEPARTMENT.

(g) Members of, or Participants in, the Depositary (“Agent Members”) will have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary, or the Trustee as its Notes Custodian and the Depositary may be treated by the Issuers, the Trustee and any agent of the Issuers or the Trustee as the absolute owner of the Global Note for all purposes whatsoever, including notices and payments. Notwithstanding the foregoing, nothing herein will prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note. Notwithstanding anything to the contrary contained herein, any notice to be delivered to DTC (including, but not limited to, a notice of redemption) may be delivered electronically by the Trustee or the Issuers in accordance with Applicable Procedures of DTC.

SECTION 2.2. Form of Execution and Authentication. An Officer will sign the Notes for each of the Issuers by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time the Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature of the Trustee will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will authenticate (a) Initial Notes for original issue on the Issue Date in an aggregate principal amount of $497,849,150 and (b) subject to compliance with Section 3.3, one or more series of Additional Notes for original issue after the Issue Date (such Notes to be substantially in the form of Exhibit A) in an unlimited amount, in each

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case upon written order of each of the Issuers signed by an Officer of each of the Issuers (an “Authentication Order”), which Authentication Order will, in the case of any issuance of Additional Notes, certify that such issuance is in compliance with Section 3.3. In addition, each such Authentication Order will specify the amount of Notes to be authenticated, the date on which the Notes are to be authenticated, whether the securities are to be Initial Notes or Additional Notes and the aggregate principal amount of Notes outstanding on the date of authentication, and will further specify the amount of such Notes to be issued as Global Notes or Definitive Notes. Such Notes will initially be in the form of one or more Global Notes, which (i) will represent, and will be denominated in an amount equal to the aggregate principal amount of, the Notes to be issued, (ii) will be registered in the name of the Depositary or its nominee and (iii) will be held by the Trustee as Notes Custodian.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuers to authenticate Notes. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Issuers or any Affiliate of the Issuers.

SECTION 2.3. Registrar and Paying Agent. The Issuers will maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange (including any co-registrar, the “Registrar”) and (ii) an office or agency in the United States where Notes may be presented for payment (“Paying Agent”). The Registrar will keep a register of the Notes and of their transfer and exchange and, upon written request from the Issuers, the Registrar will provide the Issuers with a copy of such register to enable them to maintain a register of the Notes at their registered offices. The Issuers may appoint one or more co-registars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent. The Issuers may change any Paying Agent, Registrar or co-registrar without prior notice to any Holder. The Issuers will notify the Trustee in writing and the Trustee will notify the Holders of the name and address of any Agent not a party to this Indenture. The Issuers or any of their Subsidiaries may act as Paying Agent, Registrar or co-registrar. The Issuers will enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement will implement the provisions hereof that relate to such Agent. The Issuers will notify the Trustee in writing of the name and address of any such Agent. If the Issuers fail to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee will act as such, and will be entitled to appropriate compensation in accordance with Section 7.6.

The Issuers initially appoint the Trustee as Registrar, Paying Agent and to act as Notes Custodian with respect to the Notes.

The Issuers shall be responsible for making all calculations called for under the Notes, including but not limited to determination of redemption price, premium, if any, interest, and any additional amounts or other amounts payable on the Notes. The Issuers will make the calculations in good faith and, absent manifest error,
their calculations will be final and binding on the Holders. The Issuers will provide a schedule of such calculations to the Trustee, certified by an Officer of the Issuer, and the Trustee is entitled to rely conclusively on the accuracy of the Issuer’s calculations without independent verification. The Trustee shall forward the Issuers’ calculations to any Holder upon the written request of such Holder.

SECTION 2.4. **Paying Agent to Hold Money in Trust**. The Issuers will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, and interest on the Notes, and will notify the Trustee in writing of any Default by the Issuers in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by such Paying Agent to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than one of the Issuers) will have no further liability for the money delivered to the Trustee. If one of the Issuers acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent.

SECTION 2.5. **Lists of Holders**. The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and will otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Issuers will furnish to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders, including the aggregate principal amount of the Notes held by each thereof, and the Issuers will otherwise comply with TIA § 312(a).

SECTION 2.6. **Transfer and Exchange**.

(a) **Transfer and Exchange of Global Notes**. A Global Note may not be transferred except, as a whole, by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. Global Notes will be exchanged by the Issuers for Definitive Notes, subject to any applicable laws, only (i) if the Issuers deliver to the Trustee written notice from the Depositary that the Depositary is unwilling or unable to continue to act as Depositary for the Global Notes or that it is no longer a clearing agency registered under the Exchange Act and, in either case, the Issuers fail to appoint a successor Depositary within 120 days after the date of such notice from the Depositary; (ii) if the Issuers in their sole discretion determine that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and deliver a written notice to such effect to the Trustee; provided that in no event will the Temporary Regulation S Global Note be exchanged by the Issuers for Definitive Notes prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act; or (iii) upon request of the Trustee or Holders of a majority of the aggregate principal amount of outstanding Notes if there will have
occurred and be continuing an Event of Default with respect to the Notes. In any such case, the Issuers will notify the Trustee in writing that, upon surrender by the Participants and Indirect Participants of their interests in such Global Note, certificated Notes will be issued to each Person that such Participants, Indirect Participants and DTC jointly identify as being the beneficial owner of the related Notes. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.7 and Section 2.10. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.6 or Section 2.7 or Section 2.10, will be authenticated and delivered in the form of, and will be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.6(a). However, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.6(b) or Section 2.6(c) below.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions hereof and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth in this Indenture to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with the applicable subparagraphs below.

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, no transfer of beneficial interests in a Temporary Regulation S Global Note may be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser) unless permitted by applicable law and made in compliance with Section 2.6(b)(i) and Section 2.6(b)(ii) below. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions will be required to be delivered to the Registrar to effect the transfers described in this Section 2.6(b)(i) unless specifically stated above.

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.6(b)(i) above, the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase, or (B) (1) if Definitive Notes are at such time permitted to be issued pursuant to this Indenture, a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued
a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note will be registered to effect the transfer or exchange referred to in (1) immediately above; provided that in no event will Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Temporary Regulation S Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee will adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.6(i) below.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.6(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Temporary Regulation S Global Note or the Permanent Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (3) thereof, if applicable.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.6(b)(ii) above, and

(A) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who will take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a
and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (A) above at a time when an Unrestricted Global Note has not yet been issued, the Issuer will issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (A) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer and Exchange of Beneficial Interests for Definitive Notes.

(i) Transfer and Exchange of Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes. Subject to Section 2.6(a), if any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in

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accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3) thereof, if applicable;

(F) if such beneficial interest is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof;

the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(i) below, and the Issuers will execute and the Trustee will authenticate and deliver to the Person designated in the certificate a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest will instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.6(c)(i) will bear the Private Placement Legend and will be subject to all restrictions on transfer contained therein.

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Section 2.6(c)(i)(A) and Section 2.6(c)(i)(C), a beneficial interest in the Regulation S Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(iii) Transfer and Exchange of Beneficial Interests in Restricted Global Notes for Unrestricted Definitive Notes. Subject to Section 2.6(g), a holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:
the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Definitive Note that does not bear the Private Placement Legend, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who will take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof,

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Transfer and Exchange of Beneficial Interests in Unrestricted Global Notes for Unrestricted Definitive Notes. Subject to Section 2.6(a), if any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.6(b)(ii) above, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.6(i) below, and the Issuers will execute and the Trustee will authenticate and deliver to the Person designated in the certificate an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest will instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.6(c)(iv) will not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Transfer and Exchange of Restricted Definitive Notes for Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in...
the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such Restricted Definitive Note is being transferred to the Issuers or any of their Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI Global Note.

(ii) Transfer and Exchange of Restricted Definitive Notes for Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

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the Registrar receives the following:

(1) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(2) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who will take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers have so requested) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.6(d)(ii), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(iii) Transfer and Exchange of Unrestricted Definitive Notes for Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Unrestricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from an Unrestricted Definitive Note or a Restricted Definitive Note, as the case may be, to a beneficial interest is effected pursuant to Section 2.6(d)(ii)(A) or this Section 2.6(d)(iii) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers will issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Unrestricted Definitive Notes or Restricted Definitive Notes, as the case may be, so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder’s compliance with the provisions of this Section 2.6(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder will present or surrender to the Registrar the Definitive Notes duly endorsed or
accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or its attorney, duly authorized in writing. In addition, the requesting Holder will provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.6(e).

(i) **Transfer of Restricted Definitive Notes to Restricted Definitive Notes.** Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

   (A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

   (B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

   (C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including, if the Issuers so request, a certification and/or Opinion of Counsel in form reasonably acceptable to the Issuers to the effect that such transfer is in compliance with the Securities Act.

(ii) **Transfer and Exchange of Restricted Definitive Notes for Unrestricted Definitive Notes.** Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

   (A) the Registrar receives the following:

      (1) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

      (2) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who will take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Registrar or the Issuers so request, an Opinion of Counsel of the Holder or the Issuers (except in the case the Issuers so request) in form reasonably acceptable to the Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained in this Indenture and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.
(iii) **Transfer of Unrestricted Definitive Notes to Unrestricted Definitive Notes.** A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar will register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) **Temporary Regulation S Global Note.**

(i) Notes offered and sold in reliance on Regulation S will be issued initially in the form of the Temporary Regulation S Global Note, which will be deposited on behalf of the purchasers of the Notes represented thereby with the Notes Custodian and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided.

(ii) During the Restricted Period, beneficial ownership interests in Temporary Regulation S Global Notes may only be sold, pledged or transferred (A) to the Issuers, (B) in an offshore transaction in accordance with Rule 904 of Regulation S (other than a transaction resulting in an exchange for an interest in a Permanent Regulation S Global Note) or (C) pursuant to an effective registration statement under the Securities Act, in each case in accordance with any applicable securities laws of any State of the United States; and beneficial interests in a 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, whether before or after the expiration of the Restricted Period, only if the transferor first delivers to the Trustee a written certificate to the effect that such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (if applicable).

(iii) Within a reasonable period after expiration or termination of the Restricted Period, beneficial interests in each Temporary Regulation S Global Note will be exchanged for beneficial interests in a Permanent Regulation S Global Note upon delivery to DTC of the certification of compliance and the transfer of applicable Notes pursuant to the Applicable Procedures. Simultaneously with the authentication of the corresponding Permanent Regulation S Global Note, the Trustee will cancel the corresponding Temporary Regulation S Global Note. The aggregate principal amount of a Temporary Regulation S Global Note and a Permanent Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(iv) Notwithstanding anything to the contrary in this Section 2.6, a beneficial interest in the Temporary Regulation S Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) of the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.
(g) **Private Placement Legend.**

(i) **Except as permitted by subparagraph (ii) below, each Restricted Global Note and each Restricted Definitive Note (and all Notes issued in exchange therefor or substitution thereof) will bear the Private Placement Legend.**

(ii) **Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii) or (e)(iii) of this Section 2.6 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.**

(h) **Global Note Legend.** Each Global Note will bear the Global Note Legend.

(i) **Cancellation and/or Adjustment of Global Notes.** At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(j) **General Provisions Relating to Transfers and Exchanges.**

(i) **To permit registrations of transfers and exchanges, the Issuers will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.2 or at the Registrar’s request.**

(ii) **No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.2, 2.10, 3.7, 3.9, 5.7, 5.8 and 9.4).**

(iii) **All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits**
hereof, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(iv) Neither the Registrar nor the Issuers will be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business on a Business Day 15 days before the delivery of a notice of redemption of Notes and ending at the close of business on the day of such delivery, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date.

(v) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers will be affected by notice to the contrary.

(vi) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.2.

(vii) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.6 to effect a registration of transfer or exchange may be submitted by facsimile or electronically.

(viii) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(ix) Neither the Trustee, the Issuers nor any Agent will have any responsibility for any actions taken or not taken by the Depositary.

(x) Affiliates of the Issuers, including investment funds affiliated with either of the Sponsors, may acquire, hold and dispose of the Notes and exercise voting, consent and other similar rights with respect to such Notes (subject to the express restrictions contained in this Indenture).

SECTION 2.7. Replacement Notes. If any mutilated Note is surrendered to the Trustee, or the Issuers and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, the Issuers will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee’s requirements for replacements of Notes are met. The Holder must supply
Every replacement Note is an obligation of the Issuers.

SECTION 2.8. Outstanding Notes. The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.8 as not outstanding.

If a Note is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 3.1, it will cease to be outstanding and interest on it will cease to accrue.

Subject to Section 2.9, a Note does not cease to be outstanding because the Issuers, a Subsidiary of the Issuers or an Affiliate of any of the Issuers holds the Note.

SECTION 2.9. Treasury Notes. In determining whether the Holders of the requisite portion of outstanding Notes have concurred in any request, demand, authorization, direction, notice, waiver or consent (other than in respect of any action pursuant to Section 9.2(a), which requires the consent of each Holder of an affected Note), Notes Beneficially Owned by, or held by or for the account of, the Issuers, any Subsidiary of the Issuers or any Affiliate of any of the Issuers will be disregarded and considered as though not outstanding. For purposes of determining whether the Trustee will be protected in relying on any such request, demand, authorization, direction, notice, waiver or consent, only Notes which a Trust Officer actually knows to be so Beneficially Owned or held will be considered as not outstanding. Upon request of the Trustee, the Issuers will promptly furnish to the Trustee an Officer’s Certificate listing and identifying all Notes, if any, known by the Issuers to be Beneficially Owned or held by or for the account of any of the above-described persons, and the Trustee will be entitled to accept such Officer’s Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

SECTION 2.10. Temporary Notes. Until Definitive Notes are ready for delivery, the Issuers may prepare and the Trustee will upon receipt of an Authentication Order authenticate temporary Notes. Temporary Notes will be substantially in the form of Definitive Notes but may have variations that the Issuers consider appropriate for temporary Notes. Without unreasonable delay, the Issuers will prepare and the Trustee, upon receipt of an Authentication Order, will authenticate Definitive Notes in exchange.
SECTION 2.11. Cancellation. The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of all canceled Notes in its customary manner (subject to the record retention requirements of the Exchange Act and the Trustee), and upon the written request of the Issuers, the Trustee will deliver copies of such canceled Notes to the Issuers. The Issuers may not issue new Notes to replace Notes that it has redeemed or paid or that have been delivered to the Trustee for cancellation.

SECTION 2.12. Payment of Interest; Defaulted Interest.

(a) Interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name such Note (or one or more predecessor Notes) is registered at the close of business on the regular Record Date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3.

(b) Any interest on any Note which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days will forthwith cease to be payable to the Holder on the regular Record Date by virtue of having been such Holder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at the rate borne by the Notes (such defaulted interest and interest thereon herein collectively called “Defaulted Interest”) will be paid by the Issuers, at their election in each case, as provided in clause (i) or (ii) below:

(i) The Issuers may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which will be fixed in the following manner. The Issuers will notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date (not less than 30 days after such notice unless a shorter period will be acceptable to the Trustee) of the proposed payment (the “Special Interest Payment Date”), and at the same time the Issuers will deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or will make arrangements for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Issuers will fix a record date (the “Special Record Date”) for the payment of such Defaulted Interest, which will be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Issuers will promptly notify the Trustee of such Special Record Date and will, or at the written request and in the name and expense of the
Issuers, the Trustee will, cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 13.1, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest will be paid on the Special Interest Payment Date to the Persons in whose names the Notes (or their respective predecessor Notes) are registered at the close of business on such Special Record Date and will no longer be payable pursuant to the following clause (ii).

(ii) The Issuers may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuers to the Trustee of the proposed payment pursuant to this clause (ii), such manner of payment will be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note will carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.13. CUSIP and ISIN Numbers. The Issuers in issuing the Notes may use “CUSIP” and/or “ISIN” numbers (if then generally in use). The Trustee will not be responsible for the use of CUSIP or ISIN numbers, and the Trustee makes no representation as to their correctness as printed on any Note or notice to Holders. The Issuers will promptly notify the Trustee in writing of any change in the CUSIP or ISIN numbers. A separate CUSIP or ISIN number will be issued for any Additional Notes, unless (i) the Initial Notes and such Additional Notes have the same maturity date, interest rate and optional redemption provisions and are treated as “fungible” for U.S. federal income tax purposes, (ii) both the Initial Notes and such Additional Notes are issued in the same series (as set forth in Section 2.2) without (or with less than a de minimis amount of) original issue discount for U.S. federal income tax purposes or (iii) another then-recognized identifier is used.

SECTION 2.14. Record Date. The Record Date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture will be determined as provided for in TIA § 316(c).

ARTICLE III

Covenants

SECTION 3.1. Payment of Notes. The Issuers will promptly pay the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. Principal, premium, if any, and interest will
be considered paid on the date due if by 10:00 a.m. (New York City time) on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal, premium, if any, and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

The Issuers will pay interest on overdue principal at the rate specified therefor in the Notes.

Notwithstanding anything to the contrary contained in this Indenture, the Issuers may, to the extent they are required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest payments hereunder. Either Issuer or any Subsidiary Guarantor or any successor in interest to any of the foregoing (each, a “Payor”) may withhold from any interest payment made on any Note to or for the benefit of any Person who is not a “United States person” (as such term is defined for U.S. federal income tax purposes) U.S. federal withholding tax, and pay such withheld amounts to the Internal Revenue Service, unless such Person provides documentation to such Issuer or other Payor such that an exemption from U.S. federal withholding tax would apply to such payment if interest on such Note were treated entirely as income from sources within the United States for U.S. federal income tax purposes.

SECTION 3.2. Reports and Other Information.

(a) Whether or not the Issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Issuer will provide to the Holders and the Trustee the following reports:

(i) within 90 days after the end of each fiscal year (or such longer period as would be provided by the SEC if the Issuer were then subject to SEC reporting requirements as a non-accelerated filer), an annual report containing:

(A) audited annual financial statements of the Issuer and a report thereon from the Issuer’s independent accounting firm;

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section similar in scope to the information required under such caption by Form 10-K of the Exchange Act (which shall include a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million made pursuant to clause (24) of the definition thereof); and

(C) until the MYT Completed Disposition occurs, a narrative discussion of the key financial metrics of the MYT Entities consistent with a customary earnings press release;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or such longer period as would be permitted by the SEC if
the Issuer were then subject to SEC reporting requirements as a non-accelerated filer), quarterly reports containing:

(A) unaudited quarterly financial statements of the Issuer for the fiscal quarter most recently ended and the corresponding fiscal quarter of the prior fiscal year;

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” similar in scope to the information required under such caption by Form 10-Q of the Exchange Act and, in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter (which shall include a reasonably detailed description during the most recently completed fiscal quarter of any Permitted Investment in excess of $15.0 million made pursuant to clause (24) of the definition thereof); and

(C) until the MYT Completed Disposition occurs, a narrative discussion of the key financial metrics of the MYT Entities consistent with a customary earnings press release; and

(iii) within the time period specified for filing current reports on Form 8-K by the SEC, all current reports that would be required to be filed with the SEC on Form 8-K if the Issuer were required to file such reports for any of the following events (A) significant acquisitions or dispositions by the Issuer or its Restricted Subsidiaries or the MYT Entities, (B) the bankruptcy of the Issuer or a Significant Subsidiary or of any of the MYT Entities, (C) the acceleration of any Indebtedness of the Issuer or any Restricted Subsidiary or any of the MYT Entities having a principal amount in excess of $15.0 million, (D) a change in the Issuer’s certifying independent auditor, (E) the appointment or departure of the Chief Executive Officer or Chief Financial Officer (or persons fulfilling similar duties) of the Issuer or any of the MYT Operating Entities, (F) non-reliance on previously issued financial statements of the Issuer or the MYT Entities, (G) change of control transactions with respect to the Issuer or the MYT Entities, (H) entering into, materially modifying or terminating material contracts of the Issuer or its Restricted Subsidiaries (for the avoidance of doubt, excluding officer employment arrangements) and (I) the incurrence of costs associated with exit or disposal activities by the Issuer, its Restricted Subsidiaries or the MYT Entities; and

(iv) In addition, the Issuer shall provide, in the same manner as the reports described above, copies of all operative Indebtedness Documents (including full and complete schedules and exhibits thereto) with respect to any outstanding Indebtedness of the Issuer and its Restricted Subsidiaries or the MYT Entities whose principal amount (or committed amount) exceeds $25.0 million.

The information described in clauses (iii) and (iv) above with respect to the MYT Entities need not be provided after the MYT Completed Disposition occurs.

(b) For the avoidance of doubt, notwithstanding the foregoing, (i) the Issuer will not be required to furnish any information, certificates or reports
required by (A) Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or 
(B) Regulation G or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (ii) the reports referred to above will not be required to contain the separate financial statements or other information contemplated by Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X and (iii) the reports referred to above will not be required to present compensation or beneficial ownership information.

(c) At any time that the Issuer (and any applicable Parent Entity) is not subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act, in lieu of filing such reports with the SEC, the Issuer may make available such information electronically (including by posting to a non-public, password-protected website maintained by the Issuer or a third party) to any Holder, any bona fide prospective investor the Notes, any bona fide market maker (or person who intends to be a market maker) in the Note or any bona fide securities analyst, in each case, who provides to the Issuer its email address, employer name and other information reasonably requested by the Issuer. Any Person who requests such financial information from the Issuer or seeks to participate in any conference call required by this covenant will be required to represent to and agree with the Issuer (and by accepting such financial information, such Person will be deemed to have represented to and agreed with the Issuer) to the Issuer’s good faith satisfaction that:

(i) it is a Holder, a bona fide prospective investor in the Notes, a bona fide market maker (or intended market maker) with respect to the Notes or a bona fide securities analyst, as applicable;

(ii) if it is a prospective purchaser of the Notes, it is (A) a Qualified Institutional Buyer (as defined in Rule 144A of the Securities Act), (B) a non-U.S. Person (as defined in Regulation S under the Securities Act) or (C) an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating an investment in the Notes (or, if it is a bona fide market maker or intended market maker, only in connection with making a market in the Notes or, if it is a bona fide securities analyst, for preparing analysis for Holders and prospective purchasers of the Notes that otherwise have access to the financial information in compliance with this covenant); and

(vi) it (A) will not use such information in any manner intended to compete with the business of the Issuer and (B) is not a Person (which includes such
Person’s Affiliates, other than the Affiliates of a bona fide securities research analyst with whom such research analyst does not share such information) that
is principally engaged in or derives a significant portion of its revenues from operating or owning a business which is substantially similar to the business
engaged in by the Issuer and its Restricted Subsidiaries on the Issue Date.

(d) The Issuer shall respond, as promptly as practicable, in good faith, to any request for access to the website described above.

(e) To the extent not satisfied by the foregoing, for so long as any Notes are outstanding (unless satisfied and discharged or defeased), the Issuer will furnish to Holders and prospective purchasers of the Notes, upon their request, the information required to be delivered pursuant to
Rule 144A(d)(4) under the Securities Act (or any successor provision).

(f) Notwithstanding the foregoing, the financial statements, information, auditors’ reports and other documents required to be provided as described above, may be, rather than those of the Issuer, those of any Parent Entity; provided that, if the financial information so furnished relates
to such Parent Entity, the same is accompanied by consolidating information, which may be posted to the website of the Issuer or on a non-public, password-
protected website maintained by the Issuer or a third party, which explains in reasonable detail the differences between the information relating to such Parent
Entity, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a standalone basis, on the other hand.

(g) Issuer will be deemed to have satisfied the reporting requirements of Section 3.2(a) if (i) at any time that the Issuer or any Parent
Entity is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or is a voluntary filer, the Issuer or any Parent Entity has filed such
reports containing such information (including the information required pursuant to Section 3.2(e), which, for the avoidance of doubt, need not be filed with
the SEC via EDGAR to the extent it is otherwise provided to Holders in accordance with this Section 3.2) with the SEC via the EDGAR (or successor) filing
system or (ii) at any time that the Issuer or any Parent Entity does not file such reports with the SEC via the EDGAR (or a successor) filing system, the Issuer
or any Parent Entity makes such reports available electronically (including by posting to a non-public, password-protected website as provided above)
pursuant to this Section 3.2. Notwithstanding the foregoing, the Trustee shall have no obligation to monitor or confirm, on a continuing basis or otherwise,
whether the Issuer or any Parent Entity posts such reports, information and documents on any website or the SEC’s EDGAR service, or to collect any such
information from the Issuer’s or any Parent Entity’s website or the SEC’s EDGAR service.

(h) Promptly after the date the annual and quarterly financial information for the prior fiscal period have been furnished pursuant to
Section 3.2(q)(i) or Section 3.2(q)(ii), the Issuer will hold a quarterly conference call to review the most recent financial results, which shall also include a
discussion of the financial metrics of the MYT Entities and a reasonable question and answer session open to all invited
call participants. Prior to the date such conference call is to be held, the Issuer will post to its website or a non-public, password-protected website maintained
by the Issuer or a third party an announcement of such quarterly conference call for the benefit of the Trustee, the Holders, beneficial owners of the Notes,
prospective purchasers of the Notes, securities analysts and market making financial institutions, which announcement will contain the time and the date of
such conference call and direct the recipients thereof to contact an individual at the Issuer (for whom contact information will be provided in such notice) to
obtain information on how to access such quarterly conference call; provided that any Person who attends such conference call with the Issuer will be
required to represent to and agree with the Issuer (and by attending such conference call, such person will be deemed to have represented and agreed with
the Issuer) to clauses (i) through (vi) of Section 3.2(c).

(ii) Delivery of reports, information and documents to the Trustee is for informational purposes only and its receipt of such reports,
information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein,
including the Issuers’, any Parent Entity’s, any Subsidiary Guarantor’s or any other Person’s compliance with any of its covenants under this Indenture or the
Notes (as to which the Trustee is entitled to rely exclusively on an Officer’s Certificate delivered pursuant to this Indenture). The Trustee shall have no
liability or responsibility for the content, filing or timeliness of any report, information or document delivered or filed under or in connection with this
Indenture or the transactions contemplated thereunder.

SECTION 3.3. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness
(including Acquired Indebtedness) or issue any shares of Disqualified Stock, and the Issuer will not permit any of its Restricted Subsidiaries to issue any
shares of Preferred Stock; provided, however, that the Issuers and any Subsidiary Guarantor may Incure unsecured or Junior Lien Indebtedness (including
Acquired Indebtedness) or issue shares of Disqualified Stock and any Subsidiary Guarantor may issue shares of Preferred Stock, in each case if the Interest
Coverage Ratio for the Issuer’s most recently ended four full fiscal quarters for which Required Financial Statements have been delivered immediately
preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock or Preferred Stock is issued is 2.25 to 1.00 or greater ("Ratio
Debt"), as if the additional Indebtedness had been Incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the
application of the proceeds therefrom had occurred, at the beginning of such four-quarter period.

(b) The foregoing limitations will not apply to (collectively, “Permitted Debt”):

(i) the Incurrence by the Issuers and the Subsidiary Guarantors of Indebtedness pursuant to one or more Credit Agreements
up to an aggregate
outstanding principal amount, including all Indebtedness incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (i) (and any successive Refinancing Indebtedness), not to exceed an amount equal to the Issue Date Extended Term Loan Amount plus, solely in the event the Call Right is exercised, an amount equal to the aggregate principal amount of the Third Lien Notes and Second Lien Notes redeemed in connection therewith (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) in connection with any Refinancings less the amount applied to permanently repay Indebtedness incurred under this clause (i) pursuant to Section 3.7;

(ii) the Incurrence by the Issuers and the Subsidiary Guarantors of Indebtedness pursuant to the ABL Credit Agreement and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof) up to an aggregate outstanding principal amount, including all Indebtedness incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (ii) (and any successive Refinancing Indebtedness), not to exceed an amount equal to $1,000.0 million (plus unpaid accrued interest and premium (including interest previously paid in kind and tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses) in connection with any Refinancings less the amount applied to permanently repay Indebtedness incurred under this clause (ii) pursuant to Section 3.7;

(iii) (A) (1) the Incurrence by the Issuers of the Third Lien Notes issued on the Issue Date and the Incurrence by the Subsidiary Guarantors of the Subsidiary Guarantees related to the foregoing Third Lien Notes; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(B) (1) the Incurrence by the Issuers of the Second Lien Notes issued on the Issue Date, the Incurrence of any Second Lien Notes issued in respect of interest paid in kind thereon and the Incurrence by the Subsidiary Guarantors of guarantees of any such Second Lien Notes; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(C) (1) the Incurrence by the LLC Co-Issuer of the 2028 Debentures outstanding on the Issue Date and the Incurrence by Extended Term Loan PropCo and Notes PropCo of a guarantee of such 2028 Debentures having the Required PropCo Guarantee Priority; and

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(2) the Incurrence by the LLC Co-Issuer and Extended Term Loan PropCo of Permitted Refinancing Indebtedness in respect of any of the Indebtedness described in subclause (1);

(D) (1) the Incurrence by the Issuers of the Remaining Unsecured Notes and the Incurrence by the Subsidiary Guarantors of guarantees outstanding on the Issue Date of such Remaining Unsecured Notes;

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Remaining Unsecured Notes Exchange Indebtedness described in clause (a) of the definition thereof in respect of the Indebtedness described in subclause (1), in an aggregate principal amount not to exceed (w) 85% of the Issue Date Remaining Unsecured Notes Amount, minus (x) 85% of the aggregate principal amount of Remaining Unsecured Notes previously Refinanced by the Incurrence of Remaining Unsecured Notes Exchange Indebtedness pursuant to subclause (3) below, minus (y) 85% of the aggregate principal amount of Remaining Unsecured Notes that have been repaid after the Issue Date (other than as a result of a Refinancing with Remaining Unsecured Notes Exchange Indebtedness), minus (z) the aggregate principal amount of Indebtedness Incurred pursuant to this subclause (2) that is repaid after the Issue Date (including as a result of the Incurrence of Refinancing Indebtedness (provided that clause (y) above shall not apply to any Remaining Unsecured Notes repaid pursuant to Section 3.4(b)(xii)(D) within 45 days prior to the stated maturity date of the Remaining Unsecured Notes);

(3) the Incurrence by the Issuers and the Subsidiary Guarantors of Remaining Unsecured Notes Exchange Indebtedness described in clause (b) of the definition thereof in respect of the Indebtedness described in subclause (1), in an aggregate principal amount not to exceed (w) 100% of the Issue Date Remaining Unsecured Notes Amount, minus (x) 100% of the aggregate principal amount of Remaining Unsecured Notes previously Refinanced by the Incurrence of Remaining Unsecured Notes Exchange Indebtedness Incurred pursuant to subclause (2) above, minus (y) 100% of the aggregate principal amount of Remaining Unsecured Notes that have been repaid after the Issue Date (other than as a result of a Refinancing with Remaining Unsecured Notes Exchange Indebtedness), minus (z) the aggregate principal amount of indebtedness Incurred pursuant to this subclause (3) that is repaid after the Issue Date (including as a result of the Incurrence of Refinancing Indebtedness); and

(4) the Incurrence by the Issuers and the Subsidiary Guarantors of Permitted Refinancing Indebtedness in respect of Indebtedness incurred pursuant to subclause (2) or (3) above; and

(E) (1) the Incurrence by the Issuers of the Non-Participating Term Loans and the Incurrence by the Subsidiary Guarantors of guarantees of such Non-Participating Term Loans; and

(2) the Incurrence by the Issuers and the Subsidiary Guarantors of Non-Participating Term Loan Exchange Indebtedness;
(iv) Indebtedness of the Issuer and its Restricted Subsidiaries existing on the Issue Date (other than Indebtedness described in clause (i), (ii) or (iii) above), provided that Indebtedness outstanding as of the Issue Date which was incurred or allocated under a specific clause of the definition of “Permitted Debt” under the indentures governing the Remaining Unsecured Notes as of immediately prior to the Issue Date shall be deemed to be incurred on the Issue Date under the corresponding specific clause of the definition of “Permitted Debt” under this Indenture, and not under this clause (iv);

(v) Capitalized Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness (including, for the avoidance of doubt, the Hudson Yards Indebtedness outstanding as of Issue Date) to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Issuer or any of its Restricted Subsidiaries under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the Issuer or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness Incurred to Refinance any Indebtedness originally Incurred pursuant to this clause (v) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (A) $200.0 million and (B) 2.25% of Consolidated Total Assets as of the date any such Indebtedness is Incurred (the “Capitalized Lease Obligations Cap”); provided that (x) such Indebtedness is Incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness and (y) the Capitalized Lease Obligations Cap shall be reduced by an amount equal to the amount that the Hudson Yards Indebtedness is reduced (whether by repayment, retirement, recharacterization, discharge or otherwise) after the Issue Date (but such reductions shall not result in a Capitalized Lease Obligations Cap of less than the greater of (A) $100.0 million and (B) 1.125% of Consolidated Total Assets as of the date any such Indebtedness is Incurred);

(vi) Indebtedness owed to (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) any Person providing workers’ compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers’ compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; provided that upon the Incurrence of any Indebtedness with respect to reimbursement obligations regarding workers’ compensation claims, such obligations are reimbursed not later than 45 days following such Incurrence;

(vii) Indebtedness arising from agreements of the Issuer or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, Incurred in connection with the acquisition or disposition of any business, assets or a Restricted Subsidiary of any of the Issuers in accordance with the terms of this Indenture, other than Guarantees of
Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition;

(viii) intercompany Indebtedness between or among the Issuer or any of its Restricted Subsidiaries; provided that (A) such Indebtedness owing to a Restricted Subsidiary that is not a Subsidiary Guarantor will only be permitted by this clause (viii) if at all times such Indebtedness is unsecured and subordinated in right of payment to the applicable Issuer’s Obligations with respect to the Notes or Guarantee of such Subsidiary Guarantor, as applicable, (B) no such Indebtedness owing by the Extended Term Loan PropCo or Notes PropCo shall be incurred hereunder except to the extent permitted under clause (3)(i) of the definition of “Permitted Investments”, and (C) any subsequent issuance or transfer of any Capital Stock or any other event that results in any Restricted Subsidiary lending such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary) will be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (viii);

(ix) Indebtedness pursuant to Hedge Agreements;

(x) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations, in each case, provided in the ordinary course of business, including those Incurred to secure health, safety and environmental obligations in the ordinary course of business;

(xi) (A) guarantees of Indebtedness of the Issuers or any of the Subsidiary Guarantors; or (B) guarantees of Indebtedness of any other Subsidiary, in each case of (A) and (B) permitted to be Incurred under this Indenture; in each case of (A) and (B), to the extent (1) such guarantees are Permitted Investments (other than pursuant to clause (18) of the definition thereof) and (2) in the case of guarantees made by the Issuers or any of the Subsidiary Guarantors pursuant to clause (B) above, such guarantees are made in connection with a Permitted Acquisition;

(xii) (A) Indebtedness Incurred or assumed in connection with an acquisition of any assets (including Capital Stock), business or Person and Indebtedness of any Person that becomes a Restricted Subsidiary or is merged into or consolidated or amalgamated with Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture and (B) Indebtedness Incurred or assumed in anticipation of an acquisition of any assets, business or Person; provided that in each case contemplated by the foregoing subclauses (A) and (B):

(1) immediately after giving effect for such acquisition, merger, consolidation or amalgamation, no Event of Default has occurred and is continuing and on a Pro Forma Basis, either (x) the Issuer would be permitted to incur at least $1.00 of additional Ratio Debt or (y) the Interest Coverage Ratio of the Issuer would increase;
(2) the aggregate principal amount of any such Indebtedness Incurred pursuant to this clause (xii) by Restricted Subsidiaries that are not Subsidiary Guarantors, together with any Permitted Refinancing Indebtedness Incurred by Restricted Subsidiaries that are not Subsidiary Guarantors to Refinance any Indebtedness originally Incurred pursuant to this clause (xii) (and any successive Permitted Refinancing Indebtedness thereof), may not exceed $50.0 million at any one time outstanding;

(3) the aggregate principal amount of any Indebtedness Incurred or assumed under the foregoing subclauses (A) and (B), together with (x) the aggregate principal amount of any Permitted Refinancing Indebtedness in respect thereof and (y) the aggregate amount of any Investments outstanding under clause (24) of the definition of “Permitted Investments”, does not exceed the limits set forth in that clause; and

(4) the assets acquired, if held in the Issuer or a Subsidiary Guarantor (other than Notes PropCo and Extended Term Loan PropCo), shall be pledged as Collateral, subject to Liens with the Required Collateral Lien Priority;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification is received by the Issuer of its incurrence;

(xiv) Indebtedness of the Issuer or any Restricted Subsidiary supported by a letter of credit issued pursuant to any Credit Agreement, so long as such letter of credit has not been terminated and is in a principal amount not in excess of the stated amount of such letter of credit;

(xv) [Reserved];

(xvi) Indebtedness consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xvii) [Reserved];

(xviii) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(xix) Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Issuer or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 3.4;
(xx) [Reserved];

(xxi) Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness Incurred by Foreign Subsidiaries to Refinance any Indebtedness originally Incurred pursuant to this clause (xxi) (and any successive Permitted Refinancing Indebtedness), not to exceed $25.0 million;

(xxii) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are Incurred in the ordinary course of business and not in connection with the borrowing of money;

(xxiii) Indebtedness representing deferred compensation or other similar arrangements Incurred by the Issuer or any Restricted Subsidiary (A) in the ordinary course of business or (B) in connection with any Permitted Investment;

(xxiv) any Permitted Refinancing Indebtedness Incurred to Refinance Indebtedness Incurred as Ratio Debt or under clause (iv) or this clause (xxiv) of this Section 3.3(b);

(xxv) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xxvi) Indebtedness Incurred by the Issuer or any Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case Incurred or undertaken in the ordinary course of business;

(xxvii) Indebtedness Incurred by the Issuer or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Notes in accordance with this Indenture; and

(xxviii) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness Incurred to Refinance any Indebtedness originally Incurred pursuant this clause (xxviii) (and any successive Permitted Refinancing Indebtedness), not to exceed $100.0 million; provided that the cash interest rate on any such Indebtedness may not exceed 8.0% per annum.

(c) For purposes of determining compliance with this Section 3.3, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be Incurred as Ratio Debt, the Issuer may, in its sole discretion, at the time of Incurrence, combine, divide, classify or reclassify, or at any later time combine, divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 3.3; provided that (i) all Indebtedness under the Extended Term Loans or guarantees thereof
(and any Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (i) of the definition of “Permitted Debt,” (ii) all Indebtedness under the ABL Credit Agreement or guarantees thereof (and any Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (ii) of the definition of “Permitted Debt,” (iii) all Indebtedness under the Second Lien Notes or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(B) of the definition of “Permitted Debt,” (iv) all Indebtedness under the 2028 Debentures or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(E) of the definition of “Permitted Debt,” and (v) all Indebtedness under the Remaining Unsecured Notes or guarantees thereof (and any Permitted Refinancing Indebtedness in respect thereof) will be deemed to have been Incurred pursuant to clause (iii)(D) of the definition of “Permitted Debt,” and, in each case of clauses (i) through (vi) above, the Issuer will not be permitted to reclassify at any later date all or any portion of such Indebtedness. All Indebtedness originally Incurred under clause (xxviii) of the definition of “Permitted Debt” will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be Incurred by the obligor thereon as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 3.3. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 3.3.

(d) For purposes of determining compliance with any dollar-denominated restriction on the Incurrence of Indebtedness, the dollar-equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower dollar-equivalent), in the case of revolving credit debt; provided that if such Indebtedness is Incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being Refinanced (plus unpaid accrued interest and premiums (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).
SECTION 3.4. Limitation on Restricted Payments.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

   (i) declare or pay any dividend or make any payment or distribution on account of the Issuer’s or any of its Restricted Subsidiaries’ Equity Interests, including any payment made in connection with any merger or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

   (ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any Parent Entity, including in connection with any merger or consolidation;

   (iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness of any of the Issuers or any Subsidiary Guarantor (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness of any of the Issuers or any Subsidiary Guarantor in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within 45 days of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement (provided that a repayment of Remaining Unsecured Notes during such 45-day period shall be in an amount that would be permitted pursuant to Section 3.4(b)(xii)(D) and will count against the amount permitted pursuant to such provision) and (B) Indebtedness permitted under Section 3.3(b)(viii)); or

   (iv) make any Restricted Investment;

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “Restricted Payments”).

(b) The provisions of Section 3.4(a) will not prohibit:

   (i) the making of any Restricted Payment described in Section 3.4(a)(iii) or Section 3.4(a)(iv) in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary) of, Equity Interests of the Issuer (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Issuer; provided that the amount of any such net cash proceeds that are utilized for any Restricted Payment pursuant to this clause (i) will be excluded from and Section 3.4(b)(i)(C);
(ii) Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors (collectively, "Related Persons") of the Issuer or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (ii), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; provided that the aggregate amount of such purchases or redemptions may not exceed:

(A) $20.0 million in any fiscal year for purchases or redemptions from Persons that are current Related Persons at the time of such purchase or redemption; plus

(B) $5.0 million in the aggregate from the Issue Date for purchases or redemptions from former Related Persons; plus

(C) the amount of net cash proceeds contributed to the Issuer that were received by any Parent Entity since the Issue Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements; plus

(D) the amount of net proceeds of any key man life insurance policies received during such fiscal year; plus

(E) the amount of any bona fide cash bonuses otherwise payable (but not actually paid) to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests; and;

provided, further, that cancellation of Indebtedness owing to the Issuer or any of its Restricted Subsidiaries from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Issuer or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(iii) [Reserved];

(iv) [Reserved];
(v) Restricted Payments to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal or combined or unitary state tax return that includes the Issuer and its Restricted Subsidiaries (or the taxable income thereof) (such payments being referred to as “Tax Distributions”), or to any Parent Entity that is a partner or a sole owner of the Issuer in the event the Issuer is treated as a partnership or a “disregarded entity” for U.S. federal income tax purposes, in each case, in an amount not to exceed the amount that the Issuer and its Restricted Subsidiaries would have been required to pay in respect of federal, state or local Taxes (as the case may be) in respect of such fiscal year if the Issuer and its Subsidiaries paid such Taxes directly as a stand-alone taxpayer (or stand-alone group) (such amounts, plus any cash actually distributed by an Unrestricted Subsidiary for such period pursuant to the second proviso below, the “Issuer Tax Amount”); provided, that any amounts paid pursuant to this clause (v) shall actually be used by a Parent Entity to pay taxes to an applicable taxing authority; provided further that Restricted Payments will be permitted in respect of the income of an Unrestricted Subsidiary only to the extent of the amount of cash distributed to the Issuer or any Restricted Subsidiary by such Unrestricted Subsidiary for such purpose; provided further that amounts paid under this clause (v) and taken together with any amounts paid in respect of federal, state or local Taxes under Section 3.8(b)(xvi) shall not exceed the Issuer Tax Amount for any applicable year;

(vi) Restricted Payments to permit any Parent Entity to:

(A) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filing and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Issuer and the Restricted Subsidiaries, but not, for the avoidance of doubt, any costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Issuers and their Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, with a Restricted Payment to a Parent Entity), subject to reasonable pro-ration of joint services, costs, fees and expenses;

(B) pay fees and expenses related to any public offering or private placement of debt or equity securities of any Parent Entity or any Permitted Investment, whether or not consummated, to the extent the proceeds of any of the foregoing transactions are contributed to the Issuers;

(C) pay franchise Taxes and other fees and expenses in connection with any Parent Entity’s ownership of any Restricted Subsidiary or the maintenance of its legal existence;
(D) make payments under transactions permitted by Section 3.8 (other than Section 3.8(b)(viii)), to the extent such payments are due at the time of such Restricted Payment; or

(E) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Issuer and its Restricted Subsidiaries, but not, for the avoidance of doubt, any indemnities, costs, fees and expenses for, or directly allocable to, the MYT Entities, or in respect of any litigation related thereto (other than litigation for defense of Claims brought against any Parent Entity which may be covered so long as reasonably related to the Issuers and their Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by a Parent Entity shall not be paid for, directly or indirectly, with a Restricted Payment to a Parent Entity), incurred after the Issue Date, subject to reasonable pro-ration of joint services, indemnities, costs, fees and expenses;

(vii) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(viii) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;

(ix) Restricted Payments to any Parent Entity for the purpose of paying indemnities of, and reimbursement of reasonable and documented out-of-pocket fees and expenses to any Sponsor, in each case incurred in connection with the provision by such Sponsors of bona fide services (including such services provided under the Management Agreements as in effect on the Issue Date) to any Parent Entity for the benefit of the Issuer and its Subsidiaries and not, for the avoidance of doubt, in respect of any litigation related thereto (other than litigation for defense of the Issuer and its Subsidiaries; for the avoidance of doubt, prosecution of defamation or similar claims and defense against claims of wrongful disclosures by the Issuer shall not be paid for, directly or indirectly, by any Restricted Payment to the Issuer), subject to reasonable pro-ration of joint services, fees, costs and expenses.

(x) the mandatory redemption of a de minimis aggregate principal amount of 8.75%/9.50% senior PIK toggle notes due 2021 pursuant to Section 5.10 of the indenture governing such notes as of the Issue Date;

(xi) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or
the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Indenture;

(xii) Restricted Payments to repurchase, repay, exchange for or refinance Non-Participating Term Loans using the proceeds of Non-Participating Term Loan Exchange Indebtedness (including by means of an exchange offer or modification of the Non-Participating Term Loans to become Non-Participating Term Loan Exchange Indebtedness);

(B) Restricted Payments to repurchase, repay, exchange for or refinance Remaining Unsecured Notes using the proceeds of Remaining Unsecured Notes Exchange Indebtedness (including by means of an exchange offer or modification of the Remaining Unsecured Notes to become Remaining Unsecured Notes Exchange Indebtedness), so long as any such Remaining Unsecured Notes Exchange Indebtedness is Incurred under clause (iii)(D)(2) or (iii)(D)(3) of the definition of “Permitted Debt”;

(C) Restricted Payments to repurchase, repay, exchange for or refinance Non-Participating Term Loans or Remaining Unsecured Notes using (i) the cash proceeds of common equity sales by or common equity contributions to, the Issuer or (ii) any non-cash assets contributed to or sold to the Issuer in respect of the Issuer’s common equity (including an interest in the MYT Holdco so contributed or purchased); and

(D) Restricted Payments to repurchase or repay Non-Participating Term Loans or Remaining Unsecured Notes using up to an aggregate $60.0 million of cash; provided that the total purchase price or repayment amount of any Indebtedness repurchased or repaid (or any portion of which is repurchased or repaid) pursuant to this subclause (D) more than 45 days prior to the final maturity date of such Indebtedness may not be greater than (x) 90% of face value (in the case of Non-Participating Term Loans) and (y) 40% of face value (in the case of Remaining Unsecured Notes);

(xiii) payments or distributions to satisfy dissenters’ rights, pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of this Indenture;

(xiv) the distribution or dividend of the MYT Assets (or proceeds from a sale of MYT Assets or the MYT Entities) in the event the MYT Assets (or proceeds from such sale) are contributed to the Issuers or any of their Restricted Subsidiaries on or after Issue Date to the extent that the MYT Assets (or such proceeds) are required to be distributed in accordance with any settlement, judgment, court order or other resolution of a Claim, Cause of Action or litigation with respect to the MyTheresa Distribution or the MyTheresa Designation, subject to (i) restoration of all terms set forth in the MYT Holdco Preferred Series A Certificate, (ii) compliance by the MYT Entities with all of the MYT Covenants and the MYT Waterfall (as if such MYT Waterfall had been in effect while the MYT Assets (or proceeds from a sale of MYT Assets or MYT Entities) were held by the Issuers or any of their Restricted Subsidiaries), (iii) the
automatic release of any pledges or Liens on the MYT Contributed Equity Interests contemplated by the definition of "Unrestricted Subsidiary" and (iv) the restoration of the MYT Third Lien Notes Pledge Agreement;

(xv) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries and any class or series of Preferred Stock of any Restricted Subsidiaries issued or Incurred in accordance with Section 3.3;

(xvi) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) by the Issuer after the Issue Date; and

(B) the declaration and payment of dividends to Issuer or any Parent Entity, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) of the Issuer or any Parent Entity issued after the Issue Date;

provided, however, that (1) for the most recently ended four full fiscal quarters for which Required Financial Statements have been delivered immediately preceding the date of issuance of such Designated Preferred Stock, the Interest Coverage Ratio of the Issuer would have been at least 2.25 to 1.00 and (2) the aggregate amount of dividends declared and paid pursuant to this clause (xvi) does not exceed the net cash proceeds actually received by the Issuer from the sale (or the contribution of the net cash proceeds from the sale) of Designated Preferred Stock; and

(xvii) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness, Disqualified Stock or Preferred Stock of the Issuer and its Restricted Subsidiaries pursuant to provisions similar to Section 3.7 and Section 3.9; provided that, prior to such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Issuers (or a third party to the extent permitted by this Indenture) have made a Change of Control Offer or Asset Sale Offer, as the case may be, with respect to the Notes and have repurchased, redeemed, defeased, acquired or retired all Notes validly tendered and not withdrawn in connection with such Change of Control Offer or Asset Sale Offer, as the case may be.

(c) For purposes of this Section 3.4, if any Investment or Restricted Payment (or a portion thereof) would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of "Permitted Investments," the Issuer may divide and classify such Investment or Restricted Payment (or a portion thereof) in any manner that complies with this Section 3.4 and may later divide and reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.
The Issuer and its Restricted Subsidiaries shall not, directly or indirectly, use any Investments made pursuant to Section 3.4(b)(i) or any clause of the definition of "Permitted Investment" (i) to provide assets to a Person that Incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to Refinance any Indebtedness of the Issuers or their Restricted Subsidiaries or (ii) to make the payments restricted by Section 3.4(a)(i), (ii), or (iii).

SECTION 3.5. Liens.

The Issuers will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, Incur or suffer to exist any Lien securing Indebtedness on any asset or property of any of the Issuers or any Restricted Subsidiary, except:

(i) Permitted Liens; or

(ii) Liens other than Permitted Liens on assets that are not Collateral; provided that with respect to this clause (ii), the Notes or the applicable Subsidiary Guarantee of a Subsidiary Guarantor, as the case may be, are equally and ratably secured with such Lien; provided that any Lien that is granted to secure the Notes Obligations or any Subsidiary Guarantee pursuant to this clause (ii) will be automatically and unconditionally released and discharged at the same time as the release of the underlying Lien that gave rise to the obligation to equally and ratably secure the Notes Obligations or such Subsidiary Guarantee under this clause (ii) (other than a release as a result of the enforcement of remedies in respect of such Lien or the Notes Obligations secured by such Lien).

SECTION 3.6. Dividend and Other Payment Restrictions Affecting Subsidiaries.

(I) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries on its Capital Stock; or

(ii) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(b) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.
(II) **Section 3.6(i)** will not apply to encumbrances or restrictions existing under or by reason of:

(A) contractual encumbrances or restrictions of the Issuer or any Restricted Subsidiary in effect on the Issue Date, including pursuant to:

(1) the Extended Term Loan Agreement and the other documents relating to the Extended Term Loan Agreement;

(2) the ABL Credit Agreement and the other documents relating to the ABL Credit Agreement;

(3) the Second Lien Notes Indenture and the other documents relating to the Second Lien Notes Indenture;

(4) Indebtedness permitted pursuant to Section 3.3(b)(iv); and

(5) Hedge Agreements;

(B) the Third Lien Notes Obligations and all Indebtedness Documents related thereto;

(C) applicable law or any applicable rule, regulation or order;

(D) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Issuer or any Restricted Subsidiary that was in existence at the time of such acquisition (or at the time it merges with or into the Issuer or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof)), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that in connection with a merger under this clause (D), if a Person other than the Issuer or such Restricted Subsidiary is the Successor Company with respect to such merger, any Subsidiary of such Person, or any agreement or instrument of such Person or any Subsidiary of such Person, will be deemed acquired or assumed, as the case may be, by the Issuer or such Restricted Subsidiary, as the case may be, at the time of such merger;

(E) customary encumbrances or restrictions contained in contracts or agreements for the sale of assets applicable to such assets pending consummation of such sale, including customary restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary;

(F) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
customary provisions in operating or other similar agreements entered into in the ordinary course of business and which limitation is applicable only to the assets that are the subject of those agreements;

purchase money obligations for property acquired and Capitalized Lease Obligations entered into in the ordinary course of business to the extent such obligations impose restrictions of the nature discussed in Section 3.6(I)(c) on the property so acquired;

customary provisions contained in leases, sub-leases, licenses, sublicenses, contracts and other similar agreements entered into in the ordinary course of business to the extent such obligations impose restrictions of the type described in Section 3.6(I)(c) on the property subject to such lease;

[Reserved];

other Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary that is Incurred subsequent to the Issue Date pursuant to Section 3.3; provided that such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuers’ ability to make anticipated principal or interest payments on the Notes in accordance with this Indenture (as determined by the Issuer in good faith);

any encumbrance or restriction contained in the documents relating to any secured Indebtedness otherwise permitted to be Incurred pursuant to Section 3.3 and Section 3.5 to the extent such documents limit the right of the debtor to dispose of the assets securing such Indebtedness;

any encumbrances or restrictions arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, materially affect the Issuers’ ability to make anticipated principal or interest payments on the Notes in accordance with this Indenture (as determined by an Officer of the Issuer in good faith);

customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to the applicable joint venture; and

any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) of this Section 3.6(I) imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or Refinancings of the contracts, instruments or obligations referred to in clauses (A) through (N) of this Section 3.6(I); provided that such encumbrances and restrictions contained in any such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing are, in the good faith judgment of the Issuer, not materially more restrictive, taken as a whole, than the encumbrances and restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or Refinancing.
For purposes of determining compliance with this Section 3.6, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock will not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Issuer or a Restricted Subsidiary to other Indebtedness Incurred by the Issuer or any such Restricted Subsidiary will not be deemed a restriction on the ability to make loans or advances.

SECTION 3.7. Asset Sales.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, cause or make an Asset Sale, unless:

(1) the Issuer or any of its Restricted Subsidiaries, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (as determined at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that the amount of:

(A) any liabilities (as shown on the Issuer’s or such Restricted Subsidiary’s most recent balance sheet or in the notes thereto) of the Issuer or such Restricted Subsidiary (other than liabilities that are Subordinated Indebtedness) that are assumed by the transferee of any such assets or Equity Interests pursuant to an agreement that releases or indemnifies the Issuer or such Restricted Subsidiary, as the case may be, from further liability (or are otherwise extinguished in connection with the transactions relating to such Asset Sale);

(B) any notes or other obligations or other securities or assets received by the Issuer or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 90 days of the receipt thereof; and

(C) any Designated Non-cash Consideration received by the Issuer or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) $25.0 million and (y) 0.35% of Consolidated Total Assets, calculated at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value) will be deemed to be Cash Equivalents for the purposes of this clause (2).

(b) With respect to any Collateral Asset Sale, the following provisions shall apply:

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The Issuer shall cause the Net Cash Proceeds of any Collateral Asset Sale to be deposited immediately in an account subject to a Control Agreement for the benefit of the Notes Collateral Agent pursuant to the terms of the Intercreditor Agreements, which may be a Control Agreement in favor of the ABL Agent, Second Lien Notes Collateral Agent and/or the Extended Term Loan Agent, acting as gratuitous bailee for the benefit of the Notes Collateral Agent pursuant to the ABL Intercreditor Agreement and/or the Junior Lien Intercreditor Agreement; and

Within 30 days after the Issuer’s or any Restricted Subsidiary’s receipt of the Net Cash Proceeds of any Collateral Asset Sale, the Issuer or any Restricted Subsidiary shall apply an amount equal to the Net Cash Proceeds from such Collateral Asset Sale, at its option, to repay (x) Senior Priority Obligations (with any such repayment of revolving Senior Priority Obligations to be accompanied by a corresponding permanent reduction in commitments with respect thereto) or (y) Obligations under the Notes by, at its option, (A) purchasing Third Lien Notes (on a pro rata basis between and within the Notes and the 8.000% Third Lien Notes) through open-market purchases at a price not less than 100% of the principal amount thereof; or (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders and holders of the 8.000% Third Lien Notes to purchase their Third Lien Notes at a price not less than 100% of the principal amount thereof, provided that (i) in the case of a Collateral Asset Sale with respect to a warehouse or distribution center, no prepayment under this clause (2) shall be required to the extent of the cost of any investment in, or purchase of, a new warehouse or distribution center (but not to exceed the Net Cash Proceeds of such Collateral Asset Sale) completed within 24 months before and 12 months after the date of such Collateral Asset Sale; and (ii) Net Cash Proceeds from Collateral Asset Sales of stores (in an aggregate amount not to exceed $30.0 million after the Issue Date) may be applied to capital expenditures incurred within 12 months of the date of the Collateral Asset Sale.

With respect to Asset Sales other than a Collateral Asset Sale, the following provisions shall apply: Within 365 days after the Issuer’s or any Restricted Subsidiary’s receipt of the Net Cash Proceeds of such Asset Sale, the Issuer or any Restricted Subsidiary may apply an amount equal to the Net Cash Proceeds from such Asset Sale, at its option:

1. to repay (x) Indebtedness (other than Subordinated Indebtedness) or (y) Notes Obligations by, at its option, (A) purchasing Third Lien Notes through open-market purchases at a price not less than 100% of the principal amount thereof; or (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders and holders of 8.000% Third Lien Notes to purchase their Third Lien Notes (on a pro rata basis between and within the Notes and the 8.000% Third Lien Notes) at a price not less than 100% of the principal amount thereof; or

2. to acquire all or substantially all of the assets of, or any Capital Stock of, another Similar Business, if, after giving effect to any such acquisition of Capital Stock, the Similar Business is or becomes a Restricted Subsidiary or to acquire other assets that are used or useful in a Similar Business (provided that any such assets

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that would constitute Collateral shall be pledged as Collateral under the Security Documents and in accordance with this Indenture and the Security Documents substantially simultaneously with such purchase; provided further that the Issuer and its Restricted Subsidiaries will be deemed to have complied with the provisions described in this clause (2) if and to the extent that, within 365 days after the Asset Sale that generated the Net Cash Proceeds, the Issuer or any Restricted Subsidiary enters into a binding agreement to make an investment in compliance with the provision described in this clause (2) and that investment is thereafter completed within 365 days after the end of such 365-day period.

(d) Pending the final application of any Net Cash Proceeds of an Asset Sale (other than a Collateral Asset Sale, which shall be governed by Section 3.7(b) above), the Issuer or any of its Restricted Subsidiaries may temporarily reduce Indebtedness under a revolving credit facility, if any, or otherwise invest or utilize Net Cash Proceeds in any manner not prohibited by this Indenture.

(e) Any amount of Net Cash Proceeds from any Asset Sale that are not invested or applied as provided and within the time period set forth in Section 3.7(b) or Section 3.7(c) will be deemed to constitute “Excess Proceeds.” Notwithstanding the foregoing sentence, any amount of proceeds offered to Holders pursuant to Section 3.7(b) or Section 3.7(c) pursuant to an Asset Sale Offer made at any time after the Asset Sale will be deemed to have been applied as required and will not be deemed to be Excess Proceeds without regard to the extent to which such offer is accepted by the Holders. When the aggregate amount of Excess Proceeds exceeds $25.0 million, the Issuers will make an offer (an “Asset Sale Offer”) to all Holders and holders of 8.000% Third Lien Notes to purchase their Third Lien Notes (on a pro rata basis between and within the Notes and the 8.000% Third Lien Notes) and, if required by the terms of any Pari Passu Lien Indebtedness, to all holders of such Pari Passu Lien Indebtedness, to purchase the maximum principal amount of such Third Lien Notes and Pari Passu Lien Indebtedness, as appropriate, on a pro rata basis, that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to (x) in the case of the Third Lien Notes, 100% of the principal amount thereof and (y) in the case of Pari Passu Lien Indebtedness, 100% of the principal amount thereof (or in the event such Pari Passu Lien Indebtedness was issued with original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price, if any, as may be provided by the terms of such Pari Passu Lien Indebtedness), to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture and the agreement governing such Pari Passu Lien Indebtedness. The Issuers will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed $25.0 million by transmitting electronically or by mailing to the Holders the notice required pursuant to the terms of this Indenture, with a copy to the Trustee or otherwise in accordance with the Applicable Procedures of the Depositary. The Issuers may satisfy the foregoing obligations with respect to such Net Cash Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Cash Proceeds prior to the expiration of the application period or by electing to make an Asset Sale Offer with respect to such Net Cash Proceeds before the aggregate amount of Excess Proceeds exceeds $25.0 million.
For the case of both an Asset Sale of Collateral and of assets not constituting Collateral, to the extent that the aggregate amount of Third Lien Notes and other Indebtedness tendered or otherwise surrendered in accordance with the terms of this section is less than the Excess Proceeds, the Issuers may use any remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Third Lien Notes and other Indebtedness tendered or otherwise surrendered by Holders and holders of the 8.000% Third Lien Notes in accordance with the terms of this section exceeds the amount of Excess Proceeds, the Trustee will select the Third Lien Notes (and the Issuers or their agents will select such Pari Passu Lien Indebtedness, if applicable) to be purchased in the manner described in Section 3.7(i) below. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds will be reset at zero. To the extent the Excess Proceeds exceed the outstanding aggregate principal amount of the Third Lien Notes (and, if required by the terms thereof, all Pari Passu Lien Indebtedness), the Issuers need only make an Asset Sale Offer up to the outstanding aggregate principal amount of Third Lien Notes (and any such Pari Passu Lien Indebtedness), and any additional Excess Proceeds will not be subject to this Section 3.7 and will be permitted to be used for any purpose otherwise permitted by this Indenture in the Issuers’ discretion.

The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the purchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this Section 3.7 by virtue of such compliance.

The provisions under this Indenture relative to the Issuers’ obligation to make an offer to repurchase the Notes as a result of an Asset Sale may be waived or modified at any time with the written consent of the Holders of a majority in principal amount of the Notes.

If more Notes are tendered pursuant to an Asset Sale Offer than the Issuers are required to purchase, selection of such Notes for purchase will be made in compliance with the requirements of the principal national securities exchange, if any, on which such Notes are listed (but only to the extent that the Trustee has been notified in writing of such listing by the Issuer) or if such Notes are not listed, on a pro rata basis or as nearly a pro rata basis as practicable (with adjustments so that only Notes in denominations of the minimum denomination of $2,000.00 or integral multiples of $1.00 in excess thereof) will be purchased, by lot or by such other method as the Trustee will deem fair and appropriate (and in such manner as complies with applicable legal requirements, if any); provided that the selection of Notes for purchase will not result in a Holder with a principal amount of Notes less than the minimum denomination of $2,000.00. If all of the Notes are in global form, interests in the Notes to be redeemed will be selected for redemption by the Depositary in accordance with the Applicable Procedures of the Depositary. No Note will be repurchased in part if less than the minimum denomination of such Note would be left outstanding.
(j) Notices of an Asset Sale Offer will be delivered or caused to be delivered, or in the case of Notes in global form, delivered or cause to be delivered electronically in accordance with the Applicable Procedures of the Depositary, at least 30 but not more than 60 days before the purchase date to each Holder at such Holder’s registered address, with a copy to the Trustee, or otherwise in accordance with Applicable Procedures of the Depositary. If any Note is to be purchased in part only, any notice of purchase that relates to such Note will state the portion of the principal amount thereof that has been or is to be purchased.

(k) A new Note in principal amount equal to the unpurchased portion of any Note purchased in part will be issued in the name of the Holder thereof upon cancellation of the original Note. On and after the purchase date, unless the Issuers default in payment of the purchase price, interest will cease to accrue on Notes or portions thereof purchased.

SECTION 3.8. Transactions with Affiliates.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer involving aggregate consideration in excess of $15.0 million (each of the foregoing, an “Affiliate Transaction”), unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, the Issuer delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Issuer, approving such Affiliate Transaction, together with an Officer’s Certificate certifying that the Board of Directors of the Issuer determined or resolved that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 3.8(a) will not apply to:

(i) transactions between or among (A) the Issuers and the Subsidiary Guarantors or (B) the Issuers and any Person that becomes a Subsidiary Guarantor as a result of such transaction (including by way of a merger, consolidation or amalgamation);

(ii) transactions between or among the Issuers and any Restricted Subsidiary that involves shared overhead in the ordinary course of business;

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(iii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Issuer or any Parent Entity in good faith;

(iv) loans or advances to employees or consultants of any Parent Entity, the Issuer or any Restricted Subsidiary in accordance with clause (2) of the definition of “Permitted Investments;”

(v) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Issuer or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Issuer and its Restricted Subsidiaries, and subject to reasonable pro-rata of joint services, indemnities, costs, fees and expenses;

(vi) the Transactions and other transactions, agreements and arrangements in existence on the Issue Date, or any amendment thereto to the extent such amendment is not adverse to the Holders in any material respect;

(vii) (A) any employment agreements entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors; and

(C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto.

(viii) (A) Restricted Payments permitted under Section 3.4; and

(B) Permitted Investments.

(ix) any purchase by any Parent Entity of the Equity Interests of the Issuer and the purchase by the Issuer of Equity Interests in any Restricted Subsidiary;

(x) [Reserved];

(xi) transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and on arm’s length terms;

(xii) any transaction in respect of which the Issuer delivers to the Trustee a letter addressed to the Board of Directors of the Issuer or any Parent Entity from an accounting, appraisal or investment banking firm, in each case, of nationally
recognized standing that is in the good faith determination of the Issuer qualified to render such letter, which letter states that such transaction is on terms that are no less favorable to the Issuer or its Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate;

(xiii) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;

(xiv) the issuance, sale or transfer of Equity Interests of the Issuer to any Parent Entity and capital contributions by any Parent Entity to the Issuer (and payment of reasonable out-of-pocket expenses Incurred by the Sponsors or any Parent Entity in connection therewith);

(xv) the issuance of Equity Interests to the management of any Parent Entity, the Issuer or any of the Restricted Subsidiaries in connection with the Transactions;

(xvi) payments by any Parent Entity, the Issuer or any of the Restricted Subsidiaries pursuant to tax sharing agreements among any Parent Entity, the Issuer and any of the Restricted Subsidiaries that would otherwise be permitted Tax Distributions under Section 3.4(b)(y) and shall be subject to the same restrictions as set forth under Section 3.4(b)(y); provided, that amounts paid under this clause (xvi) in respect of federal, state or local Taxes, taken together with any amounts paid under Section 3.4(b)(v) shall not exceed the Issuer Tax Amount for any applicable year;

(xvii) payments or loans (or cancellation of loans) to employees or consultants that are:

(A) approved by a majority of the disinterested directors of the Issuer in good faith;

(B) made in compliance with applicable law; and

(C) otherwise permitted under this Indenture;

(xviii) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Indenture that are fair to the Issuer and the Restricted Subsidiaries;

(xix) [Reserved];

(xx) transactions pursuant to, and complying with, Section 4.1(b) and the last sentence of Section 4.1(d);

(XX) the existence of, or the performance by the Issuer or any Subsidiary Guarantor of their obligations under the terms of, any customary registration rights agreement to which they are a party or become a party in the future.
SECTION 3.9. Change of Control.

(a) Upon the occurrence of a Change of Control after the Issue Date, each Holder will have the right to require the Issuers to purchase all or any part of such Holder’s Notes at a purchase price in cash (the “Change of Control Payment”) equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), except to the extent the Issuers have previously elected to redeem the Notes pursuant to Section 5.1.

(b) Within 30 days following any Change of Control, except to the extent that the Issuers have exercised their right to redeem the Notes pursuant to Section 5.1, the Issuers will deliver a notice (a “Change of Control Offer”) to each Holder with a copy to the Trustee, or otherwise in accordance with the Applicable Procedures of the Depositary, describing:

(i) that a Change of Control has occurred or, if the Change of Control Offer is being made in advance of a Change of Control, that a Change of Control is expected to occur, and that such Holder has, or upon such occurrence will have, the right to require the Issuers to purchase such Holder’s Notes at a purchase price in cash equal to 101.0% of the principal amount thereof, plus accrued and unpaid interest, if any, to (but not including) the date of purchase (subject to the right of Holders of record on a Record Date to receive interest on the relevant Interest Payment Date);

(ii) the transaction or transactions that constitute, or are expected to constitute, such Change of Control;

(iii) the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is delivered (the “Change of Control Payment Date”);

(iv) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(v) that unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(vi) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of such Notes completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(vii) that Holders will be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes; provided that the
paying agent receives, not later than the expiration time of the Change of Control Offer, a facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount of Notes tendered for purchase, a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased and a description of reasonable detail of any conditions precedent applicable to such withdrawal;

(viii) that if the Issuers are redeeming less than all of the Notes, the Holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to $2,000.00 or an integral multiple of $1.00 in excess thereof;

(ix) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control; and

(x) the other instructions determined by the Issuers, consistent with this Section 3.9, that a Holder must follow in order to have its Notes purchased.

(c) While the Notes are in global form and the Issuers make an offer to purchase all of the Notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the Notes to be made through the facilities of the Depositary in accordance with the Applicable Procedures of the Depositary. A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon the occurrence of such Change of Control.

(d) The Issuers will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 3.9. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 3.9, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations under this Section 3.9 by virtue of such compliance.

(e) On the Change of Control Payment Date, the Issuers will, to the extent permitted by law,

(i) accept for payment all Notes issued by them or portions thereof validly tendered and not withdrawn pursuant to the Change of Control Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer’s Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers.

(f) On the Business Day immediately preceding the Change of Control Payment Date, the Issuers will deposit with the Paying Agent in an amount equal
to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered.

(g) Holders electing to have a Note purchased will be required to surrender the Note, with an appropriate form duly completed, to the Issuers at the address specified in the notice at least three Business Days prior to the Change of Control Payment Date. Holders will be entitled to withdraw their election if the Trustee or the Issuers receive not later than one Business Day prior to the expiration of the Change of Control Offer, facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount at maturity of the Note which was delivered for purchase by the Holder and a statement that such Holder is withdrawing his selection to have such Note purchased.

(h) On the Change of Control Payment Date, all Notes purchased by the Issuers under this Section 3.9 will be delivered by the Issuers to the Trustee for cancellation, and the Issuers will pay the purchase price plus accrued and unpaid interest, if any, to the Holders entitled thereto. With respect to any Note purchased in part, the Issuers will issue a new Note in a principal amount equal at maturity to the unpurchased portion of the original Note in the name of the Holder upon cancellation of the original Note.

(i) Notwithstanding the foregoing provisions of this Section 3.9, the Issuers will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(j) Prior to any Change of Control Offer, each of the Issuers will deliver to the Trustee an Officer’s Certificate stating that all conditions precedent contained herein to the right of each of the Issuers to make such offer have been complied with.

SECTION 3.10. Maintenance of Insurance. The Issuers and the Subsidiary Guarantors will maintain with financially sound and reputable insurance companies, insurance with respect to their properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

SECTION 3.11. Additional Guarantors.

(a) Each of the Issuer’s current and future Domestic Subsidiaries (other than the Co-Issuers, Notes PropCo and Extended Term Loan PropCo) and, subject to clause (b) below, each of the Issuer’s future Foreign Subsidiaries shall, jointly and severally, irrevocably, fully and unconditionally guarantee on a senior basis and subject
to the applicable Intercreditor Agreements the Guaranteed Obligations. The foregoing requirement to provide a Subsidiary Guarantee shall not apply to an Excluded Subsidiary.

(b) After the Issue Date, (i) no direct or indirect Subsidiary (including an Excluded Subsidiary) or equity investee of the Issuer may directly or indirectly provide Credit Support for the Indebtedness incurred under clause (i) or (ii) of the definition of “Permitted Debt”, (ii) no direct or indirect Subsidiary (including an Excluded Subsidiary) or equity investee of the Issuer may be an obligor on any Indebtedness for borrowed money for which any Issuer or Subsidiary Guarantor directly or indirectly provides Credit Support, unless, in each case of clause (i) and (ii), such Subsidiary or equity investee provides a Subsidiary Guarantee, and (iii) each Immaterial Subsidiary existing as of the Issue Date shall, within 90 days following the Issue Date (or such later date as agreed to by the Issuer and the Extended Term Loan Agent) either (A) be dissolved, liquidated or merged out of existence or (B) become a Subsidiary Guarantor with respect to the Guaranteed Obligations.

(c) To the extent a Person is required to provide a Subsidiary Guarantee under the above provisions, such Person shall execute and deliver a supplemental indenture to this Indenture evidencing such Subsidiary Guarantee in the form of Exhibit D within 10 Business Days after the requirement to provide such Subsidiary Guarantee arises under this Indenture on the same terms and conditions as those set forth in this Indenture and applicable to the other Guarantors, together with such opinions of counsel and certifications as the Trustee reasonably requires, and pledge all assets held by such Person (other than Excluded Assets) as After-Pledged Property with Required Collateral Lien Priority as provided under Section 3.16.

(d) Neiman Marcus Bermuda, L.P., a limited partnership organized under the laws of Bermuda, NMG Asia Holdings Limited, a company organized under the laws of Hong Kong, and NMG Asia Limited, a company organized under the laws of Hong Kong, shall not be required to provide a Subsidiary Guarantee unless additional Investments are made after the Issue Date by the Issuers or any Restricted Subsidiaries in such Foreign Subsidiary exceeding $2.5 million in aggregate.

(e) On the Issue Date, MYT Parent and MYT Holdco shall execute and deliver the MYT Third Lien Notes Pledge Agreement.

SECTION 3.12. Notes PropCo and Extended Term Loan PropCo Guarantees

(a) Notes PropCo shall provide an unsecured Subsidiary Guarantee (the “Notes PropCo Guarantee”) of the Guaranteed Obligations, which Subsidiary Guarantee shall have the Required PropCo Guarantee Priority. Notes PropCo shall not have any Subsidiaries and may not make any Investments in any Person. No assets that may be pledged to secure the Notes Obligations may be held by Notes PropCo, and Notes PropCo shall not incur any Liens to secure Indebtedness or trade payables. Notes PropCo shall not hold any assets other than Notes Priority PropCo Assets or have any operations other than (i) holding the Notes Priority PropCo Assets and leasing or licensing such

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Notes Priority PropCo Assets to the Issuers or the Subsidiary Guarantors, and (ii) performing its obligations with respect to the Indebtedness permitted to be incurred under this Indenture (including under the ABL Obligations, the Extended Term Loan Obligations, the Third Lien Notes Obligations, the 2028 Debentures Obligations, the Second Lien Notes Obligations, the Non-Participating Exchange Term Loan Obligations and the Remaining Unsecured Notes Exchange Obligations and any Permitted Refinancing Indebtedness thereof), (iii) maintaining its legal existence, (iv) issuing Equity Interests to its parent company, (v) making Restricted Payments to its parent company, (vi) participating in tax, accounting and other administrative matters, (vii) providing indemnification to officers and directors, and (viii) activities incidental to the foregoing businesses, activities or operations. While Notes PropCo holds Notes Priority PropCo Assets, Notes PropCo shall not dissolve or liquidate or merge or consolidate with an Issuer or a Restricted Subsidiary.

(b) Extended Term Loan PropCo shall provide an unsecured Subsidiary Guarantee (the “Extended Term Loan PropCo Guarantee”) of the Guaranteed Obligations, which Subsidiary Guarantee shall have the Required PropCo Guarantee Priority. Extended Term Loan PropCo shall not have any Subsidiaries and may not make any Investments in any Person. No assets that may be pledged to secure the Extended Term Loan Obligations may be held by Extended Term Loan PropCo, and Extended Term Loan PropCo shall not incur any Liens to secure Indebtedness or trade payables. Extended Term Loan PropCo shall not hold any assets other than Extended Term Loan Priority PropCo Assets or have any operations other than (i) holding the Extended Term Loan Priority PropCo Assets and leasing or licensing such Extended Term Loan Priority PropCo Assets to the Issuers or the Subsidiary Guarantors, and (ii) performing its obligations with respect to the Indebtedness permitted to be incurred under this Indenture (including under the ABL Obligations, the Extended Term Loan Obligations, the Third Lien Notes Obligations, the 2028 Debentures Obligations, the Second Lien Notes Obligations, the Non-Participating Exchange Term Loan Obligations and the Remaining Unsecured Notes Exchange Obligations and any Permitted Refinancing Indebtedness thereof), (iii) maintaining its legal existence, (iv) issuing Equity Interests to its parent company, (v) making Restricted Payments to its parent company, (vi) participating in tax, accounting and other administrative matters, (vii) providing indemnification to officers and directors, and (viii) activities incidental to the foregoing businesses, activities or operations. While Extended Term Loan PropCo holds Extended Term Loan Priority PropCo Assets, Extended Term Loan PropCo shall not dissolve or liquidate or merge or consolidate with an Issuer or a Restricted Subsidiary.

(c) Notwithstanding anything to the contrary in this Indenture (including permissions by “Subsidiary Guarantors” to incur Indebtedness or provide other Credit Support under Section 3.3), Notes PropCo and Extended Term Loan PropCo shall not Incur or provide Credit Support for any Indebtedness or other related Obligations, other than guarantees of Permitted PropCo Guaranteed Obligations which have the Required PropCo Guarantee Priority.

SECTION 3.13. Compliance Certificate; Statement by Officers as to Default. The Issuer will deliver to the Trustee, within 120 days after the end of each
fiscal year of the Issuer ending after the Issue Date, an Officer’s Certificate to the effect that to the best knowledge of the signer thereof on behalf of each of the Issuers, the Issuers are or are not in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Issuers (through its own action or omission or through the action or omission of any Subsidiary Guarantor as applicable) will be in default, specifying all such defaults and the nature and status thereof of which such signer may have knowledge. The individual signing any certificate given by any Person pursuant to this Section 3.13 will be the principal executive, financial or accounting officer of such Person or the direct or indirect parent of such Person, in compliance with TIA § 314(a)(4).

So long as any of the Notes are outstanding, upon any Officer becoming aware of any Default or Event of Default, the Issuers will deliver to the Trustee, within 30 days after the occurrence thereof, an Officer’s Certificate specifying such Default or Event of Default and what action the Issuers are taking or propose to take with respect thereto.


(a) All payments made by a Foreign Guarantor in respect of a Guarantee will be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes unless the withholding or deduction of such Taxes is then required by law. If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of any jurisdiction in which the relevant Foreign Guarantor is then incorporated or organized or resident for tax purposes, any jurisdiction from or through which payment on behalf of such Foreign Guarantor is made or any political subdivision or governmental authority thereof or therein having power to tax (each, a "Tax Jurisdiction"), will at any time be required to be made from any payments made by or on behalf of the relevant Foreign Guarantor under its Guarantee, including payments of principal, redemption price, purchase price, interest or premium, the relevant Foreign Guarantor will pay such additional amounts (the "Additional Amounts") as may be necessary in order that the net amounts received in respect of such payments (including payments of principal, redemption price, interest or premium) by each Holder (including Additional Amounts) after such withholding or deduction will equal the respective amounts that would have been received in respect of such payments in the absence of such withholding or deduction; provided, however, that no Additional Amounts will be payable with respect to:

(i) any Taxes that would not have been so imposed but for the existence of any present or former connection between the Holder or the beneficial owner of the Note or Guarantee (or between a fiduciary, settler, beneficiary, partner, member or shareholder of, or possessor of power over the relevant Holder or beneficial owner, if the relevant Holder is an estate, nominee, trust, partnership, limited liability company or corporation) and the relevant Tax Jurisdiction, other than by the mere acquisition or holding of any Note or the enforcement or receipt of payment under or in respect of any Note or Guarantee;

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any Taxes imposed or withheld as a result of the failure of the Holder or beneficial owner of any Note or Guarantee to comply with any written request, made to that Holder or beneficial owner within a reasonable period before any such withholding or deduction would be payable, by an Issuer or a Foreign Guarantor to provide timely or accurate information concerning the nationality, residence or identity of such Holder or beneficial owner or to make any valid or timely declaration or similar claim or satisfy any certification information or other reporting requirements (in each case, to the extent such Holder or beneficial owner is legally eligible to do so), which is required or imposed by a statute, treaty, regulation or administrative practice of the relevant Tax Jurisdiction as a precondition to exemption from, or reduction in the rate of deduction or withholding of such Taxes;

any Taxes that are imposed or withheld as a result of the presentation of any Note or Guarantee for payment (where presentation is required) more than 30 days after the relevant payment is first made available for payment to the Holder or beneficial owner (except to the extent that the Holder or beneficial owner would have been entitled to Additional Amounts had the Note been presented on the last day of such 30 day period);

any estate, inheritance, gift, value added, sale, excise, transfer, personal property or similar tax or assessment;

any Tax which is payable otherwise than by deduction or withholding from payments made under or with respect to any Note or Guarantee;

any Tax imposed on or with respect to any payment by a Foreign Guarantor to the Holder if such Holder is a fiduciary, partnership, limited liability company or person other than the sole beneficial owner of such payment to the extent that Taxes would not have been imposed on such payment had such Holder been the sole beneficial owner of such Note or Guarantee;

any Taxes that are imposed or withheld as a result of the presentation of any Note or Guarantee for payment by or on behalf of a Holder or beneficial owner of such Notes or Guarantee who would have been able to avoid such withholding or deduction by presenting the relevant Note or Guarantee to, or otherwise accepting payment from, another paying agent;

any Taxes that are imposed or withheld pursuant to Sections 1471 through 1474 of the Code, any regulations promulgated thereunder, any official interpretations thereof, any similar law or regulation adopted pursuant to an intergovernmental agreement between a non-U.S. jurisdiction and the United States with respect to the foregoing or any agreements entered into pursuant to Section 1471(b)(1) of the Code; or

any combination of items (i) through (viii) above.

The relevant Foreign Guarantor will pay when due any present or future stamp, transfer, court or documentary taxes or any other excise or property taxes
that arise in a Tax Jurisdiction with respect to the initial execution, delivery or registration of the Guarantees or any other document or instrument relating thereto (other than the Notes).

(c) The relevant Foreign Guarantor will use reasonable efforts to furnish to the Holders, within a reasonable period of time after the due date for the payment of any Taxes so deducted or withheld pursuant to applicable law, either certified copies of tax receipts evidencing such payment by such Foreign Guarantor (in such form as provided in the ordinary course by the relevant Tax Jurisdiction and as is reasonably available to the Foreign Guarantor), or, if such receipts are not obtainable, other evidence of such payments by such Foreign Guarantor reasonably satisfactory to the Holders.

SECTION 3.15. Impairment of Security Interest.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take, any action which action or omission might reasonably or would (in the good faith determination of the Issuer), have the result of materially impairing the value of the security interests taken as a whole (including the lien priority with respect thereto) with respect to the Collateral for the benefit of the Notes Collateral Agent and the Holders (including materially impairing the lien priority of the Notes with respect thereto) (it being understood that any release described under Section 11.6 and the incurrence of Permitted Liens shall not be deemed to so materially impair the security interests with respect to the Collateral).

(b) At the written direction of the Issuer and without the consent of the Holders, the Notes Collateral Agent (or its agent or designee) shall from time to time enter into one or more amendments, extensions, renewals, restatements, supplements or other modifications or replacements to or of the Security Documents to, but subject in all cases to the Intercreditor Agreements: (i) cure any ambiguity, omission, defect or inconsistency therein that does not adversely affect the interests of the Holders in any material respect, (ii) add to the Collateral or (iii) make any other change thereto that does not adversely affect the Holders in any material respect.

SECTION 3.16. After-Pledged Property.

(a) With respect to After-Pledged Property of the Issuers or any Subsidiary Guarantor, the Issuers or such Subsidiary Guarantor shall execute and deliver such mortgages, deeds of trust, security instruments, financing statements and certificates and opinions of counsel as shall be reasonably necessary to create a Lien on such After-Pledged Property constituting Collateral securing the Notes Obligations as contemplated by the Security Documents and perfect such Liens to the extent required by the Security Documents in favor of the Notes Collateral Agent, and having the Required Collateral Lien Priority, subject only to Permitted Liens, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to apply to such After-Pledged Property to the same extent and with the same force and effect as the then-existing Collateral.

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(b) If any Issuer or Subsidiary Guarantor (A)(1) acquires fee simple title in Real Property after the Issue Date or (2) owns fee simple title in Real Property on the date it executes a supplemental indenture to provide a Subsidiary Guarantee pursuant to Section 3.11(c), that, in each case of subclauses (1) and (2) of this clause (A), on the date of such acquisition or the date that such Subsidiary Guarantee is provided, as applicable, has an individual fair market value (as determined customarily and in good faith by an Officer of the Issuer) of $2.5 million or more or (B)(1) acquires a leasehold interest in Real Property after the Issue Date with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center or (2) owns leasehold title in Real Property with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center on the date it provides a Subsidiary Guarantee or (y) any Non-Mortgageable Lease with respect to a full-line Neiman Marcus or Bergdorf Goodman store or a warehouse or distribution center ceases to be a Non-Mortgageable Lease hereunder, then in each case of the foregoing clauses (x) and (y) above, within 10 Business Days after the corresponding deadlines for Extended Term Loans (in each case, subject to extension as provided in the Extended Term Loan Agreement):

(i) notify the Notes Collateral Agent thereof;

(ii) cause any such acquired Real Property owned in fee simple that has a fair market value (as determined in good faith by an Officer of the Issuer) of $2.5 million or more to be subjected to a customary mortgage or deed of trust securing the Notes Obligations;

(iii) cause any such acquired or owned leasehold Real Property to be subjected to a customary mortgage or deed of trust securing the Notes Obligations;

(iv) with respect to any such Real Property, to the extent provided to the holders of any other Indebtedness of the Issuer or the Restricted Subsidiaries (or any agent or representative thereof), obtain fully paid American Land Title Association Lender’s Extended Coverage title insurance policies, with endorsements (including a standard survey endorsement or equivalent (only with respect to any such Real Property acquired or owned in fee simple pursuant to Section 3.16(b)(x)) and zoning endorsements where available) and in customary amounts that in no event shall be less than fair market value of such Real Property (the “Mortgage Policies”);

(v) with respect to any such Real Property acquired or owned in fee simple pursuant to Section 3.16(b)(x), to the extent necessary and customary to issue the Mortgage Policies, obtain American Land Title Association/American Congress on Surveying and Mapping form surveys, dated no more than 30 days before the date of their delivery to the Notes Collateral Agent, certified to the Notes Collateral Agent and the issuer of the Mortgage Policies and sufficient for the issuer of the Mortgage Policies to omit as an exception to each title policy the standard printed survey exception relating to such Real Property;
(vi) provide customary evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Notes Collateral Agent as loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks as are reasonably available for similar properties in the same geographical area, including the insurance required by the terms of any mortgage or deed of trust;

(vii) obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Issuers and the Subsidiary Guarantors in the states in which such Real Properties are located; and

(viii) take, or cause the applicable Issuer or Subsidiary Guarantor to take, such actions as shall be necessary or reasonably requested by the Notes Collateral Agent to perfect such Liens.

SECTION 3.17. Covenant Suspension.

(a) If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies, and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a “Covenant Suspension Event”), Sections 3.3, 3.4, 3.6, 3.7, 3.8 and 4.1(a)(iv) (collectively, the “Suspended Covenants”) will no longer be applicable to such Notes.

(b) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time pursuant to Section 3.17(a) (any such period, a “Suspension Period”), and on any subsequent date (the “Reversion Date”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events.

(c) Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Asset Sales will be reset at zero.

(d) With respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments since the Issue Date will be calculated as though Section 3.4 had been in effect prior to, but not during, the Suspension Period. In addition, all Indebtedness Incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified as having been Incurred or issued pursuant to Section 3.3(b)(iv). In addition, for purposes of Section 3.8, all agreements and arrangements entered into by the Issuer and any Restricted Subsidiary with an Affiliate of the Issuer during the Suspension Period prior to such Reversion Date will be deemed to have been entered into on or prior to the Issue Date, and for purposes of Section 3.6, all contracts entered into during the Suspension Period prior to such Reversion Date that contain any of the restrictions contemplated by such Section 3.6 will be deemed to have been existing on the Issue Date.
During the Suspension Period, any reference in the definitions of “Permitted Liens” and “Unrestricted Subsidiary” to Section 3.3 or any provision thereof will be construed as if Section 3.3 had remained in effect since the Issue Date and during the Suspension Period.

During the Suspension Period, the obligation to grant further Subsidiary Guarantees will be suspended. Upon the Reversion Date, the obligation to grant Subsidiary Guarantees under Section 3.11 will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was Incurred for purposes of Section 3.11).

Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of any failure to comply with the Suspended Covenants during any Suspension Period, and the Issuer and any Subsidiary of the Issuer will be permitted, following a Reversion Date, without causing a Default or Event of Default or breach of any of the Suspended Covenants (notwithstanding the reinstatement thereof) under this Indenture, to honor, comply with or otherwise perform any contractual commitments or obligations entered into during a Suspension Period following a Reversion Date and to consummate the transactions contemplated thereby.

The Issuer will provide an Officer’s Certificate to the Trustee indicating the occurrence of any Covenant Suspension Event or Reversion Date. The Trustee will have no obligation to (i) independently determine or verify if such events have occurred, (ii) make any determination regarding the impact of actions taken during the Suspension Period on the Issuer and its Restricted Subsidiaries’ future compliance with their covenants or (iii) notify the Holders of any Covenant Suspension Event or Reversion Date.

For the avoidance of doubt, the MYT Covenants, the MYT Waterfall and the other provisions contained in the MYT Third Lien Notes Pledge Agreement will remain in place during any Suspension Period.

SECTION 3.18. Stay, Extension and Usury Laws. The Issuers and each of the Subsidiary Guarantors covenant (to the extent that they may lawfully do so) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuers and each of the Subsidiary Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 3.19. Nancy Holdings Corporate Reorganization. Nancy Holdings LLC shall be merged into the Issuer, and the intercompany lease agreements between Nancy Holdings LLC and the LLC Co-Issuer will be terminated, in each case,
within 90 days after the Issue Date (or such later date as mutually agreed by the Company Parties and the Extended Term Loan Agent) and, concurrently with such merger, the Issuer, as successor to Nancy Holdings LLC, shall mortgage the owned Real Properties constituting collateral currently held by Nancy Holdings LLC, which mortgages will have the Required Collateral Lien Priority.

SECTION 3.20. Ratings. The Issuers shall use their commercially reasonable efforts to cause, within 60 days after the end of the fiscal quarter ending June 30, 2019, the Notes to receive a rating from S&P or Moody’s, or, if during such time neither of such institutions shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency (as described in Rule 436 under the Securities Act).

ARTICLE IV

Merger; Consolidation or Sale of All or Substantially All Assets

SECTION 4.1. When the Issuers May Merge or Otherwise Dispose of Assets.

(a) No Issuer may consolidate or merge with or into or wind up into (whether or not such Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person (other than the merger or consolidation of one Issuer into another Issuer) unless:

(i) such Issuer is the surviving Person or the Person formed by or surviving any such consolidation, merger or winding up (if other than such Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia (such Issuer or such Person, as the case may be, being herein called the “Successor Company”) and, if such entity is not (A) a corporation, a co-obligor of the Notes is a corporation organized or existing under such laws and (B) organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia, a co-obligor of the Notes is organized or existing under such laws;

(ii) the Successor Company (if other than such Issuer) expressly assumes all the obligations of such Issuer under Notes Documents pursuant to a supplemental indenture or other documents or instruments;

(iii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), no Default or Event of Default has occurred and is continuing;
immediately after giving pro forma effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period, either:

(A) the Successor Company would be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or

(B) the Interest Coverage Ratio for the Issuer (or, if applicable, the Successor Company thereto) and its Restricted Subsidiaries would be equal to or greater than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(v) each Subsidiary Guarantor, unless it is the other party to the transactions described above, will have by supplemental indenture confirmed that its Guarantee will apply to such Person’s Obligations under Notes Documents; and

(vi) such Issuer will have delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each in form and substance reasonably satisfactory to the Trustee and stating that such consolidation, merger or transfer and such supplemental indentures (if any) comply with this Indenture.

The Successor Company will succeed to, and be substituted for, such Issuer under this Indenture, the Notes and the Notes Documents, and such Issuer will automatically be released and discharged from its obligations under this Indenture, the Notes and the Notes Documents.

(b) Notwithstanding the foregoing clauses 4.1(a)(iii) and 4.1(a)(iv):

(i) any of the Issuers or any Subsidiary Guarantor may consolidate with, merge into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to an Issuer or a Subsidiary Guarantor;

(ii) any of the Issuers may merge or consolidate with an Affiliate of such Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Issuer in another state of the United States, the District of Columbia or any territory of the United States so long as the principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby;

(iii) any Restricted Subsidiary may merge with or consolidate into an Issuer, provided that such Issuer is the Successor Company in such merger;

(iv) any Subsidiary Guarantor may dissolve or liquidate to the extent that the assets of such Subsidiary Guarantor are transferred to the Issuers or another Subsidiary Guarantor substantially contemporaneously with such dissolution or liquidation; and

(v) any Restricted Subsidiary that is not a Subsidiary Guarantor may dissolve or liquidate to the extent that the assets of such Restricted Subsidiary that is
Subject to Section 10.2 and Section 10.5, each Subsidiary Guarantor will not, and the Issuer will not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, merger or winding up (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (including by way of liquidation or dissolution of the Subsidiary Guarantor) is a corporation, partnership, limited partnership or limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia (such Subsidiary Guarantor or such Person, as the case may be, being herein called the “Successor Guarantor”);

(B) the Successor Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under the Notes Documents, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents pursuant to a supplemental indenture or other documents or instruments;

(C) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction) no Default or Event of Default will have occurred and be continuing; and

(D) the Successor Guarantor (if other than such Subsidiary Guarantor) will have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; and

(ii) such sale or disposition or consolidation or merger does not violate Section 3.7;

provided that, in the event of a Subsidiary Guarantor liquidating or dissolving, the Person which receives the assets of such Subsidiary Guarantor substantially contemporaneously with such liquidation or dissolution shall be considered the Successor Guarantor for purposes of the above.

Subject to Sections 10.2 and 10.5, the Successor Guarantor will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture, such
Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents, and such Subsidiary Guarantor will automatically be released and discharged from its obligations under this Indenture, such Subsidiary Guarantor’s Subsidiary Guarantee and the Security Documents. Notwithstanding the foregoing:

(i) a Subsidiary Guarantor may merge or consolidate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Subsidiary Guarantor in the United States, any state or territory thereof or the District of Columbia, so long as the principal amount of Indebtedness of the Issuer and the Restricted Subsidiaries is not increased thereby;

(ii) a Subsidiary Guarantor may consolidate or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to, an Issuer or Subsidiary Guarantor;

(iii) a Subsidiary Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of a jurisdiction in the United States; and

(iv) any Restricted Subsidiary may merge with or consolidate into any Subsidiary Guarantor; provided that, in the case of this clause (iv), the surviving Person (A) shall be a corporation, partnership, limited partnership or limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia and (B) if not the Subsidiary Guarantor, the surviving Person will become a Subsidiary Guarantor upon the consummation of such merger or consolidation.

(e) For purposes of this Section 4.1, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Issuer, which properties and assets, if held by the Issuer instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Issuer on a consolidated basis, will be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

ARTICLE V
Redemption of Notes

SECTION 5.1. Optional Redemption.

(a) The Notes may be redeemed, in whole at any time, or in part from time to time, subject to the conditions and at the redemption prices set forth in Paragraph 7 of the form of Note set forth in Exhibit A hereto, which are hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

(b) On and after the Redemption Date, interest will cease to accrue on the Notes or portions thereof called for redemption so long as the Issuers have deposited
with the Paying Agent funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on the Notes to be redeemed.

SECTION 5.2. Election to Redeem; Notice to Trustee of Optional and Mandatory Redemptions. If the Issuers elect to redeem Notes pursuant to Section 5.1 or the Issuers are required to redeem Notes pursuant to Section 5.9, 5.10 or 5.11, the Issuers will furnish to the Trustee, at least five calendar days for Global Notes and 10 calendar days for Definitive Notes before notice of redemption is required to be delivered or caused to be delivered to Holders pursuant to Section 5.4, an Officer’s Certificate setting forth (a) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption will occur, (b) the Redemption Date, (c) the principal amount of the Notes to be redeemed and (d) the redemption price. The Issuers may also include a request in such Officer’s Certificate that the Trustee give the notice of redemption in the Issuers’ name and at their expense and setting forth the information to be stated in such notice as provided in Section 5.4. The Issuers will deliver to the Trustee such documentation and records as will enable the Trustee to select the Notes to be redeemed pursuant to Section 5.3.

SECTION 5.3. Selection by Trustee of Notes to Be Redeemed. If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption on a pro rata basis (or as nearly pro rata as practicable) unless otherwise required by law or the rules of the principal national securities exchange, if any, on which such Notes are listed (but only to the extent that the Trustee has been notified in writing of such listing by the Issuer), in minimum denominations of $2,000.00 and in integral multiples of $1.00 in excess thereof; provided that the selection of Notes for redemption will not result in a Holder of Notes with a principal amount of Notes owning less than $2,000.00 in aggregate principal amount of Notes, and provided further that if all of the Notes are in global form, interests in the Notes to be redeemed will be selected for redemption by the Depositary in accordance with the Applicable Procedures of the Depositary. If any Note is to be purchased or redeemed in part only, the notice of purchase or redemption relating to such Note will state the portion of the principal amount thereof that has been or is to be purchased or redeemed. A new Note in principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original Note in accordance with Section 5.7. On and after the Redemption Date, interest will cease to accrue on Notes or portions thereof called for redemption so long as the Issuers have deposited with the Paying Agent funds sufficient to pay the principal of and premium, if any, plus accrued and unpaid interest, if any, on the Notes to be redeemed.

The Trustee will promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes will relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Note which has been or is to be redeemed.
SECTION 5.4. Notice of Redemption. In the case of a redemption pursuant to Sections 5.1, 5.9, 5.10 or 5.11, the Issuers will deliver or cause to be delivered or in the case of Notes in global form, delivered or caused to be delivered electronically in accordance with the Applicable Procedures of the Depositary, a notice of redemption to each Holder whose Notes are to be redeemed not less than 30 nor more than 60 days prior to a date fixed for redemption (a “Redemption Date”); provided, however, that redemption notices may be delivered more than 60 days prior to a Redemption Date if the notice is issued pursuant to Article VIII. In connection with any redemption of Notes, any such redemption may, at the Issuers’ discretion, be subject to one or more conditions precedent, including, but not limited to, the funding of the amounts required to be funded by Calling Lenders in connection with the Call Right Redemption. In addition, if such redemption or notice is subject to satisfaction of one or more conditions precedent, such notice will state that, in the Issuers’ discretion, the Redemption Date may be delayed until such time as any or all such conditions will be satisfied (or waived by the Issuers in their sole discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Issuers in their sole discretion) by the Redemption Date, or by the Redemption Date so delayed. At the Issuers’ written request, the Trustee may give notice of redemption in the Issuers’ name and at the Issuers’ expense.

All notices of redemption will be prepared by the Issuers and will state:

(a) the Redemption Date,

(b) the redemption price and the amount of accrued interest to, but excluding, the Redemption Date payable as provided in Section 5.6, if any,

(c) if less than all outstanding Notes are to be redeemed, the identification of the particular Notes (or portion thereof) to be redeemed, as well as the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption,

(d) in case any Note is to be redeemed in part only, the notice which relates to such Note will state that on and after the Redemption Date, upon surrender of such Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed,

(e) that on the Redemption Date the redemption price (and accrued interest to, but excluding, the Redemption Date payable as provided in Section 5.6, if any) will become due and payable upon each such Note, or the portion thereof, to be redeemed, and, unless the Issuers default in making the redemption payment, that interest on Notes called for redemption (or the portion thereof) will cease to accrue on and after said date,

(f) the place or places where such Notes are to be surrendered for payment of the redemption price and accrued interest, if any,

(g) the name and address of the Paying Agent,
that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price,

the CUSIP number, and that no representation is made as to the accuracy or correctness of the CUSIP number, if any, listed in such notice or printed on the Notes,

the Section of this Indenture pursuant to which the Notes are to be redeemed, and

a description in reasonable detail of any conditions precedent applicable to such redemption.

At the Issuers’ request, the Trustee will give the notice of redemption in the Issuers’ name and at its expense; provided, however, that the Issuers will have delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officer’s Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph. Such Officer’s Certificate will state that all conditions precedent to the delivery of such notice have been complied with.

SECTION 5.5. Deposit of Redemption Price. Prior to 10:00 a.m. New York City time, on any Redemption Date, the Issuers will deposit with the Trustee or with a Paying Agent (or, if the Issuers are acting as their own Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money sufficient to pay the redemption price of, and accrued interest on, all the Notes which are to be redeemed on that date.

SECTION 5.6. Notes Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Notes so to be redeemed will, on the Redemption Date, become due and payable at the redemption price therein specified (together with accrued interest, if any, to, but excluding, the Redemption Date), and from and after such date (unless the Issuers default in the payment of the redemption price and accrued interest, if any, to, but excluding, the Redemption Date) such Notes will cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note will be paid by the Issuers at the redemption price, together with accrued interest, if any, to, but excluding, the Redemption Date (subject to the rights of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date).

If any Note called for redemption is not so paid upon surrender thereof for redemption, the principal (and premium, if any) will, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

If a Redemption Date is on or after a Record Date and on or before the related Interest Payment Date, the accrued and unpaid interest, if any, will be paid to the Person in whose name the Note is registered at the close of business on such Record
Date, and no further interest will be payable to Holders whose Notes will be subject to redemption by the Issuers.

SECTION 5.7. Notes Redeemed in Part. Any Note which is to be redeemed only in part (pursuant to the provisions of this Article) will be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to Section 2.3 (with, if the Issuers so require, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers duly executed by, the Holder thereof or such Holder’s attorney duly authorized in writing), and the Issuers will execute, and the Trustee upon receipt of an Authentication Order will authenticate and make available for delivery to the Holder of such Note at the expense of the Issuers, a new Note or Notes, of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered, provided that each such new Note will be in a minimum principal amount of $2,000.00 and integral multiples of $1.00 in excess thereof.

SECTION 5.8. Offer to Repurchase. In the event that, pursuant to Section 3.7, the Issuers are required to commence an offer to all Holders to purchase the Notes (an "Offer to Repurchase"), it will follow the procedures specified below:

(a) The Offer to Repurchase will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five Business Days after the termination of the Offer Period (the "Purchase Date"), the Issuers will apply all Excess Proceeds (the "Offer Amount"), to the purchase of Notes and such Pari Passu Lien Indebtedness, if any (in each instance, on a pro rata basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Offer to Repurchase. Payment for any Notes so purchased will be made pursuant to Section 3.1.

(b) If the Purchase Date is on or after an Interest Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest will be payable to Holders who tender Notes pursuant to the Offer to Repurchase.

(c) Upon the commencement of an Offer to Repurchase, the Issuers will deliver a notice to the Trustee and each of the Holders. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Repurchase. The notice, which will govern the terms of the Offer to Repurchase, will state:

(i) that the Offer to Repurchase is being made pursuant to this Section 5.8 and Section 3.7, and the length of time the Offer to Repurchase will remain open;
(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment will continue to accrue interest;

(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Offer to Repurchase will cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Offer to Repurchase may elect to have Notes purchased in a minimum amount of $2,000.00 or an integral multiple of $1,000 in excess thereof only;

(vi) that Holders electing to have Notes purchased pursuant to any Offer to Repurchase will be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Notes completed, or transfer by book-entry transfer, to the Issuers, the Depositary, if appointed by the Issuers, or the Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders will be entitled to withdraw their election if the Issuers, the Depositary or the Paying Agent, as the case may be, receives, not later than on the expiration of the Offer Period, facsimile transmission, pdf communication sent via electronic means or letter setting forth the name of the Holder, the principal amount of Notes the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Notes purchased;

(viii) that, if the aggregate principal amount of Notes and, if applicable, Pari Passu Lien Indebtedness, if any, surrendered by Holders thereof exceeds the Offer Amount, the Trustee will select the Notes and, if applicable, the Issuers will select such Pari Passu Lien Indebtedness to be purchased or prepaid, on a pro rata basis based on the principal amount of Notes and Pari Passu Lien Indebtedness, if any, surrendered (with such adjustments as may be deemed appropriate by the Issuers so that only Notes in minimum denominations of $2,000.00 or integral multiples of $1.00 in excess thereof are redeemed); and

(ix) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

(d) On or before the Purchase Date, the Issuers will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Offer to Repurchase, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer’s Certificate stating that such Notes or portions thereof were accepted for payment by the Issuers in accordance with the terms of this Section 5.8. The Issuers, the Depositary or the Paying
Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Issuers for purchase, and the Issuers will promptly issue a new Note, and the Trustee, upon written request from the Issuers, will authenticate and deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted will be promptly delivered by the Issuers to the Holder thereof. The Issuers will publicly announce the results of the Offer to Repurchase on the Purchase Date.

SECTION 5.9. Call Right Redemption.

(a) Lenders under the Extended Term Loan Agreement (the “Calling Lenders”) may exercise the Call Right by complying with the procedures provided therefor in the Extended Term Loan Agreement and delivering (or causing the agent under the Extended Term Loan Agreement to deliver) to the Trustee and the Issuers the notice of redemption set forth in Exhibit E hereto (the “Call Notice”). Notes in a principal amount of $200.0 million (or such lesser amount equal to the then-outstanding principal amount of Notes) (such amount, the “Called Notes”) shall be redeemed in accordance with the terms of clauses (b) and (c) below.

(b) Upon (1) receipt by the Trustee and the Issuers of the Call Notice with respect to the Call Right and (2) compliance with the Call Right Procedures provided for in the Extended Term Loan Agreement, the Issuers shall redeem the Called Notes at a price equal to the principal amount of Called Notes plus accrued but unpaid interest to, but not including, the date of redemption provided for in the Call Notice, which date shall be not more than 30 Business Days and not fewer than five Business Days following delivery of the Call Notice. Such redemption shall be conditioned upon and subject to the provision by the Calling Lenders to the Issuers of Immediately available funds in cash in an amount equal to the principal amount of Called Notes.

(c) Except as expressly set forth above in this Section 5.9, the provisions of Sections 5.1 through 5.7 shall apply mutatis mutandis to a redemption of Notes pursuant to the Call Right.


At any time following a contribution made in accordance with the MYT Waterfall, the Issuers shall redeem all or a portion of the Third Lien Notes in an aggregate principal amount equal to the amount of such contribution, on a pro rata basis among the outstanding Third Lien Notes (based on their aggregate outstanding principal amount), in accordance with the procedures set forth in this Article V at a redemption price equal to 100.0%, plus accrued and unpaid interest, if any, to (but not including) the redemption date (subject to the right of Holders of record and holders of record of the 8.000% Third Lien Notes on the relevant record date to receive interest due on the relevant interest payment date).
SECTION 5.11. Mandatory AHYDO Redemption

If the Notes would otherwise constitute an “applicable high-yield discount obligations” within the meaning of section 163(i) of the Code or any successor provisions (an “AHYDO”), on each Interest Payment Date following the Issue Date, the Issuer will be required to redeem for cash a portion of the Notes on a pro rata basis with the 8.75%/9.50% senior PIK toggle notes due 2021 (such redemption, a “Mandatory Principal Redemption”). The redemption price for the portion of each Note redeemed pursuant to a Mandatory Principal Redemption will be 100.0% of the principal amount of the Note redeemed plus any accrued interest thereon to the date of redemption. The “Mandatory Principal Redemption Amount” will equal the portion of the Note required to be redeemed to prevent the Note from being treated as an AHYDO within the meaning of Section 163(i)(1) of the Code. No partial redemption or repurchase of the Notes pursuant to any other provision of this Indenture will alter the Issuers’ obligation to make the Mandatory Principal Redemption with respect to any Notes that remain outstanding. Notwithstanding the foregoing, the Mandatory Principal Amount of the Notes redeemed under this Section 5.11 shall not exceed $5.0 million in the aggregate.

ARTICLE VI

Defaults and Remedies

SECTION 6.1. Events of Default. The occurrence of each of the following events, for so long as such event is continuing, is an “Event of Default”:

(a) a default in any payment of interest on any Note when due continued for five Business Days;

(b) a default in the payment of principal or premium, if any, of any Note when due at its Stated Maturity, upon optional or mandatory redemption, upon required purchase, upon acceleration or otherwise;

(c) the failure by the Issuer or any Restricted Subsidiary to comply for 30 days after receipt of written notice referred to below with any of its obligations, covenants or agreements (other than a default pursuant to Section 6.1(a) or this Section 6.1(b)) contained in the Notes Documents;

(d) the failure by the Issuer or any Restricted Subsidiary to pay the principal amount of any Indebtedness for borrowed money (other than Indebtedness for borrowed money owing to Issuer or a Restricted Subsidiary) within any applicable grace period upon the final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default, in each case, if the total amount of such Indebtedness unpaid at final maturity or accelerated exceeds $50.0 million or its foreign currency equivalent;

(e) an Issuer or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
(i) files a petition for relief, commences a voluntary case or commences proceedings to be adjudicated bankrupt or insolvent under any Bankruptcy Law;

(ii) consents to the entry of an order for relief against it in an involuntary case or to the institution of bankruptcy or insolvency proceedings against it;

(iii) files an answer, response or consent in an involuntary case seeking or consenting to reorganization, liquidation or other relief under applicable Bankruptcy Law;

(iv) generally is not paying its debts as they become due;

(v) consents to the appointment of a Custodian of it or for any substantial part of its property;

(vi) makes a general assignment for the benefit of its creditors; or

(vii) takes any comparable action under any domestic or foreign laws relating to insolvency;

(f) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against an Issuer or any Significant Subsidiary in an involuntary case, or adjudicates an Issuer or any Significant Subsidiary bankrupt or insolvent in any involuntary case, or an similar relief is granted under any domestic or foreign laws;

(ii) appoints a Custodian of an Issuer or any Significant Subsidiary or for any substantial part of an Issuer’s or any of the Significant Subsidiary’s property, or any similar relief is granted under any domestic or foreign laws; or

(iii) orders the winding up or liquidation of an Issuer or any Significant Subsidiary, or any similar relief is granted under any domestic or foreign laws;

and in each of the foregoing cases, the order or decree remains unstayed, undischarged and in effect for 60 days;

(g) failure by any Issuer or any Significant Subsidiary to pay final and non-appealable judgments aggregating in excess of $50.0 million or its foreign currency equivalent (net of any amounts which are covered by enforceable insurance policies issued by solvent insurance companies), which judgments are not discharged, waived or stayed for a period of 60 days after such judgment becomes final and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;
(h) the Subsidiary Guarantee of a Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms thereof or of this Indenture), or any Subsidiary Guarantor that is a Significant Subsidiary (or any Officer thereof with authority to act on behalf of such Subsidiary Guarantor with respect to such matters) denies in writing that it has any further liability under its Subsidiary Guarantee or gives written notice to such effect, other than by reason of the termination or discharge of this Indenture or the release of any such Subsidiary Guarantee in accordance with this Indenture, and such Default continues for five days;

(i) the Liens created by the Security Documents securing the Notes or Guarantees shall at any time not constitute perfected Liens on any portion of the Collateral intended to be covered thereby (to the extent perfection is required by this Indenture or such Security Documents) other than in accordance with the terms of such relevant Security Document and this Indenture and other than the satisfaction in full of all Obligations under this Indenture or release or amendment of any such Lien in accordance with the terms of this Indenture or such Security Documents, or (ii) except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture and such relevant Security Document, any such Security Document shall for whatever reason be terminated or cease to be in full force and effect, if, in each case, such default occurs with respect to a portion of the Collateral exceeding $50.0 million in fair market value;

(k) (i) the Liens created by the MYT Third Lien Notes Pledge Agreement and related security documents with respect to the assets securing the Notes shall at any time not constitute perfected Liens on any portion of the collateral intended to be covered thereby (to the extent perfection is required by this Indenture or such security documents) other than in accordance with the terms of the MYT Third Lien Notes Pledge Agreement such relevant security document and this Indenture and other than the satisfaction in full of all Notes Obligations or release or amendment of any such Lien in accordance with the terms of the MYT Third Lien Notes Pledge Agreement, this Indenture or such security documents, or (ii) except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture, the MYT Third Lien Notes Pledge Agreement and such relevant security document, any such security document shall for whatever reason be terminated or cease to be in full force and effect, if, in each case, such default occurs with respect to the collateral subject to the MYT Third Lien Notes Pledge Agreement exceeding $12.5 million in fair market value;

(l) the failure by MYT Parent or any of the MYT Entities to comply with or cause compliance with the terms of the MYT Waterfall; or

(m) the failure by any of the MYT Entities to comply for 30 days after receipt of written notice referred to below with any of the MYT Covenants.
The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

However, a default under Section 6.1(c) will not constitute an Event of Default until either the Trustee notifies in writing the Issuers or the Holders of at least 25.0% in principal amount of outstanding Notes notify in writing the Issuers and the Trustee of the default and such default is not cured within the time specified in Section 6.1(c) after receipt of such notice.

SECTION 6.2. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.1(e) or Section 6.1(f) above with respect to an Issuer) occurs and is continuing, either the Trustee, by written notice to the Issuers, or the Holders of at least 25.0% in principal amount of the outstanding Notes, by written notice to the Issuers and the Trustee, may declare the Contractual Performance Amount to be due and payable. Upon such a declaration, such Contractual Performance Amount will be due and payable immediately. If an Event of Default arising from Section 6.1(e) or Section 6.1(f) of an Issuer occurs, the Contractual Performance Amount shall be due and payable as of immediately prior to the occurrence of such Event of Default.

The Issuers and the Subsidiary Guarantors agree and acknowledge that the excess of the Contractual Performance Amount over the sum of the principal amount of the then outstanding Notes plus accrued and unpaid interest (the “Liquidated Damages Amount”) constitutes liquidated damages and not unmatured interest or a penalty, and the actual amount of damages to the Holders as a result of the relevant Event of Default would be impracticable and extremely difficult to ascertain. Accordingly, the Liquidated Damages Amount is provided by mutual agreement of the Issuers, the Subsidiary Guarantors and the Trustee (on behalf of the Holders) as a reasonable estimation and calculation of such actual lost profits and other actual damages of the Holders. Each Holder, by accepting a Note (or a beneficial interest therein), shall be deemed to have directed the Trustee to make such agreement on its behalf.

SECTION 6.3. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy (including a lawsuit for breach of contract) to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture (including sums owed to the Trustee, the Agents and their agents and counsel) and the Guarantees.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default will not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.
SECTION 6.4. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of the Holders of all of the Notes, waive, rescind or cancel any declaration of an existing or past Default or Event of Default and its consequences (including acceleration) under this Indenture if such waiver, rescission or cancellation would not conflict with any judgment or decree, except a continuing Default or Event of Default in the payment of interest on, or the principal of, the Notes (other than such nonpayment of principal or interest that has become due as a result of such acceleration). Upon any such waiver, such Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured for every purpose of this Indenture; but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

In the event of any Event of Default arising from Section 6.1(d), such Event of Default and all consequences thereof (excluding, however, any payment default on the Notes Obligations resulting from acceleration of the Notes) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if prior to 20 days after such Event of Default arose, the Issuer delivers an Officer’s Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has otherwise been cured.

SECTION 6.5. Control by Majority. The Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee, provided, however, that the holders of a majority in aggregate principal amount of the Third Lien Notes voting, acting and being treated together as a single series in the aggregate shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Notes Collateral Agent or of exercising any trust or power conferred on the Notes Collateral Agent or of directing the Notes Collateral Agent with respect to any actions under the Security Documents. With respect to such directions, the Notes Collateral Agent shall follow the direction of the majority of all outstanding Third Lien Notes voting together as a single aggregate series. The Trustee and the Notes Collateral Agent, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee or the Notes Collateral Agent, as applicable, determines is unduly prejudicial to the rights of any other Holder (it being understood that neither the Trustee nor the Notes Collateral Agent has an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders) or that would involve the Trustee in personal liability unless such Holders have offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense. Prior to taking any action under this Indenture, the Trustee will be entitled to security or indemnification reasonably satisfactory to it in its reasonable discretion against all losses, liabilities and expenses that may be caused by taking or not taking such action.

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SECTION 6.6. Limitation on Suits. In case an Event of Default occurs and is continuing, the Trustee will be under no obligation to
exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee
indemnity or security satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or
interest, when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(a) such Holder has previously given the Trustee written notice that an Event of Default is continuing or will occur upon notice and/or
passage of time;

(b) Holders of at least 25.0% in principal amount of the outstanding Notes have requested (the “Requesting Holders”) in writing the
Trustee to pursue the remedy, which pursuit of the requested remedy may be conditioned upon the occurrence of an Event of Default in the future;

(c) such Requesting Holders have offered the Trustee security or indemnity in respect of any loss, liability or expense (which security
or indemnity is reasonably acceptable to the Trustee, such acceptance not to be unreasonably withheld or delayed);

(d) the Trustee has not complied with, or indicated in writing to the Requesting Holders that it will comply with, such request within
10 days after the receipt of the request and the offer of security or indemnity; and

(e) the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a written direction inconsistent
with such request within such 10-day period.

SECTION 6.7. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any
Holder to receive payment of principal of, premium, if any, or interest on the Notes held by such Holder, on or after the respective due dates expressed in the
Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, will not be impaired or affected without the consent of such
Holder.

SECTION 6.8. Collection Suit by Trustee. If an Event of Default specified in Section 6.1(a) or Section 6.1(b) occurs and is
continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount then due and owing
(together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.6.

SECTION 6.9. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may
be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation and reasonable expenses, disbursements and
advances of the Trustee, the Agent and their agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuers, their Subsidiaries
or their respective creditors or properties and, unless prohibited.
by law or applicable regulations, may vote on behalf of the Holders (pursuant to the written direction of Holders of a majority in principal amount of the then outstanding Notes) in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee will consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation and reasonable expenses, disbursements and advances of the Trustee, the Agent and their agents and its counsel, and any other amounts due the Trustee under Section 7.6. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in such proceeding.

SECTION 6.10. Priorities. The Trustee will pay out any money or property received by it in the following order:

First: to the Trustee for amounts due under Section 7.6;

Second: to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

Third: to the Issuers or, to the extent the Trustee receives any amount for any Subsidiary Guarantor, to such Guarantor as a court of competent jurisdiction will direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Issuers (or Trustee) will deliver to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including attorneys’ fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10.0% in outstanding principal amount of the Notes.

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ARTICLE VII

Trustee

SECTION 7.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee will, in the exercise of its rights and powers under this Indenture, use the same degree of care and skill in its exercise of such rights and powers as a prudent Person would exercise or use under the circumstances in the conduct of such Person’s own affairs, subject to the provisions of clause (b) below.

(b) Except during the continuance of an Event of Default of which a Trust Officer has actual knowledge, the Trustee:

(i) and the Agents undertake to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Trustee or the Agents; and

(ii) in the absence of bad faith on its part, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee under this Indenture, the Notes and the Guarantees, as applicable. However, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee will examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture, the Notes and the Guarantees as the case may be (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee will not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this Section 7.1(c) does not limit the effect of Section 7.1(b);

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Trust Officer or Trust Officers unless it is proved in a final non-appealable decision of a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5.

(d) The Trustee and the Agents will not be liable for interest on any money received by it except as the Trustee and the Agents may agree in writing with the Issuers.
Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

No provision of this Indenture, the Notes or the Guarantees will require the Trustee or an Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or in the exercise of any of its rights or powers, if it will have reasonable grounds to believe that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee will be subject to the provisions of this Section 7.1.

The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders will have offered to the Trustee, security, prefunding or indemnity reasonably satisfactory to it against any loss, liability or expenses (including reasonable attorneys’ fees and expenses) that might be incurred by it in compliance with such request or direction.

SECTION 7.2. Rights of Trustee.

The Trustee and the Agents may conclusively rely and will be protected in acting upon any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or any other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper Person or Persons. The Trustee and the Agents need not investigate any fact or matter stated in the document.

Before the Trustee acts or refrains from acting, it may require an Officer’s Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on an Officer’s Certificate or Opinion of Counsel.

The Trustee may act through its attorneys, custodians, nominees and agents and will not be responsible for the misconduct or negligence of or for the supervision of any agent, custodians, nominees or attorney appointed with due care.

The Trustee will not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that the Trustee’s conduct does not constitute willful misconduct or negligence as determined in a final non-appealable decision of a court of competent jurisdiction.

The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture, the Notes and the Guarantees will be full and complete authorization and protection from
liability in respect to any action taken, omitted or suffered by it hereunder or under the Notes and the Guarantees in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee and the Agents will not be bound to make any investigation into any statement, warranty or representation, or the facts or matters stated in any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond or other paper or document made or in connection with this Indenture; moreover, the Trustee and the Agents will not be bound to make any investigation into (i) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture or any other agreement, instrument or document, or (iii) the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note other evidence of indebtedness or other paper or document, but the Trustee or an Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee or an Agent, as applicable, determines to make such further inquiry or investigation, it will be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney and will incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(g) The Trustee will not be deemed to have knowledge of any Default or Event of Default except any Default or Event of Default of which a Trust Officer will have (i) received written notification from the Issuers or a Holder at the Corporate Trust Office of the Trustee and such notice references the Notes and this Indenture or (ii) obtained “actual knowledge.” “Actual knowledge” will mean the actual fact or statement of knowing by a Trust Officer without independent investigation with respect thereto.

(h) In no event will the Trustee or an Agent be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee or Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and each agent (including the Agents), custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee will not have any duty (i) to see to any recording, filing, or depositing of this Indenture or any agreement referred to herein, or to see to the
maintenance of any such recording or filing or depositing or to any rerecording, re-filing or redepositing of any thereof or (ii) to see to any insurance.

The right of the Trustee or an Agent to perform any discretionary act enumerated in this Indenture will not be construed as a duty.

SECTION 7.3. Individual Rights of Trustee. Subject to the TIA, the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuers, the Subsidiary Guarantors or their Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Section 7.9. In addition, the Trustee will be permitted to engage in transactions with the Issuers; provided, however, that if the Trustee acquires any conflicting interest the Trustee must (a) eliminate such conflict within 90 days of acquiring such conflicting interest, (b) apply to the SEC for permission to continue acting as Trustee or (c) resign.

SECTION 7.4. Disclaimer. Neither the Trustee nor any Agent will be responsible for and neither of them makes any representation as to the validity or adequacy of this Indenture, the Notes or the Guarantees, neither of them will be accountable for the Issuers' use of the Notes or the proceeds from the Notes, and neither of them will be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication or for the use or application of any funds received by any Paying Agent other than the Trustee. In accepting the trust hereby created, the Trustee acts solely as Trustee under this Indenture and not in its individual capacity and all persons, including without limitation the Holders and the Issuer having any claim against the Trustee arising from this Indenture shall look only to the funds and accounts held by the Trustee hereunder for payment except as otherwise provided herein.

SECTION 7.5. Notice of Defaults. If a Default occurs and is continuing and is actually known to the Trustee, the Trustee will provide to each Holder notice of the Default within 90 days after it is actually known to the Trustee. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any Note, the Trustee may withhold notice if and so long as a committee of its Trust Officers in good faith determines that withholding notice is in the interests of the Holders.

SECTION 7.6. Compensation and Indemnity. The Issuers will pay to the Trustee and the Agents from time to time such compensation for their services as the parties agree in writing from time to time. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Issuers will reimburse the Trustee and the Agents upon request for all reasonable out-of-pocket expenses incurred or made by it, including, but not limited to, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and costs of counsel, in addition to the compensation for its services. Such expenses will include the compensation and reasonable expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.
The Issuers will indemnify the Trustee and the Agents or any predecessor Trustee or Agent in each of its capacities hereunder (including Paying Agent, and Registrar), and each of their officers, directors, employees, counsel and agents, against any and all loss, liability or expense (including, but not limited to, attorneys’ fees and expenses) incurred by it in connection with the administration of this trust and the performance of their duties hereunder and under the Notes and the Guarantees, including the costs and expenses of enforcing this Indenture (including this Section 7.6), the Notes and the Guarantees and of defending itself against any claims (whether asserted by any Holder, the Issuers or otherwise). The Trustee and the Agents will notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee or an Agent to so notify the Issuers will not relieve the Issuers of their obligations hereunder. The Issuers will defend the claim and the Trustee and the Agents may have separate counsel and the Issuers will pay the reasonable fees and expenses of such counsel. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or an Agent as a result of its own willful misconduct or negligence or bad faith.

To secure the Issuers’ payment obligations in this Section, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The right of the Trustee to receive payment of any amounts due under this Section 7.6 will not be subordinate to any other liability or indebtedness of the Issuers.

The Issuers’ obligations pursuant to this Section and any lien arising hereunder will survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee or an Agent. When the Trustee or an Agent incurs expenses after the occurrence of a Default specified in Section 6.1(e) or (f) with respect to the Issuers, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

Pursuant to Section 10.1, the obligations of the Issuers hereunder are jointly and severally guaranteed by the Subsidiary Guarantors.

SECTION 7.7. Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Issuers. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee upon written notice to the Issuers and the Trustee, and may appoint a successor Trustee. The Issuers will remove the Trustee if:

(i) the Trustee fails to comply with Section 7.9;
(ii) the Trustee is adjudged bankrupt or insolvent;
(iii) a receiver or other public officer takes charge of the Trustee or its property; or
(iv) the Trustee otherwise becomes incapable of acting.
If the Trustee resigns or is removed by the Issuers or by the Holders of a majority in aggregate principal amount of the then outstanding Notes and such Holders do not within 30 days thereafter appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers will promptly appoint a successor Trustee.

A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will deliver a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.6. All costs reasonably incurred in connection with any resignation or removal hereunder will be borne by the Issuers.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the Holders of at least 10.0% in principal amount of the Notes may petition, at the Issuers’ expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.9, unless the Trustee’s duty to resign is stayed, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 7.7, the Issuers’ obligations under this Indenture will continue for the benefit of the retiring Trustee.

SECTION 7.8. Successor Trustee by Merger. If the Trustee, consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act will be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee will succeed to the trusts created by this Indenture, any of the Notes will have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes will not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates will have the full force which it is anywhere in the Notes or in this Indenture provided.

SECTION 7.9. Eligibility; Disqualification. The Trustee will have a combined capital and surplus of at least $150,000 as set forth in its most recent filed annual report of condition.
This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

SECTION 7.10. Limitation on Duty of Trustee. The Trustee will not have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Notes and the Guarantees by the Issuers, the Subsidiary Guarantors or any other Person.

SECTION 7.11. Preferential Collection of Claims Against the Issuers. The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed will be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12. Reports by Trustee to Holders. Within 60 days after each October 15, beginning with October 15, 2019, the Trustee will provide to the Holders a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA § 313(b). The Trustee will also provide all reports as required by TIA § 313(c). The Trustee shall promptly provide, upon written request by a Holder (including an owner of beneficial interest in a Note) a true and complete copy of each and any Notes Document (including schedules and exhibits thereto).

The Issuers will promptly notify the Trustee in writing when any Notes are listed on any stock exchange and of any delisting thereof.

ARTICLE VIII

Discharge of Indenture; Defeasance

SECTION 8.1. Discharge of Liability on Notes; Defeasance.

(a) This Indenture will be discharged and will cease to be of further effect (except as to rights, indemnities and immunities of the Trustee and to surviving rights of registration or transfer or exchange of Notes, as expressly provided for in this Indenture) as to all outstanding Notes, and the Liens, if any, on the Collateral securing the Notes and the Note Guarantees will be released, in each case when:

(i) either (A) all the Notes theretofore authenticated and delivered (other than Notes which have been replaced or paid pursuant to Section 2.7 and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuers and thereafter repaid to the Issuers or discharged from such trust) have been delivered to the Trustee for cancellation or (B) all of the Notes not previously delivered to the Trustee for cancellation (1) have become due and payable, (2) will become due and payable at their Stated Maturity within one year or (3) if redeemable at the option of the Issuers, have been called for redemption or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the

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Issuers, and any of the Issuers or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee funds in cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable instructions from the Issuers directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(ii) the Issuers and/or the Subsidiary Guarantors have paid all other sums payable under this Indenture; and

(iii) Issuer has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(b) Subject to Section 8.1(c) and Section 8.2, the Issuers at any time may terminate (i) all of their obligations under the Notes and this Indenture (with respect to such Notes) and have each Subsidiary Guarantor’s obligation discharged with respect to its Subsidiary Guarantee and have Liens, if any, on the Collateral securing the Notes and the Note Guarantees released and cure any then-existing Events of Default (“legal defeasance option”) or (ii) its obligations under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.14, 3.15, 3.16, 3.19 and 3.20 and the operation of Section 4.1 (other than Sections 4.1(a)(i), (ii) and (vi)) and Sections 6.1(c) (with respect to any Default under Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.14, 3.15, 3.16, 3.19 and 3.20), 6.1(d), 6.1(e) (with respect to Significant Subsidiaries of the Issuers only), 6.1(f) (with respect to Significant Subsidiaries of the Issuers only), 6.1(g), 6.1(h), 6.1(i), 6.1(j), 6.1(k) and 6.1(m) and have Liens, if any, on the Collateral securing the Notes and the Note Guarantees released (“covenant defeasance option”). The Issuers may exercise their legal defeasance option notwithstanding their prior exercise of the covenant defeasance option. In the event that the Issuers terminate all of their obligations under the Notes and this Indenture (with respect to such Notes) by exercising the legal defeasance option or the covenant defeasance option, the obligations of each Subsidiary Guarantor under its Subsidiary Guarantee of such Notes will be terminated simultaneously with the termination of such obligations.

(c) If the Issuers exercise their legal defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default. If the Issuers exercise their covenant defeasance option, payment of the Notes so defeased may not be accelerated because of an Event of Default specified in Section 6.1(c) (with respect to any Default by the Issuer or any of its Restricted Subsidiaries with any of their obligations under Article III other than Sections 3.1, 3.13, 3.17, 6.1(d), 6.1(e) (with respect to Significant Subsidiaries of the Issuers only), 6.1(f) (with respect to Significant Subsidiaries of the Issuers only)), 6.1(g), 6.1(h), 6.1(i), 6.1(j), 6.1(k) or 6.1(m).

(d) Upon satisfaction of the conditions set forth herein and upon request of the Issuers, the Trustee will acknowledge in writing the discharge of those obligations that the Issuers terminate.
Notwithstanding clauses (a) and (b) above, the Issuers’ obligations in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 7.6, 7.7 and in this Article VIII will survive until the Notes have been paid in full. Thereafter, the Issuers’ obligations in Sections 7.6, 8.5 and 8.6 will survive such satisfaction and discharge.

SECTION 8.2. Conditions to Defeasance.

(a) The Issuers may exercise their legal defeasance option or their covenant defeasance option only if:

(i) the Issuers irrevocably deposit or cause to be deposited in trust with the Trustee cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient to pay the principal of, and premium (if any) and interest on the applicable Notes when due at maturity or redemption, as the case may be;

(ii) the Issuers deliver to the Trustee a certificate from a nationally recognized certified public accounting firm expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Notes to maturity or redemption, as the case may be;

(iii) the Issuers deliver to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(iv) the Issuers shall have delivered to the Trustee an Officer’s Certificate stating that the deposit was not made by the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuers or any Subsidiary Guarantor or others;

(v) in the case of the legal defeasance option, the Issuers will have delivered to the Trustee an Opinion of Counsel stating that (A) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vi) in the case of the covenant defeasance option, the Issuers will have delivered to the Trustee an Opinion of Counsel to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same...
amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(vii) the Issuers deliver to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes to be so defeased and discharged as contemplated by this Article VIII have been complied with.

(b) Before or after a deposit, the Issuers may make arrangements satisfactory to the Trustee for the redemption of such Notes at a future date in accordance with Article V.

SECTION 8.3.
Application of Trust Money. The Trustee will hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article VIII. It will apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

SECTION 8.4. Repayment to Issuers. Anything herein to the contrary notwithstanding, the Trustee will deliver or pay to the Issuers from time to time upon Company Order any money or U.S. Government Obligations held by it as provided in this Article VIII which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect legal defeasance option or covenant defeasance option, as applicable, provided that the Trustee will not be required to liquidate any U.S. Government Obligations in order to comply with the provisions of this Section 8.4.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent will pay to the Issuers upon written request any money held by them for the payment of principal of or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuers for payment as general creditors.

SECTION 8.5. Indemnity for U.S. Government Obligations. The Issuers will pay and will indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.6. Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuers and each Subsidiary Guarantor under this Indenture, the Notes and the Guarantees will be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with
this Article VIII; provided, however, that, if any of the Issuers or the Subsidiary Guarantors has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Issuers or any Subsidiary Guarantor, as the case may be, will be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE IX

Amendments

SECTION 9.1. Without Consent of Holders. Notwithstanding Section 9.2, the Notes Documents may be amended or supplemented by the Issuers, any Subsidiary Guarantor (with respect to this Indenture or a Subsidiary Guarantee to which it is a party), MYT Parent or the MYT Guarantor Entities (in respect of the MYT Third Lien Notes Pledge Agreement or any related security documents), the Trustee and the Notes Collateral Agent, as applicable, without notice to or consent of any Holder:

(a) to cure any ambiguity, omission, mistake, defect or inconsistency identified in an Officer’s Certificate of the Issuer, which states that such cure is a good faith attempt by the Issuer to reflect the intention of the parties to this Indenture, delivered to the Trustee and the Notes Collateral Agent;

(b) to conform the text of the Notes Documents (including any supplemental indenture or other instrument pursuant to which Additional Notes are issued) to the “Description of New Notes” in the Exchange Offering Memorandum or, with respect to any Additional Notes and any supplemental indenture or other instrument pursuant to which such Additional Notes are issued, to the “Description of Notes” relating to the issuance of such Additional Notes, solely to the extent that such “Description of Notes” provides for terms of such Additional Notes that differ from the terms of the Initial Notes, as contemplated by Section 2.2;

(c) to comply with Section 4.1;

(d) to provide for the assumption by a successor Person of the obligations of an Issuer or any Subsidiary Guarantor under and in accordance with this Indenture and the Notes or Subsidiary Guarantee, as the case may be;

(e) to provide for uncertificated Notes in addition to or in place of certificated Notes; provided, however, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(f) to add or release Subsidiary Guarantees in accordance with the terms of the Notes Documents;

(g) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Notes Collateral Agent for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the Notes Obligations, in any property or assets, including any which are required to be mortgaged, pledged or
hypothesized, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Notes Collateral Agent pursuant to the Notes Documents or otherwise;

(h) to add to the covenants of the Issuers for the benefit of the Holders or to surrender any right or power herein conferred upon the Issuers, any Subsidiary Guarantor, MYT Parent or any MYT Entity;

(i) to make any change that does not adversely affect the rights of any Holder upon delivery to the Trustee of an Officer’s Certificate of the Issuer certifying the absence of such adverse effect;

(j) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA;

(k) to make any amendment to the provisions of the Notes Documents relating to the transfer and legending of Notes as permitted by this Indenture, including to facilitate the issuance and administration of the Notes; provided, however, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(l) to evidence and provide for the acceptance of appointment by a successor Trustee, provided that the successor Trustee is otherwise qualified and eligible to act as such under the terms of this Indenture;

(m) to provide for or confirm the issuance of Additional Notes in accordance with this Indenture;

(n) to provide for the accession of any parties to the Security Documents or the Intercreditor Agreements, as applicable (and other amendments to such documents that in either case are administrative or ministerial in nature) in connection with an incurrence of additional Indebtedness to the extent permitted by the Notes Documents;

(o) to provide for the release of the Collateral from the Liens in accordance with the terms of this Indenture, provided that such release shall not affect the liens on the collateral granted in accordance with, and pursuant to the terms of the 8.000% Third Lien Indenture; or

(p) to enter into a Customary Intercreditor Agreement in connection with the incurrence of Junior Lien Indebtedness or Pari Passu Lien Indebtedness permitted by this Indenture;

provided that, for the avoidance of doubt, no co-obligor or co-issuer may be added (directly or indirectly) to the Notes without the consent of a majority in principal amount of the Notes then outstanding.
SECTION 9.2. With Consent of Holders.

(a) This Indenture, the Notes, the Guarantees and the Security Documents may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and any existing or past Default or compliance with any provisions of such documents may be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). For the avoidance of doubt, the Notes and the 8.000% Third Lien Notes will be treated separately, except that a majority in outstanding principal amount of all of the Third Lien Notes will direct the Notes Collateral Agent (other than with respect to any Collateral that secures only the Notes but not the 8.000% Third Lien Notes or only the 8.000% Third Lien Notes but not the Notes). However, without the consent of each Holder of a Note affected (including, for the avoidance of doubt, any Notes held by Affiliates), no amendment, supplement or waiver may (with respect to any Notes held by a non-consenting Holder):

(i) reduce the percentage of the aggregate principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of or extend the time for payment of interest on any Note;

(iii) reduce the principal of or change the Stated Maturity of any Note;

(iv) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration;

(v) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed as described under Section 5.1;

(vi) make any Note payable in money other than that stated in such Note;

(vii) impair the right of any Holder to receive payment of principal of, premium, if any, or interest on such Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes;

(viii) make any change in the amendment or waiver provisions of this Indenture that require each Holder’s consent, as described in clauses (i) through (xv);
(ix) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Notes;

(x) make the Notes or any Guarantee subordinated in right of payment or “waterfall” priority to, in either case, any other Obligations; or

(xi) release any Issuer or Subsidiary Guarantor from its Obligations under the Notes Documents, except in accordance with the terms of the Notes Documents.

In addition, without the consent of the Holders of at least 66 2/3% in principal amount of the then outstanding Notes, no amendment, supplement or waiver may modify any Notes Document that would have the effect of (i) releasing all or substantially all of the Collateral from the Liens of the Security Documents (except as permitted by the terms of this Indenture or the Security Documents) or changing or altering the priority of Notes Liens on the Collateral or (ii) releasing all or substantially all of the “Collateral” (as defined in the MYT Third Lien Pledge Agreement) or changing or altering the priority of the Liens granted pursuant to the MYT Third Lien Pledge Agreement (except as permitted by the terms thereof or any other Notes Document).

(b) It is not necessary for the consent of the Holders under this Section 9.2 to approve the particular form of any proposed amendment, but it will be sufficient if such consent approves the substance thereof.

(c) Additional Notes will be disregarded for purposes of any amendment or waiver relating to a Default or Event of Default that existed (disregarding any applicable notice, cure or grace periods) prior to the time of issuance of such Additional Notes.

(d) After an amendment under this Section 9.2 becomes effective, the Issuers will (or will cause the Trustee, at the expense of and at the written request of the Issuers, to) deliver to the Holders affected thereby a notice briefly describing such amendment. The failure of the Issuers to deliver such notice, or any defect therein, will not in any way impair or affect the validity of an amendment under this Section 9.2.

SECTION 9.3. Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Note will bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder’s Note, even if notation of the consent or waiver is not made on the Note. After an amendment or waiver becomes effective, it will bind every Holder unless it makes a change described in clauses (i) through (ix) of Section 9.2(a), in which case the amendment or waiver or other action will bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder’s Notes. An amendment or waiver made pursuant to Section 9.2 will become effective upon receipt by the Trustee of the requisite number of written consents.
The Issuers may, but will not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, will be entitled to give such consent or to take any such action, whether or not such Persons continue to be Holders after such record date.

SECTION 9.4. Notation on or Exchange of Notes. If an amendment changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuers or the Trustee so determines, the Issuers in exchange for the Note will issue and the Trustee will authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note will not affect the validity of such amendment.

SECTION 9.5. Trustee To Sign Amendments. The Trustee and the Notes Collateral Agent will sign any amendment, supplement or waiver authorized pursuant to this Article IX if the amendment, supplement or waiver does not, in the sole determination of the Trustee or the Notes Collateral Agent, as applicable, adversely affect the rights, duties, liabilities or immunities of the Trustee or the Notes Collateral Agent, as applicable. If it does, the Trustee or the Notes Collateral Agent, as applicable, may but need not sign it. In signing any amendment, supplement or waiver pursuant to this Article IX, the Trustee and the Notes Collateral Agent will be entitled to receive, and (subject to Section 7.1 and Section 7.2) will be fully protected in relying upon, an Officer’s Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by or complies with this Indenture, that all conditions precedent to such amendment required by this Indenture have been complied with and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers, enforceable against the Issuers in accordance with its terms, subject to customary exceptions. Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement adding a new Guarantor under this Indenture.

ARTICLE X

Guarantees

SECTION 10.1. Guarantees.

(a) Subject to the provisions of this Article X, each Subsidiary Guarantor hereby jointly and severally, irrevocably, fully and unconditionally guarantees, on a senior basis, as guarantor and not as a surety, with each other Guarantor, the full and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, all Obligations of the Issuers under this Indenture and the Notes Documents (including interest that, but for the filing of a petition in any bankruptcy or other insolvency proceeding with respect to the Issuers, would have accrued on any Obligation, whether or
not a claim is allowed against the Issuers for such interest in the related bankruptcy proceeding) to the Holders and the Trustee, whether for payment of principal of, premium, if any, or interest on the Notes, expenses, indemnification or otherwise (all such obligations guaranteed by such Subsidiary Guarantors being herein called the “Guaranteed Obligations”). Each Subsidiary Guarantor agrees (to the extent lawful) that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it will remain bound under this Article X notwithstanding any extension or renewal of any Subsidiary Guarantor Obligation.

(b) Each Subsidiary Guarantor waives (to the extent lawful) presentation to, demand of, payment from and protest to the Issuers of any of the Guaranteed Obligations and also waives (to the extent lawful) notice of protest for nonpayment. Each Subsidiary Guarantor waives (to the extent lawful) notice of any default under the Notes or the Guaranteed Obligations.

(c) Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein constitutes a Guarantee of payment when due (and not a Guarantee of collection) and waives any right to require that any resort be had by any Holder to any security held for payment of the Guaranteed Obligations.

(d) Except as set forth in Section 10.2 and Article VIII, the obligations of each Subsidiary Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and will not (to the extent lawful) be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Subsidiary Guarantor herein will not (to the extent lawful) be discharged or impaired or otherwise affected by (i) the failure of any Holder to assert any claim or demand or to enforce any right or remedy against the Issuers or any other Person under this Indenture, the Notes or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes, the Notes Collateral Agreement, the MYT Third Lien Notes Pledge Agreement or any other Notes Document; (iv) the release of any security held by any Holder for the Guaranteed Obligations or any of them; (v) the failure of any Holder to exercise any right or remedy against any other Guarantor; (vi) any change in the ownership of the Issuers; (vii) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; or (viii) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Subsidiary Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

(e) Each Subsidiary Guarantor agrees that its Subsidiary Guarantee herein will remain in full force and effect until payment in full of all the Guaranteed Obligations or such Subsidiary Guarantor is released from its Subsidiary Guarantee in compliance with Section 4.1, Section 10.2 and Article VIII. Each Subsidiary Guarantor
further agrees that its Subsidiary Guarantee herein will continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of, premium, if any, or interest on any of the Guaranteed Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuers or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Issuers to pay any of the Guaranteed Obligations when and as the same will become due, whether at maturity, by acceleration, by redemption or otherwise, each Subsidiary Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Trustee or the Trustee on behalf of the Holders an amount equal to the sum of (i) the unpaid amount of such Guaranteed Obligations then due and owing and (ii) accrued and unpaid interest on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by law) (including interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Issuers or any Subsidiary Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

(g) Each Subsidiary Guarantor further agrees that, as between such Subsidiary Guarantor, on the one hand, and the Holders, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed by this Guarantee may be accelerated as provided in this Indenture for the purposes of its Subsidiary Guarantee in this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed by this Guarantee and (ii) in the event of any such declaration of acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purposes of this Subsidiary Guarantee.

(h) Each Subsidiary Guarantor also agrees to pay any and all reasonable costs and expenses (including attorneys’ fees) incurred by the Trustee or the Holders in enforcing any rights under this Guarantee.

(i) No Issuers or the Subsidiary Guarantors will be required to make a notation on the Notes to reflect any Subsidiary Guarantee or any release, termination or discharge thereof and any such notation will not be a condition to the validity of any Guarantee.

SECTION 10.2. Limitation on Liability; Termination, Release and Discharge.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the obligations of each Subsidiary Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other
A Subsidiary Guarantee by a Subsidiary Guarantor (other than Notes PropCo and Extended Term Loan PropCo) will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of the Capital Stock of such Subsidiary Guarantor to a party that is not an Affiliate of the Issuer, if after such transaction, the Subsidiary Guarantor is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(c) The Notes PropCo Guarantee will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock of Notes PropCo to a party that is not an Affiliate of the Issuer, if after such transaction, Notes PropCo is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(d) The Extended Term Loan PropCo Guarantee will be automatically and unconditionally released and discharged:

(i) upon the sale, exchange, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock of Extended Term Loan PropCo to a party that is not an Affiliate of the Issuer, if after such transaction, Extended Term Loan PropCo is no longer a Subsidiary (so long as such transaction is permitted by this Indenture); or

(ii) upon the Issuers’ exercise of their legal defeasance option or covenant defeasance option under Section 8.1(b) or if the Issuers’ Obligations under this Indenture are discharged in accordance with the terms of this Indenture.

(e) In the case of Section 10.2(b), the Issuers will deliver to the Trustee an Officer’s Certificate and Opinion of Counsel, each stating that all conditions

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The release of a Subsidiary Guarantor from its Subsidiary Guarantee and its obligations under this Indenture in accordance with the provisions of this Section 10.2 will not preclude the future application of Section 3.11 to such Person.

SECTION 10.3. Right of Contribution. Each Subsidiary Guarantor hereby agrees that to the extent that any such Guarantor will have paid more than its proportionate share of any payment made on the obligations under its Guarantee, such Guarantor will be entitled to seek and receive contribution from and against the Issuers or any other Guarantor who have not paid their proportionate share of such payment. The provisions of this Section 10.3 will in no respect limit the obligations and liabilities of each Subsidiary Guarantor to the Trustee and the Holders and each Subsidiary Guarantor will remain liable to the Trustee and the Holders for the full amount guaranteed by such Guarantor hereunder.

SECTION 10.4. No Subrogation. Notwithstanding any payment or payments made by each Subsidiary Guarantor hereunder, no Guarantor will be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Issuers or any other Guarantor or any collateral security or guarantee or right of offset held by the Trustee or any Holder for the payment of the Guaranteed Obligations, nor will any Subsidiary Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuers or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee and the Holders by the Issuers on account of the Guaranteed Obligations are paid in full. If any amount will be paid to any Subsidiary Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations will not have been paid in full, such amount will be held by such Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Guarantor, and will, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Guaranteed Obligations.

SECTION 10.5. Limitations on Merger. Subject to Section 4.1 and Section 10.2, a Subsidiary Guarantor will not, and the Issuer will not permit any Subsidiary Guarantor to, consolidate or merge with or into or wind up into (whether or not such Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(a) such Person is a Successor Guarantor;

(b) the Successor Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor’s Guarantee pursuant to a supplemental indenture or other documents or instruments;
(c) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Guarantor or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Guarantor or such Subsidiary at the time of such transaction) no Default or Event of Default will have occurred and be continuing; and

(d) the Successor Guarantor (if other than such Subsidiary Guarantor) will have delivered or caused to be delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; or

(e) such sale or disposition or consolidation or merger does not violate Section 3.7.

The Successor Guarantor will succeed to, and be substituted for, such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor’s Guarantee, and such Subsidiary Guarantor will automatically be released and discharged from its obligations under this Indenture and such Guarantor’s Guarantee. Notwithstanding the foregoing, (1) a Subsidiary Guarantor may merge or consolidate with an Affiliate of the Issuer incorporated or organized solely for the purpose of reincorporating or reorganizing such Guarantor in the United States, any state or territory thereof, the District of Columbia or the jurisdiction of such Guarantor, so long as the principal amount of Indebtedness of the Issuer and the Restricted Subsidiaries is not increased thereby and the Person resulting from such merger or consolidation is or becomes an Issuer or a Subsidiary Guarantor, (2) a Subsidiary Guarantor may consolidate or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties and assets to an Issuer or another Subsidiary Guarantor, (3) a Subsidiary Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Guarantor or the laws of a jurisdiction in the United States, so long as such Subsidiary Guarantor remains a Subsidiary Guarantor and (4) any Restricted Subsidiary may merge into any Subsidiary Guarantor, provided that, in the case of this clause (4), the surviving Person will be a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia or the jurisdiction of organization of such Restricted Subsidiary or Subsidiary Guarantor and the surviving Person of such merger (if not the Guarantor) is or will become a Subsidiary Guarantor upon the consummation of such merger.

SECTION 10.6. Subordination of PropCo Guarantees. The guarantee by Extended Term Loan Propco of the Guaranteed Obligations pursuant to this Article X is subordinate in the manner and to the extent set forth in that certain subordination agreement (as amended, supplemented or otherwise modified from time to time) dated as of June 7, 2019 among the Collateral Agent, Extended Term Loan PropCo and the other parties thereto (the “Extended Term Loan PropCo Subordination Agreement”), to the Senior Priority Guarantee Obligations (as defined therein); and each Holder, by its
The guarantee by Notes PropCo of the Guaranteed Obligations pursuant to this Article X is subordinate in the manner and to the extent set forth in that certain subordination agreement (as amended, supplemented or otherwise modified from time to time) dated as of June 7, 2019 among the Collateral Agent, Notes PropCo and the other parties thereto (the “Notes PropCo Subordination Agreement”), to the Senior Priority Guarantee Obligations (as defined therein); and each Holder, by its acceptance of a Note or a beneficial interest therein, irrevocably agrees to be bound by the provisions of such subordination agreement.

ARTICLE XI

Collateral


The Notes Obligations are secured by the Collateral as provided in the Security Documents with Liens that have the Required Collateral Lien Priority. The Issuer shall, and shall cause each Subsidiary Guarantor to, and each Subsidiary Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) necessary to maintain (at the sole cost and expense of the Issuer and the Subsidiary Guarantors) the security interest created by the Security Documents in the Collateral as a perfected security interest to the extent perfection is required by the Security Documents, subject only to Permitted Liens.

SECTION 11.2. Extended Term Loan Priority Real Estate Collateral and Extended Term Loan PropCo Equity Interests.

(a) On the Issue Date (or within the Initial Post-Closing Period, subject to the Extended Post-Closing Period, in the event that the Extended Term Loan Agent extends such Initial Post-Closing Period for obtaining mortgages or deeds of trust on the Notes Priority Real Estate Collateral or the Extended Term Loan Priority Real Estate Collateral beyond such Initial Post-Closing Period, provided, that, during such Extended Post-Closing Period, no such mortgages or deeds of trust on any Extended Term Loan Priority Real Estate Collateral to secure the Notes Obligations shall be obtained more than 10 days after the corresponding mortgages or deeds of trust on such properties are obtained to secure the Extended Term Loan Obligations), the Notes Collateral Agent shall be granted a third-priority Lien on specified real estate interests which consist of certain owned real properties and real property leases (whether operating leases, ground leases, or otherwise) which constitute collateral for the Extended Term Loan Obligations as of the Issue Date to the extent not constituting Non-Mortgageable Leases (such real estate interests, the "Extended Term Loan Priority Real Estate Collateral")
Notwithstanding the foregoing, to the extent any real property interests that would otherwise be mortgaged as Extended Term Loan Priority Real Estate Collateral constitute Non-Mortgageable Leases (the “Extended Term Loan Priority PropCo Assets”), such Non-Mortgageable Leases shall be contributed to the Extended Term Loan PropCo, which shall grant a lease or license to the applicable Restricted Subsidiary of the Issuer to use the Extended Term Loan Priority PropCo Assets on terms consistent with Exhibit F in each case within the time period described in clause (a).

SECTION 11.3. **Notes Priority Real Estate Collateral and Notes PropCo Equity Interests.**

(a) On the Issue Date (or within the Initial Post-Closing Period, subject to the Extended Post-Closing Period, in the event that the Extended Term Loan Agent extends such Initial Post-Closing Period for obtaining mortgages or deeds of trust on the Notes Priority Real Estate Collateral or the Extended Term Loan Priority Real Estate Collateral beyond such Initial Post-Closing Period; provided, that, during such Extended Post-Closing Period, no such mortgages or deeds of trust on any Extended Term Loan Priority Real Estate Collateral to secure the Third Lien Notes Obligations shall be obtained more than 10 days after the corresponding mortgages or deeds of trust on such properties are obtained to secure the Extended Term Loan Obligations), the Notes Collateral Agent, on behalf of the Holders shall be granted a Lien on the Notes Priority Real Estate Collateral and a pledge of the Notes PropCo Equity Interests in each case with the Required Collateral Lien Priority applicable thereto.

(b) Notwithstanding the foregoing, to the extent any real property interests that would otherwise be mortgaged as Notes Priority Real Estate Collateral constitute Non-Mortgageable Leases, then the Issuer shall cause Notes PropCo to be formed as promptly as practicable, and, in lieu of such mortgages, the applicable Non-Mortgageable Leases (such interests ceasing to be Notes Priority Real Estate Collateral, the “Notes Priority PropCo Assets”) shall be contributed to the Notes PropCo. In the event that Notes PropCo is formed, it shall grant a lease or license to the applicable Restricted Subsidiary of the Issuer to use the Notes Priority PropCo Assets on terms consistent with Exhibit F in each case within the time period described in clause (a).

SECTION 11.4. **Notes Collateral Agent.**

(a) The Notes Collateral Agent shall have all the rights, benefits, privileges, protections, indemnities and immunities provided in the Security Documents and, additionally, shall have all the rights, benefits, privileges, protections, indemnities and immunities provided to the “Trustee” under Article VII.

(b) Subject to Section 7.1, none of the Notes Collateral Agent, Trustee, Paying Agent or Registrar nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or
protection of any Collateral, for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency or protection of any Notes Liens, or any defect or deficiency as to any such matters.

(c) Except as required or permitted by the Security Documents, and the Intercreditor Agreements, the Holders, by accepting a Note, acknowledge that the Notes Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person, except in accordance with the Security Documents and the Intercreditor Agreements;

(ii) to foreclose upon or otherwise enforce any Lien granted pursuant to the Security Documents; or

(iii) to take any other action whatsoever with regard to any or all of the Notes Liens, Security Documents, Intercreditor Agreements or Collateral.

(d) The Notes Collateral Agent may be removed and replaced in the same manner as the Trustee, as provided the Notes Collateral Agreement and the MYT Third Lien Notes Pledge Agreement.

SECTION 11.5. Authorization of Actions to Be Taken.

(a) Each Holder, by its acceptance thereof, consents and agrees to the terms of each Security Document, as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Trustee and Notes Collateral Agent to enter into the Security Documents to which each is a party, authorizes and empowers the Trustee and Notes Collateral Agent to execute and deliver the Intercreditor Agreements and authorizes and empowers the Trustee and Notes Collateral Agent to bind the Holders as set forth in the Security Documents to which each is a party and the Intercreditor Agreements and to perform their respective obligations and exercise their respective rights and powers thereunder.

(b) The Trustee is authorized and empowered to receive for the benefit of the Holders any funds collected or distributed to the Notes Collateral Agent under the Security Documents to which the Trustee is a party and, subject to the terms of the Security Documents, to make further distributions of such funds to the Holders according to the provisions of this Indenture.

(c) Subject to the provisions of Sections 7.1, 7.2, the Intercreditor Agreements and the Security Documents, the Trustee may, in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders, the Notes Collateral Agent to take all actions it deems necessary or appropriate in order to, upon the occurrence and continuance of an Event of Default:
foreclose upon or otherwise enforce any or all of the Liens granted pursuant to the Security Documents;

(ii) enforce any of the terms of the Security Documents to which the Notes Collateral Agent is a party; or

(iii) collect and receive payment of any and all Obligations.

Following an Event of Default, subject to the Intercreditor Agreements and at the Issuer’s sole cost and expense, the Trustee is hereby authorized and empowered by each Holder (by its acceptance thereof) to, subject to Sections 7.1 and 7.2 institute and maintain, or direct the Notes Collateral Agent to institute and maintain, such suits and proceedings as it may deem reasonably expedient to protect or enforce the Liens granted under the Security Documents to which the Notes Collateral Agent or Trustee is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of the Security Documents or this Indenture, and such suits and proceedings as the Trustee may deem reasonably expedient, at the Issuer’s sole cost and expense, to preserve or protect its interests and the interests of the Holders in the Collateral, including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Liens granted under the Security Documents or be prejudicial to the interests of Holders or the Trustee.


(a) Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents and the Intercreditor Agreements. In addition, the Issuer and the Subsidiary Guarantors will be entitled to the release of assets included in the Collateral from the Liens securing the Notes, and the Trustee shall (or, if the Trustee is not then the Notes Collateral Agent, shall direct the Notes Collateral Agent to) release the same from such Liens at the Issuer’s sole cost and expense, under any one or more of the following circumstances without the need for any further action by any Person:

(i) as to any property or assets to enable the Issuers or the Subsidiary Guarantors to consummate the disposition of such property or assets to the extent not prohibited and otherwise in accordance with Section 3.7; provided, however, that if such property or assets, immediately prior thereto, were subject to any Lien securing any Obligations of the Issuers or Subsidiary Guarantors and such property or assets continue after such disposition to be subject to a Lien securing any such Obligations, no such release shall occur with respect to such property or assets;

(ii) in the case of the property and assets of a Restricted Subsidiary that is a Subsidiary Guarantor, upon the release of such Subsidiary Guarantor from its Subsidiary Guarantee of the Notes;
as described under Article IX of this Indenture.

(b) The security interests in all Collateral securing the Notes also will be released upon payment in full of the principal of, together with accrued and unpaid interest on, the Notes and all other Obligations under this Indenture, the Notes, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest are paid, or upon the Issuers’ exercise of a legal defeasance option or covenant defeasance option under this Indenture as described under Article VIII.

(c) Upon the written request of the Issuer pursuant to an Officer’s Certificate and Opinion of Counsel stating that all conditions precedent hereunder and under the Security Documents have been met, and upon receipt of any necessary or proper instruments of termination, satisfaction or release prepared by the Issuer or the Subsidiary Guarantors, as the case may be, the Notes Collateral Agent, without the consent of any Holder or the Trustee and at the expense of the Issuer or the Subsidiary Guarantors, shall execute, deliver or acknowledge such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this or the Security Documents.

SECTION 11.7. Filing, Recording and Opinions.

(a) The Issuer will comply with the provisions of Sections 314(b) and 314(d) of the TIA, in each case following qualification of this Indenture pursuant to the TIA. Any certificate or opinion required by Section 314(d) of the TIA may be made by an Officer of the Issuer except in cases where Section 314(d) of the TIA requires that such certificate or opinion be made by an independent engineer, appraiser or other expert, who shall be reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary herein, the Issuer and the Subsidiary Guarantors will not be required to comply with all or any portion of Section 314(d) of the TIA if they determine, in good faith, after consultation with counsel (which may be internal counsel), that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including “no action” letters or exemptive orders, all or any portion of Section 314(d) of the TIA is inapplicable to the released Collateral. Following such qualification, to the extent the Issuer is required to furnish to the Trustee an Opinion of Counsel pursuant to Section 314(b)(2) of the TIA, the Issuer will furnish such opinion not more than 60 but not less than 30 days prior to each October 15, commencing October 15, 2019.

Any release of Collateral permitted by Section 11.6 and this Section 11.7 will be deemed not to impair the Liens under this Indenture and the Security Documents in contravention thereof and any Person that is required to deliver an Officer’s Certificate or Opinion of Counsel pursuant to Section 314(d) of the TIA, shall be entitled to rely upon the foregoing as a basis for delivery of such certificate or opinion. The Trustee and the Notes Collateral Agent may, to the extent permitted by Section 7.1 and 7.2, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and Opinion of Counsel.
(b) If any Collateral is released in accordance with this Indenture or any Security Document at a time when the Trustee is not itself also the Notes Collateral Agent and if the Issuer has delivered the certificates and documents required by the Security Documents and Section 11.6, the Trustee will deliver all documentation received by it in connection with such release to the Notes Collateral Agent.

SECTION 11.8. Powers Exercisable by Receiver or Trustee. In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article XI upon the Issuer or a Subsidiary Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or a Subsidiary Guarantor or of any officer or officers thereof required by the provisions of this Article XI and if the Trustee or the Notes Collateral Agent shall be in the possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee or the Notes Collateral Agent, as the case may be.

SECTION 11.9. Voting. In connection with any matter under the Security Agreement requiring a vote of holders of Secured Obligations (as defined in the Security Agreement), the holders of such Secured Obligations shall be treated as a single class and the Holders shall cast their votes in accordance with this Indenture. The amount of the Notes to be voted by the Holders will equal the aggregate outstanding principal amount of the Notes. Following and in accordance with the outcome of the applicable vote under this Indenture, the Trustee shall vote the same proportion of the Notes in respect of any vote under the Security Agreement.

SECTION 11.10. Subject to the Intercreditor Agreements. This Indenture is entered into with the benefit of and subject to the terms of the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement. By accepting a Note, each Holder is authorizing the Trustee and the Notes Collateral Agent to enter into the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement on its behalf. Holders will be permitted to take enforcement action with respect to the Collateral only to the extent permitted under and in accordance with the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement.

ARTICLE XII
Mutual Releases

Certain capitalized terms used in this Article XII are specifically defined for purposes of this section and are set forth at the end of this Article XII.

SECTION 12.1. Releases by the Company Releasing Parties. Effective as of the Effective Date, each Company Releasing Party, on behalf of itself, and to the extent a Company Releasing Party is not party to this Indenture, the Issuers or Subsidiary Guarantors on behalf of such Company Releasing Party, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the
and the respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the
Company Releasing Parties, that the Issuers, Subsidiary Guarantors or any of the Company Releasing Parties would have been legally entitled to assert in
their or its own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Equity Security in, a Company Releasing Party
or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution,
(iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive
Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with
or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of
any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the
contrary in the foregoing, the releases by the Company Releasing Parties set forth above do not release any party or Entity from any post Effective Date
obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any
document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the
releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of
competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to result in the waiving or
limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance
by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees,
monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Company
Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the
commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding the foregoing or anything to the
contrary in this Indenture, nothing in this Indenture shall or shall be deemed to (or is intended to) limit any of the Company Releasing Parties’ rights to assert
or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under
the Bankruptcy Code, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-
referenced Claims and Causes of Action arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of this
Indenture, the Transaction Support Agreement, the Definitive Documents, or any Recapitalization Transaction, or any contract, instrument, release, or other
agreement or document created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of
consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or
distribution of securities in connection therewith. For the avoidance of doubt, the release by the Company Releasing Parties in this Section 12.1 is granted by or on behalf of each of the Company Releasing Parties in their capacities as Issuers or Subsidiary Guarantors, and on behalf of each of their Related Parties, in each case, in accordance with the terms and conditions set forth in this Indenture.

SECTION 12.1. Releases by the Company Releasing Parties. Effective as of the Effective Date, by accepting the Notes and the benefits of this Indenture, each Company Releasing Party, solely in its capacity as such, severally and not jointly, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Company Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties or the Stakeholder Releasing Parties, that the Trustee or any of the Stakeholder Releasing Parties would have been legally entitled to assert in its or their own right (whether individually or collectively) or on behalf of the holders of any Claim against, or Equity Security in, a Company Releasing Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Company Releasing Parties set forth above do not release any party or Entity from any post Effective Date obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to (or is intended to) limit any of the Stakeholder Releasing Parties’ rights to assert or prosecute any affirmative defenses.

SECTION 12.2. Releases by the Stakeholder Releasing Parties. Effective as of the Effective Date, by accepting the Notes and the benefits of this Indenture, each Stakeholder Releasing Party, solely in its capacity as such, severally and not jointly, hereby conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Stakeholder Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Releasing Parties or the Stakeholder Releasing Parties, that the Trustee or any of the Stakeholder Releasing Parties would have been legally entitled to assert in its or their own right (whether individually or collectively) or on behalf of the holders of any Claim against, or Equity Security in, a Company Releasing Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. Notwithstanding anything to the contrary in the foregoing, the releases by the Stakeholder Releasing Parties set forth above do not release any party or Entity from any post Effective Date obligations of any party or Entity under this Indenture, any other Definitive Documents, any Recapitalization Transaction, the Commitment Letter or any document, instrument, or agreement executed to implement the Recapitalization Transactions. Notwithstanding anything to the contrary in the foregoing, the releases set forth in clauses (iv) and (v) above do not release any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Nothing contained in the releases shall or shall be deemed to result in the waiving or limiting by any Sponsor or any officer, director, or employee of any Company Party of (a) any indemnification against, or expense reimbursement or advance by, any Company Party or any Company Party’s insurance carriers, (b) any rights as beneficiaries of any insurance policies, (c) any management fees, monitoring fees, or like fees and expenses, (d) wages, salaries, compensation, or benefits, or (e) any Equity Securities in any Company Party. Each Stakeholder Releasing Party hereby agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding the foregoing or anything to the contrary in this Indenture, nothing in the releases or this Indenture shall or shall be deemed to (or is intended to) limit any of the Stakeholder Releasing Parties’ rights to assert or prosecute any affirmative defenses.
or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under the Bankruptcy Code, in connection
with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action
arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of this Indenture, the Transaction Support Agreement,
the Definitive Documents, the Commitment Letter, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document
created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the
administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the
avoidance of doubt, the release by the Stakeholder Releasing Parties in this Section 12.2 is hereby granted by or on behalf of each of the Stakeholder
Releasing Parties in accordance with the terms and conditions set forth in this Indenture solely in in their capacities as Holders with respect to Notes that they
hold, and on behalf of their Related Parties, only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party.

SECTION 12.3. No Additional Representations and Warranties. Each Releasing Party hereby agrees and acknowledges that, except
as expressly provided in this Indenture and the Definitive Documents, no Released Party, in any capacity, has warranted or otherwise made any
representations concerning any Released Claim (including any representation or warranty concerning the existence, non-existence, validity, or invalidity of
any Released Claim). Notwithstanding the foregoing, nothing contained in this Indenture is intended to impair or otherwise derogate from any of the
representations, warranties, or covenants expressly set forth in this Indenture or any of the Definitive Documents.

SECTION 12.4. Release of Unknown Claims. Each of the Releasing Parties hereby expressly acknowledges that although ordinarily
a general release may not extend to any Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may
have materially affected its settlement with the party released, it has carefully considered and taken into account in determining to enter into the releases set
forth under Article XII the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Holder, by its holding
of a Note, and, on behalf of each Company Releasing Party, the Issuers and Subsidiary Guarantors, expressly waive and relinquish any and all rights such
Releasing Party may have or conferred upon it under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provide
that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the releases set forth under
Article XII or which may in any way limit the effect or scope of such releases with respect to the Released Claims, which such Releasing Party did not know
or suspect to exist in such Releasing Party’s favor at the time of providing such releases, which in each case if known by it may have materially affected its
settlement with any Released Party, including any rights under Section 1542 of the California Civil Code or any analogous applicable state or federal law or
regulation. Each of the Releasing Parties hereby expressly acknowledges that the releases and covenants not to sue contained in this Indenture are effective
regardless of whether
those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or foreseen or unforeseen.

To the extent that the releases set forth above include releases to which Section 1542 of the California Civil Code or similar provisions of other applicable law applies, it is the intention of each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party that the releases described under Article XII are to be effective as a bar to any and all Claims and Causes of Action of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified in this Indenture. In furtherance of this intention, each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party hereto expressly waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law, which are as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFfected HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. Thus, notwithstanding the provisions of Section 1542 of the California Civil Code, and for the purpose of implementing a full and complete release and discharge of the Released Parties, each Holder (in its capacity as a holder of the Notes) and each Company Releasing Party expressly acknowledges that this Indenture is intended to include in its effect all of the Claims, Causes of Action and liabilities which the Releasing Parties and each Holder (in its capacity as a holder of the Notes) does not know or suspect to exist in their favor as of the Effective Date, and this Indenture contemplates extinguishment of all such Claims, Causes of Action and liabilities.

SECTION 12.5. Covenant to Refrain from Certain Actions. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS INDENTURE, FROM AND AFTER THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES HEREBY AGREES AND COVENANTS NOT TO, AND SHALL NOT, AND SHALL NOT ASSIST OR OTHERWISE AID ANY OTHER PERSON TO, (A) COMMENCE OR CONTINUE, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION, OR OTHER PROCEEDING; (B) ENFORCE, ATTACH, COLLECT, OR RECOVER IN ANY MANNER ANY JUDGMENT, AWARD, DEGREE, OR ORDER; (C) CREATE, PERFECT, OR ENFORCE ANY LIEN OR ENCUMBRANCE; (D) ASSERT A SETOFF, RIGHT OF SUBROGATION, OR RECOUPEMENT OF ANY KIND; (E) COMMENCE OR CONTINUE IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, OR (F) ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF ANY CLAIM OR CAUSE OF ACTION, IN EACH CASE, ON ACCOUNT OF OR WITH RESPECT TO ANY RELEASED CLAIM OR ANY CLAIM

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SECTION 12.6. Turnover of Subsequently Recovered Assets. Subject to the occurrence of the Effective Date, in the event that the Trustee, the Issuers, Subsidiary Guarantors or any Releasing Party (including any successor or assignee thereof) receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against Parent or the MYT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), the Trustee, the Collateral Agent, the Issuers, Subsidiary Guarantors or such Releasing Party shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MYT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of Parent, Parent or the applicable MYT Entity. Parent or the applicable MYT Entity shall distribute any such recoveries turned over or assigned to it in accordance with the MYT Waterfall, to the extent applicable. Notwithstanding anything to the contrary contained in this Indenture (but subject to the immediately following paragraph below), Parent shall be entitled to enforce the provisions of this paragraph on behalf of Parent or any MYT Entity. The Releasing Parties, the Issuers and Subsidiary Guarantors, the Trustee and the Collateral Agent will be bound by the provisions set forth under this Section 12.6 notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

Notwithstanding anything to the contrary contained in this Indenture, (i) the immediately foregoing paragraph will only apply to the Stakeholder Releasing Parties in their capacities as Holders with respect to Notes that they hold, the Trustee in its capacity as Trustee, the Collateral Agent in its capacity as Collateral Agent, and each of the Company Releasing Parties in their capacities as Issuers or Subsidiary Guarantors,
and will not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor in possession or any similar financing and (ii) to
the extent a Releasing Party receives consideration on account of a Claim secured by assets or property of any Company Party or its subsidiaries (other than,
for the avoidance of doubt, the Specified Claims or any such assets or property contributed to or otherwise obtained by any Company Party or its subsidiaries
on account of the Specified Claims), such consideration will not be subject to the immediately foregoing paragraph.

SECTION 12.7. Definitions. The capitalized terms below shall have the following meanings as used in this Article XII.

“Bankruptcy Code” means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Effective Date, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

“Claim” means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Commitment Letter” means that certain Backstop Commitment Letter, dated March 25, 2019, by and among the Sponsors and the Ad Hoc Committee of Unsecured Noteholders.

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“Company Releasing Party” means each of the Company Parties and, to the maximum extent permitted by law, each of the Company Parties on behalf of its Related Parties.

“Consenting Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions, including (i) the material documents governing the Second Lien Notes (including the Second Lien Notes Indenture), (ii) the material documents governing the Third Lien Notes (including this Indenture and the 8.000% Third Lien Indenture), (iii) the material documents governing the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock (including the applicable Certificates of Designation and material organizational documents), and (iv) the Extended Term Loan Agreement, and (v) all other material customary documents delivered in connection with transactions of this type (including any and all material documents necessary to implement the Recapitalization Transactions).

“Effective Date” means the date of consummation of the Recapitalization Transactions (no later than 11:59 p.m. Eastern Standard Time).

“Entity” means any Person, individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Body or any agency or political subdivision of any Governmental Body, or any other entity, whether acting in an individual, fiduciary, or other capacity.

“Equity Security” means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).

“Governmental Body” means any U.S. or non-U.S. federal, state, municipal, or other government, or other department, commission, board, bureau, agency, public authority, or instrumentality thereof, or any other U.S. or non-U.S. court or arbitrator.

“Holder” means the Person in whose name a Note is registered; provided that it may include the “beneficial owner” of an interest in a Note.

“Nancy Transaction” means, collectively, (a) the formation of Nancy Holdings LLC, a Delaware limited liability company, (b) all designations prior to the
TSA Execution Date by any Company Party or any of its Related Parties of Nancy Holdings LLC as an “unrestricted” subsidiary under the Original Indenture, the Pre-Transactions Term Loan Agreement, or the ABL Credit Agreement (as in effect immediately prior to the Effective Date), (c) all contributions, investments, conveyances, or transfers of any real properties or any interests associated with such real properties by any Company Party or any of its Related Parties in or to Nancy Holdings LLC prior to the TSA Execution Date, (d) all leases of real properties or any interests associated with such real properties between Nancy Holdings LLC as lessor, and any Company Party as lessee, entered into prior to the TSA Execution Date, and (e) all acts or omissions taken prior to the Effective Date by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing.

“Original Indenture” means the Indenture, dated as of October 21, 2013, as supplemented by the First Supplemental Indenture, dated October 25, 2013 (as amended, supplemented, waived or otherwise modified) governing the 8.750%/9.500% PIK Toggle Notes due 2021 among Mariposa Merger Sub LLC and Borrower, Inc. as issuers, and U.S. Bank National Association, as trustee.

“Recapitalization Transactions” means the consensual recapitalization of certain of the Company Parties’ outstanding indebtedness and equity interests consisting of the entry into the Extended Term Loan Agreement, the consummation of the Exchange Offers, the issuance of the New Second Lien Notes and the Third Lien Notes and the issuance of the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock on terms and conditions consistent with the Transaction Support Agreement.

“Related Parties” means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity. For the avoidance of doubt, the MYT Entities are Related Parties of the Sponsors; provided, however, that any Related Party of a Holder is subject to and bound by the terms of the mutual releases set forth under this Indenture only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party.

“Released Claim” means, with respect to any Releasing Party, any Claim, Cause of Action, or any other debt, obligation, right, suit, damage, judgment, action, remedy, or liability which is released by such Releasing Party described under Article XII.

“Released Party” means, collectively, (a) each of the Company Parties, (b) each of the Consenting Noteholders, (c) the Sponsors and the Related Parties of each of the foregoing Persons in clauses (a), (b) and (c) of this definition.
“Releasing Party” means collectively, (a) the Stakeholder Releasing Parties and (b) the Company Releasing Parties.

“Sponsor” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Stakeholder Releasing Party” means to the maximum extent permitted by law, (i) each Holder (in its capacity as a holder of Notes) and (ii) each of the Sponsors on behalf of their respective Related Parties.

“TSA Execution Date” means March 25, 2019, the date on which the Transaction Support Agreement was executed.

ARTICLE XIII

Miscellaneous

SECTION 13.1. Notices. Notices given to Holders by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices from Holders given by first-class mail, postage prepaid, will be deemed given five calendar days after mailing. Notices from Holders personally delivered will be deemed given at the time delivered by hand. Notices from Holders given by publication will be deemed given on the first day on which publication is made and notices from Holders given by facsimile will be deemed given when receipt is acknowledged. Notices from Holders given by overnight air courier guaranteeing next day delivery will be deemed given the next Business Day after timely delivery to the courier. Notices from the Issuer or Trustee or Notes Collateral Agent to Holders will be deemed given at the time delivered electronically in accordance with the Applicable Procedures of the Depositary.

Any notice or communication will be in writing and delivered in person, by facsimile or mailed by first-class mail addressed as follows:

if to the Issuers or any Subsidiary Guarantor:

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
c/o Ares Management
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Facsimile: (310) 201-4170
Attention: Dennis Gies; Eric Waxman; Andrew Paik
With copies to:

Neiman Marcus Group LTD LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214) 743-7611
Attention: Tracy M. Preston
Email: Tracy_Preston@neimanmarcus.com

Kirkland & Ellis
2029 Century Park East
Los Angeles, CA 90067
Facsimile: (310) 552-5900
Attention: Philippa Bond, P.C.; David M. Nemecek, P.C.
Email: pippa.bond@kirkland.com; david.nemecek@kirkland.com

if to the Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Tele: (302) 636-6432
Email: tmorris@wilmingtontrust.com

With copies to:

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attn: Ronald A. Hewitt
Fax: (212) 841-1010
Email: rhewitt@cov.com

if to the Notes Collateral Agent:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Tele: (302) 636-6432
Email: tmorris@wilmingtontrust.com
The Issuers or the Trustee or the Notes Collateral Agent by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder will be mailed to the Holder at the Holder’s address as it appears on the registration books of the Registrar and will be sufficiently given if so mailed within the time prescribed. Any notice or communication will also be so mailed or delivered to any Person described in TIA § 313(c), to the extent required by the TIA.

Failure to deliver a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

The Trustee and the Notes Collateral Agent agree to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee or the Notes Collateral Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee or the Notes Collateral Agent in its discretion elects to act upon such instructions, the Trustee’s or the Notes Collateral Agent’s understanding of such instructions will be deemed controlling. The Trustee and the Notes Collateral Agent will not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s or the Notes Collateral Agent’s reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee or the Notes Collateral Agent, including without limitation the risk of the Trustee or the Notes Collateral Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption or purchase) to a Holder of a Global Note (whether by mail or otherwise),
such notice will be sufficiently given if delivered or caused to be delivered electronically in accordance with the Applicable Procedures of the Depositary.

SECTION 13.2. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers to the Trustee to take or refrain from taking any action under this Indenture (except in connection with (x) the original issuance of Notes on the date hereof and (y), with respect to clause (b) below, the execution of any amendment or supplement adding a new Guarantor under this Indenture), the Issuers will furnish to the Trustee:

(a) an Officer’s Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 13.3. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) will comply with the provisions of TIA § 314(e) and also will include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officer’s Certificate or on certificates of public officials.

SECTION 13.4. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 13.5. Days Other than Business Days. If a payment date is not a Business Day, payment will be made on the next succeeding day that is a Business Day.
Day, and no interest will accrue for the intervening period. If a regular Record Date is not a Business Day, the Record Date will not be affected.

SECTION 13.6. Governing Law. This Indenture, the Notes and the Guarantees will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction.

SECTION 13.7. Jurisdiction and Service. In relation to any legal action or proceedings arising out of or in connection with this Indenture, the Notes or the Guarantees, each Subsidiary Guarantor that is organized under laws other than those of the United States or a state or territory thereof or the District of Columbia hereby (a) irrevocably submits to the jurisdiction of the federal and state courts in the Borough of Manhattan in the City, County and State of New York, United States (b) waives, to the fullest extent permitted by law, any objection to any suit, action or proceeding that may be brought in connection with this Indenture, the Notes or the Guarantees in such courts on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum, (c) designates and appoints Issuer as their authorized agent upon which process may be served in any such suit, action or proceeding that may be instituted in any such court, and (d) agrees that service of any process, summons, notice or document by U.S. registered mail addressed to the Issuer, with written notice of said service to such Person at the address of the Issuer set forth in Section 13.1, will be effective service of process for any such legal action or proceeding brought in any such court.

SECTION 13.8. Waiver of Jury Trial. EACH OF THE ISSUERS, THE SUBSIDIARY GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTES DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 13.9. No Recourse Against Others. No manager, managing director, incorporator, director, officer, employee or holder of any Equity Interests of the Issuer, Corporate Co-Issuer, any Subsidiary or any direct or indirect parent of the Issuer, as such, will have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Subsidiary Guarantees or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder will waive and release all such liability. The waiver and release will be part of the consideration for the issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

SECTION 13.10. Successors. All agreements of the Issuers and each Subsidiary Guarantor in this Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Indenture will bind its successors.
SECTION 13.11. **Multiple Originals.** The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") will be effective as delivery of a manually executed counterpart thereof. One signed copy is enough to prove this Indenture.

SECTION 13.12. **Variable Provisions.** The Issuers initially appoint the Trustee as Paying Agent and Registrar and Notes Custodian with respect to any Global Notes.

SECTION 13.13. **Table of Contents; Headings.** The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and will not modify or restrict any of the terms or provisions hereof.

SECTION 13.14. **Force Majeure.** In no event will the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee will use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.15. **USA Patriot Act.** The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act the Trustee and the Trust Officers, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this agreement agree that they will provide the Trustee and the Trust Officers with such information as they may request in order to satisfy the requirements of the USA Patriot Act.

SECTION 13.16. **Communication by Holders with Other Holders.** Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Registrar and anyone else will have the protection of TIA § 312(c).

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

**NEIMAN MARCUS GROUP LTD LLC,**  
**as the Issuer**

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

**MARIPOSA BORROWER, INC.,**  
**as Corporate Co-Issuer**

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President and Secretary

**THE NMG SUBSIDIARY LLC,** as New Co-Issuer Subsidiary

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President and Secretary

**THE NEIMAN MARCUS GROUP LLC,** as LLC Co-Issuer

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

[Signature Page to 8.750% Third Lien Notes Indenture]
GUARANTORS

BERGDORF GOODMAN INC.
BERGDORF GRAPHICS, INC.
BG PRODUCTIONS, INC.
NM BERMUDA, LLC
NM FINANCIAL SERVICES, INC.
NM NEVADA TRUST
NMGP, LLC
WORTH AVENUE LEASING COMPANY

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NMG GLOBAL MOBILITY, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President, General Counsel and Secretary

NEMA BEVERAGE CORPORATION
NEMA BEVERAGE HOLDING CORPORATION
NEMA BEVERAGE PARENT CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to 8.750% Third Lien Notes Indenture]
GUARANTORS

NMG CALIFORNIA SALON LLC
NMG FLORIDA SALON LLC
NMG SALONS LLC
NMG TEXAS SALON LLC

By:   /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By:   /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Chief Executive Officer and President

[Signature Page to 8.750% Third Lien Notes Indenture]
GUARANTORS

NMG TERM LOAN PROPCO LLC
NMG NOTES PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to 8.750% Third Lien Notes Indenture]
NM ENTITIES

MYT PARENT CO.
MYT HOLDING CO.
MYT INTERMEDIATE HOLDING CO.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to 8.750% Third Lien Notes Indenture]
[Signature Page to 8.750% Third Lien Notes Indenture]
Global Note Legend, if applicable
Guarantor Legend, if applicable
Private Placement Legend, if applicable
Temporary Regulation S Legend, if applicable
OID Legend, if applicable

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Neiman Marcus Group LTD LLC, The Neiman Marcus Group LLC, Mariposa Borrower, INC., The NMG Subsidiary LLC promise to pay to Cede & Co., or registered assigns, the initial principal amount set forth on the Schedule of Increases or Decreases in the Global Note attached hereto, as revised by the Schedule of Increases or Decreases in the Global Note attached hereto, on October 25, 2024.

Interest Payment Dates: April 15 and October 15.

Record Dates: April 1 and October 1.

Additional provisions of this Note are set forth on the other side of this Note.

(1) Insert on Global Notes only
(2) 144A —
     Reg S —
     IAI —

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TRUSTEE’S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST, NATIONAL ASSOCIATION

as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By:  
Title:  Authorized Signatory  
Date:  

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1. **Interest**

Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer and their successors and assigns under the Indenture hereinafter referred to, the “Co-Issuers” and, together with the Issuer, the “Issuers”) promise to pay interest on the principal amount of this Note at the rate per annum shown above. The Issuers will pay interest semiannually on April 15 and October 15 of each year, with the first interest payment to be made on October 15, 2019.(3) Interest on the Notes will accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from June 7, 2019.(4) Interest on the Notes will accrue at the rate of 8.750% per annum, payable in cash. The Issuers will pay interest on overdue principal or premium, if any (plus interest on such interest to the extent lawful), at the rate borne by the Notes to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Issuers will pay interest on overdue principal at 2.0% per annum in excess of the above rate and will pay interest on overdue installments of interest at such higher rate to the extent lawful.

2. **Method of Payment**

By no later than 10:00 a.m. (New York City time) on the date on which any principal of, premium, if any, or interest on any Note is due and payable, the Issuers will irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, and/or interest. The Issuers will pay interest (except Defaulted Interest) to the Persons who are registered Holders at the close of business on the April 1 and October 1 next preceding the Interest Payment Date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuers will pay principal, premium, if any, and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by the Paying Agent by the transfer of immediately available funds to the accounts specified by the Depositary. Payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders, provided that payment by wire transfer of immediately available funds will be required with respect to

(3) With respect to the Initial Notes.

(4) With respect to the Initial Notes.
principal of, interest and premium, if any, on, all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Paying Agent by no later than the record date for such payment. The Issuers will make all payments in respect of a Definitive Note (including principal, premium, if any, and interest) through the Paying Agent by mailing a check to the registered address of each Holder thereof.

3. **Paying Agent and Registrar**

Initially, Wilmington Trust, National Association, duly organized and existing under the laws of the United States of America and having a Corporate Trust Office at 1100 North Market Street, Wilmington, Delaware, 19890 (“Trustee”), will act as Paying Agent and Registrar. The Issuers may appoint and change any Paying Agent, Registrar or co-registrar without notice to any Holder. The Issuers or any of their Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. **Indenture**

The Issuers issued the Notes under an Indenture dated as of June 7, 2019 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”), among the Issuers and the Trustee. The terms of the Notes include those stated in the Indenture. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Securities Act for a statement of those terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

The Notes are senior unsubordinated obligations of the Issuers. This Note is one of the 8.750% Third Lien Senior Secured Notes due 2024 referred to in the Indenture.

5. **Guarantee**

To guarantee the due and punctual payment of the principal, premium, if any, and interest (including post-filing or post-petition interest) on the Notes and all other Guaranteed Obligations when and as the same will be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Subsidiary Guarantors will unconditionally Guarantee, jointly and severally, such Guaranteed Obligations pursuant to and subject to the limitations described in Article X of the Indenture.

6. **Security**

The Indenture Obligations of the Issuers and the Guarantors are secured by Liens on the Collateral pursuant to the terms of the Security Documents. The actions of the Trustee, the Notes Collateral Agent and the Holders and the application of proceeds from the enforcement of any remedies with respect to such Collateral are
limited pursuant to the terms of the Security Documents and the Intercreditor Agreements.

7. Optional Redemption
   (a) On and after the Issue Date, the Issuers may redeem the 8.750% Third Lien Senior Secured Notes, at their option, in whole at any time or in part from time to time, upon notice as described in Section 5.4 of the Indenture, at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest, if any, to (but not including) the Redemption Date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on October 25(5) of the years set forth below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>102.188%</td>
</tr>
<tr>
<td>2019 and thereafter</td>
<td>100.000%</td>
</tr>
</tbody>
</table>

   The Issuers may redeem the 8.000% Third Lien Notes without redeeming the Notes and may redeem the Notes without redeeming the 8.000% Third Lien Notes.
   (c) In connection with any redemption of Notes, any such redemption may, at the Issuers’ discretion, be subject to one or more conditions precedent as provided in Section 5.4 of the Indenture.
   (d) Unless the Issuers default in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable Redemption Date.
   (e) Any redemption pursuant to this paragraph 7 will be made pursuant to the provisions of Article V of the Indenture.

8. Mandatory Call Right Redemption
   The Notes will be subject to the mandatory Call Right Redemption, pursuant to Section 5.9 of the Indenture.

   The Notes may be subject to mandatory redemption pursuant to Section 5.10 of the Indenture.

(5) With respect to the Initial Notes.
The Notes may be subject to mandatory redemption pursuant to Section 5.11 of the Indenture.

(a) If a Change of Control occurs, Holders of the Notes may have the right to cause the Company to offer to repurchase the Notes as provided in Section 3.9 of the Indenture.

(b) In the event of an Asset Sale, Holders of the Notes may have the right to cause the Company to offer to repurchase the Notes as provided in Sections 3.7 and 5.8 of the Indenture.

By accepting a Note, each Holder is authorizing the Trustee and the Notes Collateral Agent to enter into the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement on its behalf. Holders will be permitted to take enforcement action with respect to the Collateral only to the extent permitted under and in accordance with the Junior Lien Intercreditor Agreement and the ABL Intercreditor Agreement.

The Notes will be issuable only in minimum denominations of $2,000.00 and integral multiples of $1.00 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes for a period beginning 15 Business Days before an Interest Payment Date and ending on such Interest Payment Date.

The registered Holder of this Note may be treated as the owner of it for all purposes, provided that, notwithstanding anything to the contrary in this Note, solely for purposes of determining whether any notice, direction, action to be taken or consent to be given under the Indenture is authorized, provided or given (as the case may be) by a sufficient aggregate principal amount of Notes, an owner of a beneficial interest in a Global Note shall be treated as a Holder, and the Trustee shall accept reasonable evidence of such beneficial interest provided by such owner (which may be in the form of “screenshots” of such owner’s position).

If money for the payment of the principal of or premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to
the Issuers at their request unless an abandoned property law designates another person. After any such payment, Holders entitled to the money must look only to the Issuers and not to the Trustee for payment.

16. **Discharge and Defeasance**

   Subject to certain conditions set forth in the Indenture, the Issuers at any time may terminate some or all of their obligations under the Notes and the Indenture if the Issuers irrevocably deposit in trust with the Trustee money or U.S. Government Obligations (sufficient, without reinvestment, in the opinion of a nationally-recognized certified public accounting firm) for the payment of principal, premium (if any) and interest on the Notes to redemption or maturity, as the case may be.

17. **Amendment, Waiver**

   The Indenture and the Notes may be amended or waived as set forth in Article IX of the Indenture.

18. **Defaults and Remedies**

   Events of Default will be as set forth in Article VI of the Indenture.

   Holders may only enforce the Indenture or the Notes as provided in the Indenture.

19. **Trustee Dealings with the Issuers**

   Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuers or their Affiliates and may otherwise deal with the Issuers or their Affiliates with the same rights it would have if it were not Trustee.

20. **No Recourse Against Others**

   No manager, managing director, director, officer, employee, incorporator or Holder of any Equity Interests in the Issuers, any Subsidiary or any Parent Entity, as such, will not have any liability for any obligations of the Issuers or any Subsidiary Guarantor under the Notes, the Indenture or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release will be part of the consideration for the issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.
21. **Authentication**

   This Note will not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.

22. **Abbreviations**

   Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

23. **CUSIP Numbers**

   Pursuant to a recommendation promulgated by the Committee on Uniform Note Identification Procedures the Issuers have caused CUSIP numbers to be printed on the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers placed thereon.

24. **Successor Entity**

   When a successor entity assumes, in accordance with the Indenture, all the obligations of its predecessor under the Notes and the Indenture, and immediately before and thereafter no Default or Event of Default exists and all other conditions of the Indenture are satisfied, the predecessor entity will be released from those obligations.

25. **Governing Law**

   This Note will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction that would indicate the applicability of the law of any other jurisdiction.
ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

________________________________________________________
(Print or type assignee’s name, address and zip code)

________________________________________________________
(Insert assignee’s soc. sec. or tax I.D. No.)

and irrevocably appoint agent to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: ____________ Your Signature: __________________________

Signature Guarantee: ______________________________________
(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.

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The initial principal amount of the Note will be $[ ]$. The following increases or decreases in this Global Note have been made:

<table>
<thead>
<tr>
<th>Date of Exchange</th>
<th>Amount of decrease in Principal Amount of this Global Note</th>
<th>Amount in increase in Principal amount of this Global Note</th>
<th>Principal amount of this Global Note following such decrease or increase</th>
<th>Signature of authorized signatory of Trustee or Notes Custodian</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A-12
OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 3.7 or 3.9 of the Indenture, check the box:

☐ 3.7  ☐ 3.9

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 3.7 or 3.9 of the Indenture, state the amount in principal amount (must be in denominations of $2,000.00 or integral multiples of $1.00 in excess thereof): $

Date: ____________________________  Your Signature: ____________________________

(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: ____________________________

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to SEC Rule 17Ad-15.
FORM OF CERTIFICATE OF TRANSFER

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214)-743-7611
Attention: Tracy M. Preston

Wilmington Trust National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Email: tmorris@wilmingtontrust.com
Facsimile: (302) 636-4149

Re: 8.750% Third Lien Senior Secured Notes due 2024
(CUSIP )

Reference is hereby made to the Indenture, dated as of June 7, 2019, as amended or supplemented from time to time (this “Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party thereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (in such capacity, the “Trustee”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”). Capitalized terms used but not defined herein will have the meanings given to them in the Indenture.

The Transferor owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $ in such Note[s] or interests (the “Transfer”), to (the “Transferee”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. o Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note pursuant to Rule 144A.
   The

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Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believed and believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2. **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3. **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or an Unrestricted Global Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.** The Transfer is being effected in compliance with the...
transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) o such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) o such Transfer is being effected to the Issuers or a subsidiary thereof;

or

(c) o such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) o such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit E to the Indenture and (2) if such Transfer is in respect of a principal amount of Notes at the time of transfer of less than $2,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

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4. Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.

(a) Check if Transfer is pursuant to Rule 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) Check if Transfer is pursuant to Regulation S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) Check if Transfer is pursuant to other exemption. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the
transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

________________________________________________________________________

[Insert Name of Transferor]

By:

________________________________________________________________________

Name:
Title:

Dated: ____________________________

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ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) o a beneficial interest in the:

   (i) o 144A Global Note (CUSIP [ ]), or
   (ii) o Regulation S Global Note (CUSIP [ ]), or
   (iii) o IAI Global Note (CUSIP [ ]), or

(b) o a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) o a beneficial interest in the:

   (i) o 144A Global Note (CUSIP [ ]), or
   (ii) o Regulation S Global Note (CUSIP [ ]), or
   (iii) o Unrestricted Global Note (CUSIP [ ]), or
   (iv) o IAI Global Note (CUSIP [ ]), or

(b) o a Restricted Definitive Note; or

(c) o an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.
Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214)-743-7611
Attention: Tracy M. Preston

Wilmington Trust National Association
1100 North Market Street
Wilmington, DE  19890
Attn:  Neiman Marcus Notes Administrator
Email:  tmorris@wilmingtontrust.com
Facsimile: (302) 636-4149

Re: 8.750% Third Lien Senior Secured Notes due 2024
(CUSIP )

Reference is hereby made to the Indenture, dated as of June 7, 2019, as amended or supplemented from time to time (this “Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors party thereto, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee, WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”). Capitalized terms used but not defined herein will have the meanings given to them in the Indenture.

(the “Owner”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $ in such Note[s] or interests (the “Exchange”). In connection with the Exchange, the Owner hereby certifies that:

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1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note**

   (a) **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the “Securities Act”), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

   (b) **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

   (c) **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.** In connection with the Owner’s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.
Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note. In connection with the Owner’s Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes.

(a) Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note. In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner’s own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note. In connection with the Exchange of the Owner’s Restricted Definitive Note for a beneficial interest in the [CHECK ONE] 144A Global Note, Regulation S Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.
Form of Supplemental Indenture

THIS [·] SUPPLEMENTAL INDENTURE, dated as of [·], 20[·] (this “Supplemental Indenture”), is by and among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), and The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), and The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with the Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the Subsidiary Guarantors, WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee (in such capacity, the “Trustee”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (in such capacity, the “Notes Collateral Agent”).

W I T N E S S E T H

WHEREAS, the Issuers and the Trustee are parties to an indenture dated as of June 7, 2019 (the “Indenture”), providing for the issuance of the Issuers’ 8.750% Third Lien Senior Secured Notes due 2024 (the “Notes”);

WHEREAS, Section 3.11 (Additional Guarantors) of the Indenture provides that under certain circumstances the New Guarantors will execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantors will unconditionally guarantee all of the Issuers’ obligations under the Notes and the Indenture on the terms and conditions set forth herein; and

WHEREAS, pursuant to Section 9.1 (Amendments Without Consent of Holders) of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Issuers, the New Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Capitalized Terms. Capitalized terms used herein without definition will have the meanings assigned to them in the Indenture.

2. Agreements to Become Guarantors. Each of the New Guarantors hereby unconditionally guarantees the Issuers’ obligations for the due and punctual payment of the principal of, premium, if any, and interest on all the Notes and the performance and observance of each other obligation and covenant set forth in the Indenture to be performed or observed on the part of the Issuers, on the terms and subject to the conditions set forth in Article X (Guarantees) of the Indenture and agrees to be bound by all other provisions of the Indenture and the Notes applicable to a Subsidiary Guarantor therein.
3. **Ratification of Indenture; Supplemental Indenture Part of Indenture.** Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof will remain in full force and effect. This Supplemental Indenture will form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered will be bound hereby.

4. **No Recourse Against Others.** No manager, managing director, director, officer, employee, incorporator or holder of any Equity Interests in the Issuers, any Subsidiary or any Parent Entity, as such, will have any liability for any obligations of the Issuers or the New Guarantors under the Notes, the Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes, by accepting a Note, waives and releases all such liability. This waiver and release are part of the consideration for issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

5. **Notices.** For purposes of Section 13.1 (Notices) of the Indenture, the address for notices to each of the New Guarantors will be:

   Neiman Marcus Group LTD LLC
   One Marcus Square
   1618 Main Street
   Dallas, TX 75201
   Facsimile: (214)-743-7611
   Attention: Tracy M. Preston

6. **Governing Law.** This Supplemental Indenture will be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflicts of laws principles of any jurisdiction.

7. **Counterparts.** The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a “pdf” or “tif”) will be effective as delivery of a manually executed counterpart thereof.

8. **Effect of Headings.** The section headings herein are for convenience only and will not affect the construction hereof.

9. **The Trustee.** The Trustee will not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by each of the New Guarantors.

[remainder of page intentionally blank]

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

THE NEIMAN MARCUS GROUP LTD LLC, as the Issuer

By:

Name: [ ]
Title: [ ]

MARIPOSA BORROWER, INC., as Corporate Co-Issuer

By:

Name: [ ]
Title: [ ]

THE NMG SUBSIDIARY LLC, as New Co-Issuer Subsidiary

By:

Name: [ ]
Title: [ ]

THE NEIMAN MARCUS GROUP LLC, as LLC Co-Issuer

By:

Name: [ ]
Title: [ ]

[ ], as a New Guarantor

By:

Name: [ ]
Title: [ ]

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WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By:

Name: [ ]
Title: [ ]

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Notes Collateral Agent

By:

Name: [ ]
Title: [ ]

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FORM OF CALL NOTICE

Neiman Marcus Group LTD LLC
The Neiman Marcus Group LLC
Mariposa Borrower, Inc.
The NMG Subsidiary LLC
One Marcus Square
1618 Main Street
Dallas, TX 75201
Facsimile: (214)-743-7611
Attention: Tracy M. Preston

Wilmington Trust National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Neiman Marcus Notes Administrator
Email: tmorris@wilmingtontrust.com
Facsimile: (302) 636-4149

Re: Exercise of Call Right under the Third Lien Notes Indenture with respect to 8.750% Third Lien Senior Secured Notes due 2024

Reference is hereby made to (i) that certain Credit Agreement, dated as of October 25, 2013 (as amended by (a) that certain Refinancing Amendment, dated as of March 13, 2014 and (b) that certain Extension Amendment and Amendment No. 2 to the Credit Agreement, dated as of June 7, 2019, and as further amended, amended and restated, supplemented, extended, renewed or otherwise modified from time to time, the “Amended Credit Agreement”), by and among Mariposa Intermediate Holdings LLC, Neiman Marcus Group LTD LLC, the Lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and Collateral Agent and (ii) that certain indenture, dated as of June 7, 2019, among Wilmington Trust National Association, the issuers party thereto and the guarantors party thereto from time to time (as amended, restated, supplemented or otherwise modified from time to time, the “Third Lien Notes Indenture”). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Amended Credit Agreement, the Amendment, and the Third Lien Notes Indenture, as applicable.

The undersigned 2019 Extending Term Lenders (the “Calling Lenders”) hereby exercise the Call Right pursuant to Section 2.18 of the Amended Credit Agreement and in accordance with Section 5.9 of the Third Lien Notes Indenture, which Call Right shall be consummated on , 20 or such other date as the Calling Lenders and the Borrowers may agree, subject to the terms of the Amended Credit Agreement and the Third Lien Notes Indenture (the “Call Date”).

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(6) To be signed by Calling Lenders or a representative thereof.
EXHIBIT F

FORM OF PROPCO GRANT

SUBLEASE

THIS SUBLEASE (this “Sublease”) is made and entered into as of the day of , 2019, by and between [NMG NOTES PROPCO LLC](7) / [NMG TERM LOAN PROPCO LLC](8), a Delaware limited liability company (hereinafter called “Sublandlord”), and , a (hereinafter called “Subtenant”);

W I T N E S S E T H:

WHEREAS, Sublandlord is a wholly-owned subsidiary of Subtenant;

WHEREAS, Subtenant was party as tenant to that certain [lease, sublease or sub-sublease], dated [ ] with [ ] as landlord (“Landlord”), as more particularly described on Exhibit A annexed hereto and made a part hereof (hereinafter called the “Prime Lease”);

WHEREAS, Subtenant, as the prior tenant under the Prime Lease, leased the demised premises located at (the “Leased Premises”);

WHEREAS, Subtenant, as assignor, and Sublandlord, as assignee, entered into an Assignment and Assumption of Lease (the “Assignment”) pursuant to which Subtenant assigned to Sublandlord all of Subtenant’s right, title and interest in and to the leasehold interest in the Prime Lease; and

WHEREAS, Subtenant desires to sublease from Sublandlord, and Sublandlord desires to sublease to Subtenant, the Leased Premises, of which Subtenant is currently in possession and on which Subtenant is currently operating a [Neiman Marcus] [Bergdorf Goodman] store (hereinafter, the “Store”), all upon the terms and subject to the conditions and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Sublandlord and Subtenant hereby agree as follows:

1. **Demise; Use.** Sublandlord hereby leases to Subtenant and Subtenant hereby leases from Sublandlord the Leased Premises for the term and rental and upon the other terms and conditions hereinafter set forth, to be used solely for the purposes permitted under the Prime

(7) Use for PropCo Assets
(8) Use for New Term Loan Assets

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Lease, including operating the Store in accordance with all operating covenants and requirements (including with respect to trade name) of the Prime Lease.

2. **Term.** The term (the “Term”) of this Sublease shall commence on [date] (the “Commencement Date”) and, unless sooner terminated pursuant to the provisions hereof, shall terminate on the earlier of the one-year anniversary of the Commencement Date (such date, and each applicable subsequent anniversary following an extension pursuant to the proviso to this sentence, the “Scheduled Expiry Date”) and the prior termination of the term of the Prime Lease for any reason whatsoever; provided, the Term shall automatically be extended by an additional year after the Scheduled Expiry Date (subject to prior termination of the Prime Lease) if neither party has delivered to the other written notice of its intent to terminate this Sublease at least ten (10) business days prior to the Scheduled Expiry Date.

3. **Base Rent.**

   (a) Subtenant shall pay to Landlord directly on behalf of Sublandlord annual fixed rental (hereinafter called “Base Rent”) for the Leased Premises equal to the Base Rent (as defined in the Prime Lease) payable by Sublandlord to Landlord under the Prime Lease. Base Rent shall be due and payable pursuant to the terms and provisions of the Prime Lease.

   (b) All Base Rent and Additional Rent (as defined below) shall be paid directly to Landlord at the address designated under the Prime Lease or by notice from Landlord or at such other place as Sublandlord may designate by notice to Subtenant.

4. **Additional Rent; Payments; Interest.**

   (a) In addition to Base Rent, Subtenant shall also pay to Sublandlord all other charges, costs, expenses, fees and other amounts, including real property taxes and assessments, sewer rents, utilities, common area charges, and percentage or contingent rent, including late payments, interest, and costs and fees of collection, including attorney fees (collectively “Additional Rent”) payable by Sublandlord under the Prime Lease. Without limiting the foregoing, Subtenant shall maintain and provide to Landlord all reports and accountings with respect to rent, issues and profits and percentage rent of Subtenant with respect to the Leased Premises required under the Prime Lease.

   (b) Each amount due pursuant to Subsection 4(a) above and each other amount payable by Subtenant hereunder, unless a date for payment of such amount is provided for elsewhere in this Sublease, shall be due and payable no later than the date on which any such amount is due and payable under the Prime Lease.

   (c) All amounts other than Base Rent payable to, or on behalf of, Sublandlord under this Sublease shall be deemed to be additional rent due under this Sublease. All past due installments of Base Rent and additional rent shall bear interest from the date that is the earlier of the date provided in the Prime Lease for the applicable payment or five (5) business days following receipt of written notice thereof from Sublandlord until paid at the rate per annum equal to the greater of the rate provided in the Prime Lease or
three percent (3%) in excess of the Prime Rate (as hereinafter defined) (the “Default Rate”) in effect from time to time, which rate shall change from
time to time as of the effective date of each change in the Prime Rate, unless a lesser rate shall then be the maximum rate permissible by law with
respect thereto, in which event said lesser rate shall be charged. For the purposes of this Sublease, the term “Prime Rate” shall mean the base rate on
corporate loans at large U.S. money centers or commercial banks as published from time to time by the Wall Street Journal.

(d) As and to the extent provided in the Prime Lease or as Landlord and Subtenant may otherwise agree, Subtenant shall pay Landlord on
the due dates as provided in the Prime Lease or as otherwise agreed by the parties, for all services requested by Subtenant which are billed by
Landlord directly to Subtenant rather than Sublandlord, all of which shall constitute Additional Rent.

5. Condition of Leased Premises. Subtenant, as the present occupant and operator of the Leased Premises, acknowledges and agrees that it
takes the Leased Premises “as is”, “where is” and “with all faults”, and that Sublandlord does not make any warranties, representations or promises with
respect to the Leased Premises or the Prime Lease of any kind whatsoever, express or implied, including without limitation with respect to state of title,
physical condition or environmental condition, or fitness for any particular use. Subtenant’s taking possession of the Leased Premises pursuant to this
Sublease shall be conclusive evidence as against Subtenant that the Leased Premises were in good order and satisfactory condition when Subtenant took
possession. No promise of Sublandlord to alter, remodel or improve the Leased Premises, except as may be expressly provided herein, and no representation
respecting the condition of the Leased Premises have been made by Sublandlord to Subtenant. Upon the expiration of the term hereof, or upon any earlier
termination of the term hereof or of Subtenant’s right to possession (including any rejection of this Sublease in bankruptcy), Subtenant shall surrender the
Leased Premises in the condition required pursuant to the Prime Lease (including environmental matters).

6. The Prime Lease.

(a) This Sublease and all rights, privileges and interests of Subtenant hereunder and with respect to the Leased Premises are subject to
all of the terms, conditions, covenants, warranties, representations and provisions of the Prime Lease. Notwithstanding any provision to the contrary
in the Assignment, as between Sublandlord and Subtenant, Subtenant hereby assumes and agrees to perform faithfully and be bound by, with respect
to the Leased Premises, all of Sublandlord’s obligations, warranties, representations, covenants, agreements, provisions and liabilities under the
Prime Lease and all terms, conditions, provisions and restrictions contained in the Prime Lease. Without limitation of the foregoing:

(i) Subtenant shall not make any changes, alterations or additions in or to the Leased Premises except as otherwise expressly
provided in the Prime Lease or herein;
If Subtenant desires to take any other action and the Prime Lease would require that Sublandlord obtain the consent of Landlord before undertaking any action of the same kind, Subtenant shall not undertake the same without the prior written consent of Landlord and Sublandlord. Sublandlord may condition its consent on the consent of Landlord being obtained and may require Subtenant to contact Landlord directly for such consent. All such consents shall be at the sole cost and expense of Subtenant;

Sublandlord shall have the right during all normal business hours upon reasonable prior notice to Subtenant to enter upon and inspect the Leased Premises. Without limiting the foregoing, all rights given to Landlord and its agents and representatives by the Prime Lease to enter and/or inspect the Leased Premises shall inure to the benefit of Sublandlord and their respective agents and representatives with respect to the Leased Premises;

Sublandlord shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by, Landlord under the Prime Lease;

Subtenant shall maintain insurance of the kinds and in the amounts required to be maintained by Sublandlord under the Prime Lease; and

Subtenant shall not do anything or suffer or permit anything to be done which could result in a default or breach under the Prime Lease or permit the Prime Lease, with the passage of time or the service of notice or both, to be cancelled or terminated (or which could limit or prohibit Sublandlord from exercising any option or right of renewal, first negotiation, first refusal or right of expansion under the Prime Lease).

(b) In addition to the other covenants and obligations under this Sublease and the Prime Lease as incorporated herein, and without limitation of the foregoing, Sublandlord agrees as follows, subject in each case to the due and punctual performance and observance of all covenants and obligations of Subtenant hereunder:

Sublandlord shall not do anything which could reasonably be expected to result in a default under the Prime Lease; provided, however, that Sublandlord shall not be in default of this covenant to the extent the default under the Prime Lease is caused or attributable (in whole or in part) by Subtenant, its shareholders, partners, members, directors, officers, employees, agents, customers or invitees.

Sublandlord shall not amend, modify or terminate the Prime Lease, without the prior written consent of Subtenant, which may be withheld in its sole discretion to the extent the same could increase Subtenant’s liabilities or obligations under this Sublease.

If any action to be taken by Subtenant or any other matter would require the consent or approval of Sublandlord under this Sublease, but not
Landlord under the Prime Lease, Sublandlord’s consent or approval shall not be unreasonably withheld, conditioned or delayed. If any action to be taken by Subtenant or any other matter would require the consent or approval of Landlord under the Prime Lease, (i) Sublandlord shall be deemed to have consented to or approved such request if Landlord consents to or approves the same, and (ii) Sublandlord shall be deemed not to have consented to or approved such request if Landlord does not consent to or approve the same.

(iv) Sublandlord shall not assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Sublease or any interest in this Sublease, whether voluntarily, by operation of law or otherwise (including a merger or transfer of voting control in Sublandlord), in each case without the prior written consent of Subtenant, which may be withheld in its sole discretion.

(c) Notwithstanding anything contained herein or in the Prime Lease which may appear to be to the contrary, Sublandlord and Subtenant hereby agree as follows:

(i) Subtenant shall not assign, mortgage, pledge, hypothecate, or otherwise transfer or permit the transfer of this Sublease or any interest of Subtenant in this Sublease, directly or indirectly, by operation of law or otherwise, or permit the use of the Leased Premises or any part thereof by any persons other than Subtenant and Subtenant’s employees, or sublet the Leased Premises or any part thereof;

(ii) in the event of any condemnation or casualty damage or destruction of the Leased Premises, Sublandlord shall have no obligation to restore the Leased Premises, all such obligations (if any) of Sublandlord as the tenant under the Prime Lease (if any) to be performed by Subtenant; provided that neither rental nor additional rent or other payments hereunder shall abate or be suspended by reason of any condemnation, damage to or destruction of the Leased Premises or any part thereof, unless, and then only to the extent that, rental and additional rent and such other payments actually abate under the Prime Lease with respect to the Leased Premises on account of such event;

(iii) Subtenant shall not have any right to any portion of the proceeds of any award for a condemnation or other taking, or a conveyance in lieu thereof, of all or any portion of the Leased Premises;

(iv) Subtenant shall not have any right to exercise or have Sublandlord exercise any option under the Prime Lease, including, without limitation, any option or right of first refusal, first negotiation or first offer to extend the term of the Prime Lease or lease additional space; and

(v) In the event of any conflict between the terms, conditions and provisions of the Prime Lease and of this Sublease, the terms, conditions and provisions of the Prime Lease shall, in all instances, govern and control.
It is expressly understood and agreed that Sublandlord does not assume and shall not have any of the obligations or liabilities of Landlord under the Prime Lease and that Sublandlord is not making the representations or warranties, inducements, rent or other concessions or abatements, allowances, tenant improvements or landlord’s work, if any, made by Landlord in the Prime Lease. With respect to work, services, repairs and restoration or the performance of other obligations required of Landlord under the Prime Lease, Sublandlord’s sole obligation with respect thereto shall be to request the same, upon written request from Subtenant, and to use reasonable efforts to obtain the same from Landlord. Sublandlord shall not be liable in any respect, in damages or otherwise, nor shall rent abate hereunder, for or on account of any failure by Landlord to perform the obligations and duties imposed on it under the Prime Lease.

Nothing contained in this Sublease shall be construed to create privity of estate or contract between Subtenant and Landlord, unless Subtenant attorns to Landlord by written instrument.

Nothing contained in this Sublease shall be construed to release the Sublandlord of any of its obligations or liabilities owed to Landlord under the Prime Lease.

7. **Default by Subtenant.**

(a) Upon the happening of any of the following:

(i) Subtenant fails to pay any Base Rent or Additional Rent within five (5) days after the date it is due;

(ii) Subtenant fails to pay any other amount due from Subtenant hereunder and such failure continues for five (5) business days after notice thereof from Sublandlord to Subtenant;

(iii) Subtenant fails to perform or observe any other covenant, obligation or agreement set forth in this Sublease and such failure continues until the earlier of (1) ten (10) business days after notice thereof from Sublandlord to Subtenant or (2) any earlier date specified for default under the Prime Lease, any Superior Interest or any Ancillary Document, as the case may be; or

(iv) any other event occurs which involves Subtenant or the Leased Premises or any part thereof and which would constitute a default under the Prime Lease if it involved Sublandlord (or any agent, representative, officer, director, manager or shareholder of Subtenant) or the Leased Premises, subject to any notice and cure periods thereunder;

Subtenant shall be deemed to be in default hereunder, and Sublandlord may exercise, without any further demand or notice, and without limitation of any other rights and remedies available to it hereunder or at law or in equity, all of which rights are hereby expressly reserved, any and all of the equivalent rights and remedies of Landlord set forth in the Prime Lease with respect to the Leased Premises in the event of a default by Subtenant.
Sublandlord thereunder (including without limitation the right to terminate this Sublease and recover possession of the Leased Premises free of all rights and interests of Subtenant).

(b) In the event Subtenant fails or refuses to make any payment or perform any covenant, obligation or agreement to be performed hereunder by Subtenant, Sublandlord may make such payment or undertake to perform such covenant, obligation or agreement (but shall not have any obligation to Subtenant to do so). In such event, all amounts so paid and all amounts expended in undertaking such performance, together with all costs, expenses and reasonable attorneys’ fees incurred by Sublandlord or Landlord in connection therewith, together with interest at the Default Rate, shall be additional rent hereunder.

8. Nonwaiver. Failure of Sublandlord to declare any default or delay in taking any action, or partial exercise of any rights or remedies, in connection therewith shall not waive such default. No receipt of moneys or performance of obligations by Sublandlord from Subtenant after the termination in any way of the term or of Subtenant’s right of possession hereunder or after the giving of any notice of termination or eviction shall reinstate, continue or extend the term or Subtenant’s right of occupancy or possession or affect any notice given to Subtenant or any suit commenced or judgment entered prior to receipt of such moneys or performance of obligations.

9. Cumulative Rights and Remedies. All rights and remedies of Sublandlord under this Sublease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

10. Waiver of Claims and Indemnity.

(a) Subtenant hereby releases and waives any and all claims against Landlord and Sublandlord and each of their respective officers, directors, partners, agents and employees for injury or damage to person, property or business sustained in or about the Leased Premises by Subtenant other than by reason of gross negligence or willful misconduct and except in any case which would render this release and waiver void under applicable law.

(b) Subtenant agrees to indemnify, defend and hold harmless Landlord and its beneficiaries, Sublandlord and each of their respective officers, directors, partners, agents and employees, from and against any and all claims, demands, liabilities, costs and expenses of every kind and nature, including reasonable attorneys’ fees and litigation expenses, arising out of or with respect to or from Subtenant’s use, possession or occupancy (or rights thereto) of the Leased Premises (including such use, possession or occupancy by Subtenant prior to the commencement of the Term in its capacity as prior tenant under the Prime Lease), or any events or occurrences on, under, or about the Leased Premises, Subtenant’s construction or authorization of any work or leasehold improvements in the Leased Premises or from any breach or default on the part of Subtenant in the performance of any agreement, covenant, obligation, warranty or representation of Subtenant to be performed or performed under this Sublease or pursuant
to the terms of this Sublease, or from any act or neglect of Subtenant or its agents, officers, employees, guests, servants, invitees or customers in or about the Leased Premises, other than by reason of gross negligence or willful misconduct on the part of any of the foregoing indemnitees. In case any action or proceeding is brought against any of said indemnified parties, Subtenant covenants, if requested by Sublandlord, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Sublandlord (and, if provided in the Prime Lease, by Landlord).

(c) Subtenant acknowledges that prior to the assignment to, and assumption by, Sublandlord of the Prime Lease, Subtenant was the tenant under the Prime Lease, and agrees that all of Subtenant’s liabilities and obligations under this Sublease, including, without limitation, Subtenant’s indemnification obligations under Section 10(b), shall apply to the extent such liabilities or obligations arise from any matter first arising or accruing during Subtenant’s tenancy and occupancy of the Leased Premises under the Prime Lease (the “Subtenant Occupancy Period”). Sublandlord acknowledges and agrees that such obligations of Subtenant shall not apply to any matter first arising or accruing during the period of time (i) prior to the Subtenant Occupancy Period, or (ii) after the expiration or earlier termination of the Term of this Sublease, except to the extent such liabilities or obligations expressly survive such expiration or termination.

11. **Waiver of Subrogation.** Anything in this Sublease to the contrary notwithstanding, Sublandlord and Subtenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other and the officers, directors, partners, agents and employees of each of them, and Subtenant hereby waives any and all rights of recovery, claims, actions or causes of action against Landlord and its agents and employees for any loss or damage that may occur to the Leased Premises, or any improvements thereto, or any personal property of any person therein, by reason of fire, the elements or any other cause insured against under valid and collectible fire and extended coverage insurance policies, regardless of cause or origin, including negligence, except in any case which would render this waiver void under law, to the extent that such loss or damage is actually recovered under said insurance policies.

12. **Successors and Assigns.** This Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublandlord and shall be binding upon and inure to the benefit of the successors of Subtenant and, to the extent any such assignment may be approved, Subtenant’s assigns. The provisions of Subsection 6(e) and Sections 10 and 11 hereof shall inure to the benefit of the successors and assigns of Landlord.

13. **Entire Agreement.** This Sublease contains all the terms, covenants, conditions and agreements between Sublandlord and Subtenant relating in any manner to the rental, use and occupancy of the Leased Premises. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sublease cannot be altered, changed, modified or added to except by a written instrument signed by Sublandlord and Subtenant.

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14. **Notices.**

(a) In the event any notice from the Landlord or otherwise relating to the Prime Lease is delivered to the Leased Premises or is otherwise received by Subtenant, Subtenant shall, as soon thereafter as possible deliver such notice to Sublandlord if such notice is written or advise Sublandlord thereof by telephone if such notice is oral.

(b) Notices and demands required or permitted to be given by either party to the other with respect hereto or to the Leased Premises shall be in writing and shall not be effective for any purpose unless the same shall be served either by personal delivery with a receipt requested, by overnight air courier service or by United States certified or registered mail, return receipt requested, postage prepaid; provided, however, that all notices of default shall be served either by personal delivery with a receipt requested or by overnight air courier service, addressed as follows:

- **if to Sublandlord:** [ ]
  - One Marcus Square
  - 1618 Main Street
  - Dallas, Texas 75201
  - Attention: Tracy M. Preston, Esq.
  - Facsimile: (214) 743-7611

- **if to Subtenant:** [ ]
  - One Marcus Square
  - 1618 Main Street
  - Dallas, Texas 75201
  - Attention: Tracy M. Preston, Esq.
  - Facsimile: (214) 743-7611

Notices and demands shall be deemed to have been given two (2) days after mailing, if mailed, or, if made by personal delivery or by overnight air courier service, then upon such delivery. Either party may change its address for receipt of notices by giving notice to the other party.

15. **Electronic Transmission; Counterparts.** Sublandlord and Subtenant may deliver executed signature page(s) to this Sublease by electronic transmission to the other party, which electronic copy shall be deemed to be an original executed signature page. This Sublease may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

16. Superior Interests; Ancillary Documents. Except as expressly provided herein to the contrary, Subtenant acknowledges and agrees that this Sublease is expressly subject and subordinate to, and Subtenant shall observe and perform, Sublandlord’s obligations with respect to, (a) all superior fee, leasehold and mortgage or security interests affecting the Leased Premises (collectively, “Superior Interests”) existing as of the date hereof until such time as such Superior Interests are terminated or released, (b) all future Superior Interests to the extent expressly provided in Superior Interests existing as of the date hereof until such time such future
Superior Interests are terminated or released, and (c) all ancillary agreements and documents (including, without limitation, reciprocal easement and/or operating agreements affecting the Lease Premises as of the date hereof (including any of the same identified on Exhibit A, collectively, the "Ancillary Documents")), as all such Superior Interests and Ancillary Documents may hereinafter be amended or supplemented from time to time.

[Signature Pages Follow]

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IN WITNESS WHEREOF, Sublandlord and Subtenant have executed this Sublease as of the date aforesaid.

SUBLANDLORD: SUBTENANT:

[NMG NOTES PROPCO LLC] [NMG TERM LOAN PROPCO LLC]

By:

Its:

F-11
June 7, 2019

MYT Holding Co.
c/o Neiman Marcus Group, Inc.
1618 Main Street
Dallas, TX 75201
Attention: Tracy M. Preston

Ladies and Gentlemen:

This letter agreement (the “Letter Agreement”) is made and entered into as of June 7, 2019, by and between MYT Parent Co. (“MYT Parent”) and MYT Holding Co., a subsidiary of MYT Parent (“MYT Holdco”), in connection with, and as an inducement to the parties described in Section 5 (Third Party Beneficiaries) below to enter into the recapitalization of certain of the Company Parties’ (as defined below) outstanding indebtedness and equity interests. MYT Parent and MYT Holdco hereby acknowledge and agree that:

1. MYT Waterfall. If MYT Holdco receives any distributions on account of the equity of the MYT Holdco or proceeds from a MYT Secondary Sale, MYT Holdco shall promptly pay or distribute such proceeds (net of any taxes payable by MYT Holdco) in the following order of priority, in each case, until the redemption in full of the Series A Preferred Stock:

(a) first, until the earliest to occur of (i) a MYT Deposit Event, (ii) the provision of MYT Alternate Security or (iii) the satisfaction and discharge in full of the Second Lien Notes Obligations, into a segregated account of MYT Parent for the benefit of the trustee and the collateral agent on behalf of the holders of the Second Lien Notes, pledged to secure the Second Lien Notes Obligations (the “MYT Account”), up to an amount equal to $200.0 million; provided, that, upon the earlier to occur of (i) the satisfaction and discharge in full of the Second Lien Notes Obligations and (ii) provision of MYT Alternate Security, any amounts in the MYT Account shall be released and distributed in accordance with clause (b) below, and

(b) second, to the holders of Series A Preferred Stock, pro rata based on the number of shares of Series A Preferred Stock held by each such holder at a redemption price not to exceed an amount in respect of each share of Series A Preferred Stock equal to (i) $1.00, adjusted as
appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization, combination or similar event with respect to shares of Series A Preferred Stock, plus (ii) all accumulated and unpaid dividends (whether or not declared, and including all such dividends that have compounded) thereon, including Default Returns, through but not including, the date of payment (such amount in respect of each share of Series A Preferred Stock, the “Liquidation Preference” and such amount in the aggregate, the “Aggregate Liquidation Preference”); provided, that, if the amount distributable in respect of any share of Series A Preferred Stock, together with all prior amounts distributed in respect of such share pursuant to this clause (b), equals the Liquidation Preference in respect of such share, MYT Holdco shall redeem, and as a condition to receipt of such amount the holder of such share of Series A Preferred Stock shall surrender, such share of Series A Preferred Stock to MYT Holdco for cancellation, in each case in accordance with the procedures set forth in Article III of the Certificate of Designation of the Series A Preferred Stock.

2. **MYT Secondary Sales.** If MYT Parent, directly or indirectly, receives any distributions on account of the equity of the MYT Holdco or proceeds from any MYT Secondary Sale, it shall promptly pay or contribute such proceeds to MYT Holdco and, thereafter, MYT Holdco shall distribute such proceeds (net of any taxes payable by MYT Parent) in the relative amounts and priorities set forth in Section 1 (after taking into account any proceeds previously distributed pursuant to Section 1) until the redemption in full of the Series A Preferred Stock. MYT Parent shall not effectuate a MYT Secondary Sale unless the agreement governing such MYT Secondary Sale requires the seller(s) to direct the purchaser(s) to fund the proceeds of such MYT Secondary Sale directly or indirectly (if such proceeds are thereafter distributed or contributed to MYT Holdco, as applicable) to MYT Holdco for distribution in the manner set forth in Section 1.

3. **Additional Restriction.** MYT Holdco and MYT Parent shall not (and shall not permit their subsidiaries to) take any action that causes, directly or indirectly (including by amendment, modification, recapitalization, reclassification, reincorporation, redomiciling, share exchange, merger, consolidation, liquidation, dissolution or otherwise) the amount that is required to be paid or distributed by MYT Holdco in the manner described in Section 1(a) to exceed $200.0 million.

4. **Non-Circumvention.** MYT Parent shall have no operations or business other than holding the equity interests of MYT Holdco (including, that MYT Parent shall not incur any indebtedness, liens, or other liabilities, other than liabilities resulting from its ownership of the equity interests of MYT Holdco). Each of MYT Parent shall not, and shall cause MYT Holdco not to, by any voluntary action directly or indirectly through any subsidiary, including amending its governing documents or through any reorganization, reclassification, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other similar voluntary action, avoid the
observance or performance of any of the terms set forth in this Letter Agreement. Without limiting the generality of the foregoing, the business of the MYT Group (as defined in the Certificate of Designation of the Series A Preferred Stock) will be conducted, directly or indirectly, through MYT Holdco.

5. **Third Party Beneficiaries.** The parties to this Letter Agreement agree that each of the holders of Series A Preferred Stock, for so long as any such holder holds a share of Series A Preferred Stock, is an intended third-party beneficiary of this Letter Agreement.

6. **Certain Definitions.** As used herein, the following terms shall have the following meanings:

   - **Common Stock** means any shares of common stock of MYT Holdco, par value $0.001 per share.
   - **Company Party** mean Neiman Marcus Group, Inc., a Delaware corporation, and each of its subsidiaries that has executed and delivered, or in the future, executes and delivers, counterpart signature pages to the Second Lien Notes Indenture.
   - **Default Return** means additional dividends of 2% per annum payable in accordance with the Certificate of Designation governing the Series A Preferred Stock upon the occurrence and continuance of a Triggering Event (as defined therein).
   - **Guarantee and Collateral Agreement** means that certain Guarantee and Collateral Agreement, dated as of the date hereof, by and between MYT Parent and Ankura Trust Company.
   - **Independent Third Party** means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates own at least 10% of the outstanding equity interests of such person or entity (measured by voting power, economic value or number).
   - **Issue Date** means the date the shares of the Series A Preferred Stock are first issued to the holders thereof.
   - **Issuers** means Neiman Marcus Group LTD LLC, The Neiman Marcus Group LLC, Mariposa Borrower, Inc. and The NMG Subsidiary LLC.
   - **MYT Alternate Security** shall have the meaning set forth in the Guarantee and Collateral Agreement as amended in accordance with Section 9.
   - **MYT Deposit Event** shall have the meaning set forth in the Guarantee and Collateral Agreement as amended in accordance with Section 9.
“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) once formed, MYT Netherlands Parent B.V. (Netherlands) and (viii) the subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Parent” means MYT Parent Co., the direct parent of MYT Holdco.

“MYT Secondary Sale” shall have the meaning set forth in the Second Lien Notes Indenture as amended in accordance with Section 9.

“Second Lien Notes” means the 14.00% Senior Cash Pay/PIK Second Lien Notes due 2024 of the Issuers.

“Second Lien Notes Indenture” means the indenture governing the Second Lien Notes, as the same may be amended, modified or supplemented from time to time.

“Second Lien Notes Obligations” means the indebtedness and related obligations under the Second Lien Notes and the other indebtedness documents related to the Second Lien Notes.

“Series A Preferred Stock” means the 250,000,000 shares of Cumulative Series A Preferred Stock of MYT Holdco, $0.001 par value per share.

“Sponsors” means any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective affiliates and funds or partnerships managed or advised by any of them or any of their respective affiliates, but not including any operating portfolio company of any of the foregoing.

“Third Lien Notes” means, collectively, (x) the 8.75% Third Lien Senior Secured Notes due 2024 of the Issuer and (y) the 8.00% Third Lien Senior Secured Notes due 2024 of the Issuers.

“Third Lien Notes Indenture” means the indentures governing the Third Lien Notes.

7. Entire Agreement. This Letter Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof or thereof.

8. Severability. In case any provision in this Letter Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired hereby.
9. **Modifications.** No provision contained in this Letter Agreement shall be amended, modified, supplemented or waived without the written consent of each of the parties hereto; provided that so long as any Series A Preferred Stock is outstanding, any amendments, modifications, supplements or waivers that adversely affects the holders of Series A Preferred Stock shall require the consent of the holders that hold a majority of the outstanding shares of Series A Preferred Stock and any amendments, modifications, supplements or waivers that reduce the amounts available for distribution to the holders of Series A Preferred Stock shall require the prior written consent of all holders of Series A Preferred Stock. Notwithstanding the foregoing, (a) any amendment, modification, supplement or waiver of the provisions of the Guarantee and Collateral Agreement (in accordance with the terms thereof) that corresponds to Section 1(a) and the related definitions thereto and (b) any amendment, modification, supplement or waiver of the definitions set forth in the Second Lien Notes Indenture that are used in Sections 1 and 2 of this Letter Agreement shall be automatically deemed effective as to such section or definition herein without additional action by the parties hereto; provided that in each case of the foregoing clauses (a) and (b), (i) in no event shall Section 1(a) or such definitions be amended, modified, supplemented or waived to require the amount to be paid or distributed by MYT Holdco thereunder to exceed $200.0 million or otherwise in a manner materially adverse to the holders of the Series A Preferred Stock and (ii) the holders of Series A Preferred Stock shall be given prompt (and in any event within four business days) notice and copies of any such amendment, modification, supplement or waiver.

10. **Binding Effect.** The rights and obligations of this Letter Agreement shall bind and inure to the benefit of the parties and their respective successors.

11. **Governing Law.** This Letter Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in such state without giving effect to the choice of law principles of such state that would require or permit the application of laws of another jurisdiction.

12. **Counterparts.** This Letter Agreement may be executed in multiple counterparts, each one of which shall be deemed an original and which, taken together, shall constitute one and the same agreement. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpg or similar attachment to electronic mail, shall be treated in all manner and respects as an original executed counterpart.

[Signature Page to Follow]
IN WITNESS WHEREOF, the parties have caused this Letter Agreement to be executed on the date first written above.

MYT PARENT CO.

By:  /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President and Secretary

MYT HOLDING CO.

By:  /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Vice President and Secretary

[Signature Page to MYT Parent Letter Agreement]
THIRD LIEN NOTES COLLATERAL AGREEMENT,

dated as of June 7, 2019,

among

each Grantor party hereto,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as 8.000% Notes Trustee,

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as 8.750% Notes Trustee

Reference is made to the ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “ABL/Term Loan/Notes Intercreditor Agreement”), among Deutsche Bank AG New York Branch as ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as Term Loan Agent (as defined therein), Ankura Trust Company, LLC as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings (as defined therein), the Issuers and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and this Agreement, the provisions of the ABL/Term Loan/Notes Intercreditor Agreement shall control.

Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder are subject to the provisions of the Junior Lien Intercreditor Agreement, dated as of June 7, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Junior Lien Intercreditor Agreement”), among CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Initial First Lien Representative, CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Initial First Lien Collateral Agent, ANKURA TRUST COMPANY, LLC as Initial Second Lien Representative, ANKURA TRUST COMPANY, LLC as Initial Second Lien Collateral Agent, WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.000% Notes Representative, WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.750% Notes Representative, WILMINGTON TRUST, NATIONAL ASSOCIATION, as Initial Third Lien Collateral Agent and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Junior Lien Intercreditor Agreement and this Agreement, the terms of the Junior Lien Intercreditor Agreement shall govern and control.
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THIRD LIEN NOTES COLLATERAL AGREEMENT dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “Grantor” and, collectively, the “Grantors”), WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee under the 8.000% Notes Indenture (as defined below) (in such capacity, the “8.000% Notes Trustee”), WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee under the 8.750% Notes Indenture (as defined below) (in such capacity, the “8.750% Notes Trustee”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “Collateral Agent”).

RECITALS

(1) Reference is made to (i) that certain Indenture, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “8.000% Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time and the 8.000% Notes Trustee, governing the 8.000% Third Lien Senior Secured Notes due 2024 (the “8.000% Notes”) of the Issuers and (ii) that certain Indenture, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “8.750% Indenture” and together with the 8.000% Indenture, the “Indentures”), among the Issuers, the guarantors party thereto from time to time and the 8.750% Notes Trustee, governing the 8.750% Third Lien Senior Secured Notes due 2024 (the “8.750% Notes” and together with the 8.000% Notes, the “Notes”) of the Issuers.

(2) The Grantors will derive substantial benefits from the issuance and sale of such notes pursuant to the Indentures and in consideration thereof has agreed to secure its obligations under the Notes Documents, as set forth herein.

AGREEMENT

Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Indentures.

(a) Unless otherwise defined herein, terms defined in the Indentures and used herein have the meanings assigned to them in the Indentures, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, As-Extracted
SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“8.00% Notes Trustee” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“8.75% Notes Trustee” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Agreement” has the meaning assigned to such term in the introductory paragraph hereto.

“Article 9 Collateral” has the meaning assigned to such term in Section 4.01(1).

“Collateral” means the collective reference to Article 9 Collateral and Pledged Collateral.

“Collateral Agent” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Consignment Inventory” means any Inventory held by a Grantor on a consignment basis, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Grantors and their Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the applicable Grantor identifies such proceeds as such through a method of tracing.

“Control” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.
“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“Copyrights” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

1. all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;
2. all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;
3. all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
4. all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“DDA” means any checking or other demand deposit account maintained by the Grantors.

“Event of Default” means an “Event of Default” as defined in each Indenture.

“Excluded Accounts” means any DDA, Securities Account, Commodity Account or any other Deposit Account of any Grantor (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of $500,000, or in the aggregate with each other account described in this clause (1), in excess of $5.0 million; (2) the balance of which is swept at the end of each Business Day into a Deposit Account, Securities Account or Commodity Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account, Securities Account or Commodity Account is swept into another Deposit Account, Securities Account or Commodity Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account (as defined in the ABL Credit Agreement) or Designated Disbursement Account (as defined in the ABL Credit Agreement); or (4) to the extent that it is cash collateral for
letters of credit to the extent permitted under Section 3.5 of each Indenture; provided, in no event shall any Controlled Account be an Excluded Account.

“Federal Securities Laws” has the meaning assigned to such term in Section 5.03.

“Grantor” and “Grantors” have the meanings assigned to such terms in the introductory paragraph to this Agreement. For the avoidance of doubt, “Grantors” shall not include Extended Term Loan PropCo or Notes PropCo.

“Indenture” and “Indentures” has the meaning assigned to such term in the recitals to this Agreement.

“Intellectual Property” means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

“Intellectual Property Collateral” has the meaning assigned to such term in Section 4.02(8).

“Intellectual Property Security Agreement” means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.

“Intercreditor Agreement” means each of the ABL/Term Loan/Notes Intercreditor Agreement and the Junior Lien Intercreditor Agreement.

“IP Agreements” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including the agreements set forth on Schedule II hereto.

“Leased-Department Inventory” means any Inventory relating to a leased department within one of the Grantors’ retail stores, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Grantors and their Subsidiaries prepared in accordance with GAAP).

“Leased-Department Proceeds” means any proceeds from the sale of any Leased-Department Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Leased-Department Inventory and that the Grantor, acting in good faith, identifies such proceeds as such in writing to the Collateral Agent.

“Material Adverse Effect” means a material adverse effect on:

(1) the business, financial condition or results of operations, in each case, of the Note Parties and their Restricted Subsidiaries (taken as a whole);
the ability of the Note Parties (taken as a whole) to perform their payment obligations under the Notes Documents; or

the rights and remedies of the Trustees and the Holders (taken as a whole) under the Notes Documents.

“Notes Documents” means, collectively, (i) the “Notes Documents”, as defined under the 8.000% Indenture and (ii) the “Notes Documents”, as defined under the 8.750% Indenture.

“Patent License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.

“Patents” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

1. all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;

2. all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

3. all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

4. all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Pledged Collateral” has the meaning assigned to such term in Section 3.01(5).

“Pledged Debt Securities” has the meaning assigned to such term in Section 3.01.

“Pledged Securities” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Pledged Stock” has the meaning assigned to such term in Section 3.01.

“Secured Obligations” means, collectively, the “Note Obligations” as defined in the 8.000% Indenture and “Note Obligations” as defined in the 8.750% Indenture.
“Secured Parties” means the Trustee, the Collateral Agent, the other Agents and the Holders.

“Security Interest” has the meaning assigned to such term in Section 4.01(1).

“Termination Date” means the date on which the principal of and interest on the Notes, all fees and all other expenses or amounts payable under the Notes Documents have been paid in full (other than in respect of contingent indemnification and expense reimbursement claims not then due).

“Trademark License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

“Trademarks” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

1. all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;

2. all goodwill associated therewith or symbolized thereby;

3. all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

4. all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Trust Account” means any accounts or trusts used solely to hold Trust Funds.

“Trust Funds” means cash, cash equivalents or other assets comprised of:
(1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Grantor’s employees;

(2) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer’s share thereof)); and

(3) any other funds which a Grantor or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary.

“Trustee” means each of the 8.00% Notes Trustee and the 8.75% Notes Trustee.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

ARTICLE II

[RESERVED]

ARTICLE III

PLEDGE OF SECURITIES

SECTION 3.01. Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

(1) the Equity Interests (a) directly owned by such Grantor as of the Issue Date and (b) obtained by such Grantor after the Issue Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Stock”);

(2) the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Issue Date and (b) issued to such Grantor after the Issue Date, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Debt Securities”);
subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);

subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and

all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.02, collectively, the “Pledged Collateral”).

Notwithstanding anything to the contrary in this Agreement or any other Notes Documents, none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

SECTION 3.02. Delivery of the Pledged Collateral.

(1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.

(2) Each Grantor will use its commercially reasonable efforts to cause (x) any Indebtedness for borrowed money having an aggregate principal amount in excess of $5.0 million owed to such Grantor by any Person and (y) accrued intellectual property royalties and other amounts owing to NM Nevada Trust (regardless of whether classified as current), to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof; provided that the foregoing requirement will not apply to intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Issuers and their Subsidiaries. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

(3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer to the Collateral Agent and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement will be accompanied, to the
extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor. Each delivery of Pledged Securities will be accompanied by a schedule describing the securities, which schedule will be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided that failure to attach any such schedule hereto will not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered will supplement any prior schedules so delivered.

(4) Notwithstanding anything to the contrary in this Agreement or any other Notes Documents, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

SECTION 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants to and with the Collateral Agent, for the benefit of the Secured Parties that:

(1) Schedule I correctly sets forth, as of the Issue Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments evidencing Indebtedness required to be pledged pursuant to the terms of the Indentures on the Issue Date;

(2) the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Issuer or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of Issuer or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

(3) except for the security interests granted hereunder, each Grantor:

(a) is and, subject to any transfers made in compliance with the Indentures, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;

(b) holds the same free and clear of all Liens, other than Permitted Liens;
(c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by both Indentures and other than Permitted Liens; and

(d) subject to the rights of such Grantor under the Notes Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all Persons;

(4) other than as set forth in the Indentures or the schedules thereto, and except for restrictions and limitations imposed by the Notes Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Indentures, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Issue Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(6) other than as set forth in the Indentures or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(7) as of the Issue Date, this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof;

(8) as of the Issue Date, none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction; and

(9) the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary of any Grantor whose Equity Interests are, or are required to be, Collateral hereunder in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Grantor shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby to maintain the security interest of the Collateral Agent therein as a valid, perfected security interest.
SECTION 3.04. Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent will have the right (but not a duty or obligation) to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 3.05. Voting Rights; Dividends and Interest, Etc.

(1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder:

(a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Indentures and the other Notes Documents; provided that, except as permitted under both Indentures, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Indentures or any other Notes Documents or the ability of the Secured Parties to exercise the same;

(b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and

(c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Indentures, the other Notes Documents and applicable laws; provided that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part
thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent).

(2) Upon the occurrence and during the continuance of an Event of Default and after at least one (1) Business Day’s prior written notice by the Collateral Agent to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent, which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; provided, however, that even after the occurrence and during the continuance of an Event of Default and such one (1) Business Day’s prior written notice, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclause (b)(vi)(A), subclause (b)(vi)(C) and subclause (b)(vi)(E) of Section 3.4 of each Indenture.

(3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (3), subject to the Intercreditor Agreements, will be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and will be applied in accordance with the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.

(4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon
become vested in the Collateral Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to the Intercreditor Agreements); provided that the Collateral Agent will have the right from time to time following and during the continuance of an Event of Default and such at least one (1) Business Day’s prior written notice to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

ARTICLE IV
SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

SECTION 4.01. Security Interest.

(1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest (the “Security Interest”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Article 9 Collateral”):

(a) all Accounts;
(b) all Chattel Paper;
(c) all cash and Deposit Accounts;
(d) all Documents;
(e) all Equipment;
(f) all General Intangibles;
(g) all Instruments;
(h) all Inventory;
(i) all Investment Property;
(j) all Letter of Credit Rights;
(k) all Intellectual Property;
(l) all Commercial Tort Claims, including those described on Schedule IV hereto;

(m) each of the following:

(i) Securities Accounts;

(ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;

(iii) all cash held in any Securities Account or Deposit Account; and

(iv) all other Money in the possession of the Collateral Agent;

(v) all books and Records pertaining to the Article 9 Collateral; and

(vi) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Notes Documents, the Article 9 Collateral will not include, this Agreement will not constitute a grant of a security interest in and the security interest granted hereunder will not attach to, any Excluded Asset.

Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:

(a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;

(b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and

(c) a description of collateral that describes such property in any other manner as is reasonably necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing,
enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

(4) Notwithstanding anything to the contrary in this Agreement or any other Notes Documents (but subject to Section 4.03(11) hereof), no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.

(5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(6) Notwithstanding anything to the contrary in any Notes Documents, no Grantor will be required:

(a) subject to clause (b) below, to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):

(i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;


(iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of $5.0 million; provided that such delivery shall not be required with respect to:

(A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;

(B) checks received in the ordinary course of business; and

(C) notes and debt securities issued in connection with the extension of trade credit by a Grantor in each case with a duration of not more than 364 days;

(iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral; and

(v) entering or causing to be entered into any Control Agreements or similar arrangements with respect to any Controlled Accounts; and

(b) except as set forth in Section 4.03(11) hereof to take any actions outside the United States to create or perfect any security interests in any Collateral (it being...
understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction except as contemplated by Section 4.03(11) hereof).

(7) Notwithstanding anything in this Agreement to the contrary, the Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Lien or security interest in the Collateral.

SECTION 4.02. Representations and Warranties. Each Grantor represents and warrants to the Collateral Agent and the Secured Parties that:

(1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Indentures.

(2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Issue Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.

(3) Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Issue Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Issue Date to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.

(4) The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be
perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest has and shall have the Required Collateral Lien Priority on any of the Article 9 Collateral subject to Permitted Liens.

(5) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Issue Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.

(6) None of the Grantors holds any Commercial Tort Claim individually in excess of $5.0 million as of the Issue Date except as indicated on Schedule IV.

(7) The names of the obligors, amounts owing, due dates and other information with respect to each Grantor’s Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Collateral Agent by such Grantor from time to time.

(8) As to itself and its Article 9 Collateral consisting of Intellectual Property (the “Intellectual Property Collateral”), to each Grantor’s knowledge, as of the Issue Date:

(a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, registered Trademarks and registered Copyrights owned by such Grantor as of the date hereof (including all such registered with the United States Patent and Trademark Office or United States Copyright Office);

(b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;

(c) Such Grantor has made or performed in the ordinary course of Grantor’s business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use.
of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(d) With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

SECTION 4.03. Covenants.

(1) Each Grantor agrees to furnish to the Collateral Agent five Business Days prior written notice of any change in such Grantor’s:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in Uniform Commercial Code Section 9-307); or

(d) organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number.

No Grantor will effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Grantor.

(2) Subject to the rights of such Grantor under the Notes Documents to dispose of Collateral and except as would otherwise be permitted by both Indentures, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all Persons and to defend the Security Interest of the Collateral Agent, for the benefit of the Secured Parties, in the Article 9 Collateral and the Required Collateral Lien Priority thereof against any Lien that is not a Permitted Lien.
(3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as may be reasonably necessary or advisable from time to time to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.

(4) If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of $5.0 million is or becomes evidenced by any promissory note or other instrument, such note or instrument, subject to the Intercreditor Agreements, will be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed to the Collateral Agent.

(5) After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right (but no duty or implied obligation) to share any information it gains from such inspection or verification with any Secured Party.

(6) After the occurrence of an Event of Default and during the continuance thereof, none of the Grantors will, without the Collateral Agent’s prior written consent, grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with prudent business practices or as otherwise permitted under both Indentures.

(7) At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Indentures or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Notes Documents.
Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.

Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor’s true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Indentures or to pay any premium in whole or part relating thereto, the Collateral Agent may, but shall not be obligated to, after the occurrence and during the continuation of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys’ fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Notwithstanding anything herein to the contrary, no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required, in each case, other than with respect to (1) debt or Equity Interests acquired pursuant to a Permitted Acquisition and (2) Foreign Subsidiaries that are or will become Subsidiary Guarantors; provided, however, that (i) in the event a Responsible Officer of a Grantor (reasonably and in good faith) and the Extended Term Loan Agent mutually determine that the burden or cost of obtaining foreign-law governed Security Documents or creating or taking such perfection steps in any such foreign jurisdictions is impracticable, impossible or ineffective or would give rise to or result in any violation of applicable law, then no such foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions shall be required to be provided with respect to such Grantor and (ii) notwithstanding anything to the contrary contained herein or in any other Notes Document, in the event that any foreign-law governed Security Documents or the creation or taking of perfection steps in any such foreign jurisdictions are being obtained in accordance with this Section 4.03(11), the Grantors and the Collateral Agent shall enter into Security Documents and/or make filings or take perfection actions or steps in accordance with the “Agreed Security Principles” and reasonable and customary timeline agreed between a Responsible Officer of a Grantor (reasonably and in good faith)
and the Extended Term Loan Agent, and taking into account the Required Collateral Lien Priority; provided that the deadlines to enter into such Security Documents and/or make such filings or take such perfection actions or steps shall be 10 calendar days after the corresponding deadlines for Extended Term Loans (in each case subject to extension by the Collateral Agent)).

SECTION 4.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, for the benefit of the Secured Parties, the Collateral Agent’s security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor’s own expense, to take the following actions with respect to the following Article 9 Collateral:

(1) **Instruments and Tangible Chattel Paper.** If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of $5.0 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements), accompanied by such instruments of transfer or assignment duly executed in blank.

(2) **Investment Property.** Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements), accompanied by such instruments of transfer or assignment duly executed in blank. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall either (a) cause the issuer to agree to comply with instructions from the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) as to such security, without further consent of any Grantor or such nominee or (b) cause the issuer to register the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) as the registered owner of such security.

(3) **Commercial Tort Claims.** If any Grantor shall at any time hold or acquire a Commercial Tort Claim with an asserted or nominal value in excess of $5.0 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement.

SECTION 4.05. Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by both Indentures:

(1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that
is necessary to the normal conduct of such Grantor’s business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.

(2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor’s business:

(a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
(b) maintain the quality of products and services offered under such Trademark;
(c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
(d) not knowingly use or knowingly permit its licensees’ use of such Trademark in violation of any third-party rights.

(3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.

(4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, regarding such Grantor’s ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.

(5) Each Grantor, either itself or through any agent, employee, licensee or designee, will execute and deliver any and all agreements, instruments, documents and papers reasonably necessary or advisable (and substantially equivalent agreements, documents and papers as are executed and delivered with respect to any Credit Agreement) to evidence the Collateral Agent’s security interest in each Patent, Trademark, or Copyright listed in a list of new Patents, Trademarks or Copyrights which shall be furnished to the Collateral Agent together with the annual financial statements provided pursuant to Section 3.2(a) of each Indenture.

(6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor’s business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and
each such Copyright, including, when applicable and necessary in such Grantor’s reasonable business judgment, timely filings of applications for
renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable
business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright
necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly
notify the Collateral Agent in writing and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are
reasonably appropriate under the circumstances.

SECTION 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Grantors and the Collateral Agent
acknowledge that the exercise of certain of the Collateral Agent’s rights and remedies hereunder are subject to the provisions of the ABL/Term Loan/Notes
Intercreditor Agreement and the Junior Lien Intercreditor Agreement, (2) prior to the Discharge of ABL Claims, any obligation hereunder to physically
deliver any ABL Priority Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the ABL Collateral Agent, acting as gratuitous bailee
for the Collateral Agent in accordance with the ABL/Term Loan/Notes Intercreditor Agreement and (3) any obligation hereunder to physically deliver any
Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the Senior Priority Collateral Agent (as defined in the Junior Lien Intercreditor
Agreement), acting as gratuitous bailee for the Collateral Agent in accordance with the Junior Lien Intercreditor Agreement. The failure of the Collateral
Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of the Intercreditor Agreements or
otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the ABL/Term
Loan/Notes Intercreditor Agreement and this Agreement regarding the relative priorities of the ABL Collateral Agent, the Collateral Agent, the New Second
Lien Notes Agent and the New Third Lien Notes Agent in the Collateral, the terms of the ABL/Term Loan/Notes Intercreditor Agreement shall govern and
control. In the event of any conflict or inconsistency between the terms of the Junior Lien Intercreditor Agreement and this Agreement regarding the relative
priorities of the Collateral Agent, the Initial Second Lien Representative and the Initial Third Lien Representatives in the Collateral, the terms of the Junior
Lien Intercreditor Agreement shall govern and control. Terms used but not defined in this Section 4.06 shall be as defined in the applicable Intercreditor
Agreement.

ARTICLE V

REMEDIES

SECTION 5.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to
deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreements) on demand, and it is agreed
that the Collateral Agent shall have the right, subject to applicable law, to take any of or all the following actions at the same or different times: (1) with
respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest
to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker’s board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to Persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors ten Business Days’ written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent’s intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker’s board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels in the Collateral Agent’s own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of
any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Article V hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Without limiting any other rights of the Collateral Agent granted pursuant to this Agreement, each Grantor hereby grants to the Collateral Agent, and the representatives and independent contractors of the Collateral Agent, a royalty free, non-exclusive, irrevocable license (such license to be effective upon the occurrence and during the continuance of any Event of Default), to use, apply, and affix any Trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent’s enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

SECTION 5.02. Application of Proceeds.

Subject to the terms of the Intercreditor Agreements, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the following order of priority:

(a) first, to all amounts owing to the Collateral Agent or each Trustee pursuant to any of the Notes Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in the Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Notes Documents;
(b) second, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to each Trustee or Collateral Agent pursuant to any of the Notes Documents in its capacity as such;

(c) third, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the Secured Obligations with each Secured Party receiving an amount equal to its outstanding Secured Obligations or, if the proceeds are insufficient to pay in full all such Secured Obligations, its pro rata share of the amount remaining to be distributed; and

(d) fourth, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Grantor, their successors or assigns, or as a court of competent jurisdiction may otherwise direct or as otherwise required by the Intercreditor Agreement.

(2) If any payment to any Secured Party pursuant to this Section 5.02 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other Secured Parties, with each Secured Party whose Secured Obligations have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Secured Obligations of such Secured Party and the denominator of which is the unpaid Secured Obligations of all Secured Parties entitled to such distribution.

(3) All payments required to be made hereunder shall be made to the applicable Trustee for the account of such Secured Parties or as such Trustee may otherwise direct in accordance with the Notes Documents.

(4) Subject to the other limitations (if any) set forth herein and in the other Notes Documents, it is understood that the Note Parties will remain liable (as and to the extent set forth herein except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s gross negligence or willful misconduct) to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations of the Note Parties.

(5) It is understood and agreed by each Note Party that the Collateral Agent will have no liability for any determinations made by it in this Section 5.02 except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s own gross negligence, bad faith or willful misconduct. Each Note Party also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof and of each Intercreditor Agreement, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.
The parties hereto agree that the provisions of this Article V shall apply to distributions and/or realizations on account of all assets securing the Secured Obligations, including assets not defined as Collateral hereunder (including, for the avoidance of doubt, all Real Property of the Grantors mortgaged to the Collateral Agent for the benefit of some or all of the Secured Parties).

SECTION 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE VI

[RESERVED]

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 13.1 of each Indenture. All communications and notices hereunder to any Grantor will be given to it in care of the Issuer, with such notice to be given as provided in Section 13.1 of each Indenture.
SECTION 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

1. any lack of validity or enforceability of the Indentures, any other Notes Documents, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;

2. any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indentures, any other Notes Documents or any other agreement or instrument;

3. any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or

4. subject only to termination or release of a Grantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

SECTION 7.03. Limitation By Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

SECTION 7.04. Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Indentures. This Agreement will be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

SECTION 7.05. Successors and Assigns; Replacement of Collateral Agent; Successor Collateral Agent by Merger.

1. Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are
contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

(2) The Collateral Agent may resign at any time by so notifying the Issuers. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Collateral Agent upon written notice to the Issuers, the Trustees and the Collateral Agent, and may appoint a successor Collateral Agent. The Issuers will remove the Collateral Agent if:

(a) [reserved];

(b) the Collateral Agent is adjudged bankrupt or insolvent;

(c) a receiver or other public officer takes charge of the Collateral Agent or its property; or

(d) the Collateral Agent otherwise becomes incapable of acting.

(3) If the Collateral Agent resigns or is removed by the Issuers or by the Holders of a majority in aggregate principal amount of the then outstanding Notes and such Holders do not within 30 days thereafter appoint a successor Collateral Agent, or if a vacancy exists in the office of Collateral Agent for any reason (the Collateral Agent in such event being referred to herein as the retiring Collateral Agent), the Issuers will promptly appoint a successor Collateral Agent.

(4) A successor Collateral Agent will deliver a written acceptance of its appointment to the retiring Collateral Agent and to the Issuers. Thereupon the resignation or removal of the retiring Collateral Agent will become effective, and the successor Collateral Agent will have all the rights, powers and duties of the Collateral Agent under this Agreement and the other Notes Documents. Each Trustee will deliver a notice of the successor Collateral Agent’s succession to the applicable Holders. The retiring Collateral Agent will promptly transfer all property held by it as Collateral Agent to the successor Collateral Agent, subject to the liens provided for in Section 7.6 of each Indenture. All costs reasonably incurred in connection with any resignation or removal hereunder will be borne by the Issuers.

(5) If a successor Collateral Agent does not take office within 30 days after the retiring Collateral Agent resigns or is removed, the Holders of at least 10.0% in principal amount of the Notes may petition, at the Issuers’ expense, any court of competent jurisdiction for the appointment of a successor Collateral Agent.

(6) [reserved].

(7) Notwithstanding the replacement of the Collateral Agent pursuant to this Section 7.05, the Issuers’ obligations under this Agreement will continue for the benefit of the retiring Collateral Agent.
If the Collateral Agent, consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act will be the successor Collateral Agent.

SECTION 7.06. Collateral Agent’s Fees and Expenses; Indemnification; Concerning the Collateral Agent.

(1) The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 7.6 of each Indenture and the provisions of Section 7.6 of each Indenture shall be incorporated by reference herein and apply to each Grantor mutatis mutandis.

(2) The Collateral Agent has been appointed pursuant to the Indentures. The actions of the Collateral Agent hereunder are subject to the provisions of the Indentures (including the rights, benefits, privileges, protections, immunities and indemnities of the Collateral Agent, all of which are incorporated herein mutatis mutandis, as a part hereof) and the Intercreditor Agreements. Beyond the exercise of reasonable care in the custody thereof, the Collateral Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. Notwithstanding anything in this Agreement to the contrary and unless otherwise provided in the Intercreditor Agreements, the Collateral Agent shall act or refrain from acting with respect to any Collateral or any occasion requiring or permitting an approval, consent, discretion, waiver, election or other action on the part of the Collateral Agent only on the written instructions and at the written direction of the holders of a majority of the aggregate principal amount of the Obligations then outstanding.

SECTION 7.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right (but not the obligation or implied duty), upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent’s name or in the name of such Grantor, to:

(1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;

(2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;

(3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;

(4) sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;
send verifications of Accounts to any Account Debtor;

commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;

settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;

notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and

use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

provided that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7.09. Waivers; Amendment.

(1) No failure or delay by the Collateral Agent or any other Secured Party in exercising any right, power or remedy hereunder or under any other Notes Documents will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the other Secured Parties hereunder and under the other Notes Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Grantor therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09,
and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.

(2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Article IX of each Indenture.

SECTION 7.10. WAIVER OF JURY TRIAL. The provisions of Section 7.10 of each Indenture shall be incorporated by reference herein and apply to each party hereto.

SECTION 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected or impaired thereby.

SECTION 7.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

SECTION 7.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 7.14. Jurisdiction; Consent to Service of Process. The provisions of Section 13.7 of each Indenture shall be incorporated by reference herein and apply to each party hereto.

SECTION 7.15. Termination or Release.

(1) This Agreement, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate upon the occurrence of the Termination Date.

(2) A Grantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by both Indentures as a result of which such Grantor ceases to be a Guarantor; provided that such portion of the Holders as are required by the terms of the Indentures to consent to such transaction shall have consented thereto; provided, further, to the extent the ABL Security Documents, Third Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) or the Third Lien Notes Collateral Documents (as defined in the Junior Lien Intercreditor Agreement) are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) is released under such ABL Security Documents, Third Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (2).
Upon any sale or other transfer by any Grantor of any Collateral that is permitted under both Indentures to any person that is not a Grantor, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Article IX of each Indenture or pursuant to Section 5.1 of the ABL/Term Loan/Notes Intercreditor Agreement or Sections 5.1 or 5.2 of the Junior Lien Intercreditor Agreement, the security interest in such Collateral shall be automatically released; provided to the extent the ABL Security Documents, Third Lien Notes Collateral Documents or the Third Lien Notes Collateral Documents are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) is released under such ABL Security Documents, Third Lien Notes Collateral Documents and Third Lien Notes Collateral Documents, as applicable, concurrently with the release referred to in this clause (3).

In connection with any termination or release pursuant to paragraph (1) through (3) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor’s expense, all documents that such Grantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor such of the Pledged Collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; provided that the Collateral Agent will not be required to take any action under this Section 7.15(6) unless such Grantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of a Responsible Officer of the Issuer certifying that the transaction giving rise to such termination or release is permitted by both Indentures and was or is consummated in compliance with the Notes Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.

SECTION 7.16. Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by Section 3.11 of each Indenture of a supplement in substantially the form of Exhibit I hereto, such Subsidiary will become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

GRANTORS:

NEIMAN MARCUS GROUP LTD LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President, General Counsel and Chief Compliance Officer

THE NEIMAN MARCUS GROUP LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

THE NMG SUBSIDIARY LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

BERGDORF GOODMAN INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

BERGDORF GRAPHICS, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Third Lien Collateral Agreement]
BG PRODUCTIONS, INC.

By:  /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

MARIPOSA BORROWER, INC.

By:  /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NEMA BEVERAGE CORPORATION

By:  /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NEMA BEVERAGE HOLDING CORPORATION

By:  /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

NEMA BEVERAGE PARENT CORPORATION

By:  /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to Third Lien Collateral Agreement]
NM BERMUDA, LLC

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston
Title: Vice President and Secretary

NM FINANCIAL SERVICES, INC.

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston
Title: Vice President and Secretary

NM NEVADA TRUST

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston
Title: Vice President and Secretary

NMG CALIFORNIA SALON LLC

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMG FLORIDA SALON LLC

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

[Signature Page to Third Lien Collateral Agreement]
NMG GLOBAL MOBILITY, INC.

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President, General Counsel and Secretary

NMG SALONS LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Chief Executive Officer and President

NMG TEXAS SALON LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Senior Vice President and General Counsel

NMGP, LLC

By:  /s/ Tracy M. Preston
     Name: Tracy M. Preston
     Title: Vice President and Secretary

[Signature Page to Third Lien Collateral Agreement]
WORTH AVENUE LEASING COMPANY

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Third Lien Collateral Agreement]
By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

[Signature Page to Third Lien Collateral Agreement]
By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

[Signature Page to Third Lien Collateral Agreement]
WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Agent

By:  /s/ Hallie E. Field  
Name: Hallie E. Field  
Title:  Vice President  

[Signature Page to Third Lien Collateral Agreement]
Exhibit I

to
Collateral Agreement

SUPPLEMENT NO. dated as of (this “Supplement”), to the Third Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Third Lien Notes Collateral Agreement”), among each of the Grantors party thereto, Wilmington Trust, National Association, as 8.000% Notes Trustee, Wilmington Trust, National Association, as 8.750% Notes Trustee, and Wilmington Trust, National Association, as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “Collateral Agent”).

(1) Reference is made to (i) that certain Indenture, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “8.000% Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time and the 8.000% Notes Trustee, governing the 8.000% Third Lien Senior Secured Notes due 2024 (the “8.000% Notes”) of the Issuers and (ii) that certain Indenture, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “8.750% Indenture” and together with the 8.000% Indenture, the “Indentures”), among the Issuers, the guarantors party thereto from time to time and the 8.750% Notes Trustee, governing the 8.750% Third Lien Senior Secured Notes due 2024 (the “8.750% Notes” and together with the 8.000% Notes, the “Notes”) of the Issuers.

(2) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indentures and the Third Lien Notes Collateral Agreement referred to therein.

(3) The Grantors have entered into the Third Lien Notes Collateral Agreement in order to induce the Holders to purchase the Notes under the Indentures. Section 7.16 of the Third Lien Notes Collateral Agreement provides that additional entities may become Grantors under the Third Lien Notes Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Indentures to become a Grantor under the Third Lien Notes Collateral Agreement.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

SECTION 1. (a) In accordance with Section 7.16 of the Third Lien Notes Collateral Agreement, the New Subsidiary by its signature below becomes a Grantor under the Third Lien Notes Collateral Agreement with the same force and effect as if originally named therein as a Grantor, and the New Subsidiary hereby (1) agrees to all the terms and provisions of the Third

Exhibit I-1
Lien Notes Collateral Agreement applicable to it as a Grantor thereunder and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects, on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Third Lien Notes Collateral Agreement), does hereby create and grant to the Collateral Agent, for the benefit of the applicable Secured Parties, a security interest in and Lien on all the New Subsidiary’s right, title and interest in and to the Collateral (as defined in and to the extent required by the Third Lien Notes Collateral Agreement) of the New Subsidiary. Each reference to a “Grantor” in the Third Lien Notes Collateral Agreement shall be deemed to include the New Subsidiary. The Third Lien Notes Collateral Agreement is hereby incorporated herein by reference.

(b) In accordance with Section 9.3 of the ABL/Term Loan/Notes Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the ABL/Term Loan/Notes Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future ABL Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement), all existing and future Term Loan Lenders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) and all existing and future Existing Noteholders (as defined in the ABL/Term Loan/Notes Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the ABL/Term Loan/Notes Intercreditor Agreement as fully as if the undersigned had executed and delivered the ABL/Term Loan/Notes Intercreditor Agreement as of the date thereof. This Supplement shall constitute an Intercreditor Agreement Joinder under (and as defined in) the ABL/Term Loan/Notes Intercreditor Agreement.

(c) In accordance with Section 8.20 of the Junior Lien Intercreditor Agreement, the New Subsidiary by its signature below becomes a party to the Junior Lien Intercreditor Agreement as a Grantor thereunder for all purposes thereof on the terms set forth therein, and agrees, for the enforceable benefit of all existing and future all existing and future First Lien Secured Parties (as defined in the Junior Lien Intercreditor Agreement) and all existing and future Junior Lien Secured Parties (as defined in the Junior Lien Intercreditor Agreement) that it is bound by the terms, conditions and provisions of the Junior Lien Intercreditor Agreement as fully as if the undersigned had executed and delivered the Junior Lien Intercreditor Agreement as of the date thereof. This Supplement shall constitute an intercreditor agreement joinder under the Junior Lien Intercreditor Agreement.

SECTION 2. The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Collateral Agent receives a counterpart.

Exhibit I-2
SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

1. set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof;

2. set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, registered Trademarks and registered Copyrights of the New Subsidiary as of the date hereof;

3. set forth on Schedule III attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of $5.0 million as of the date hereof; and

4. set forth on Schedule IV attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Third Lien Notes Collateral Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER NOTES DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, in the Third Lien Notes Collateral Agreement and in the Intercreditor Agreements will not in any way be affected or impaired thereby. The parties will endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Third Lien Notes Collateral Agreement. The address of each of the New Subsidiaries for purposes of all notices and other communications under the Intercreditor Agreements is: [ ].

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent.

Exhibit I-3
IN WITNESS WHEREOF, the New Subsidiary and the Collateral Agent have duly executed this Supplement to the Third Lien Notes Collateral Agreement and to the Intercreditor Agreements as of the day and year first above written.

[Name of New Subsidiary]

By: 

----------------------------------------
Name: 
Title: 

Exhibit I-4
WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.000% Notes Trustee

By: 
    Name: 
    Title: 

WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.750% Notes Trustee

By: 
    Name: 
    Title: 

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Agent

By: 
    Name: 
    Title: 

Exhibit I-5
### EQUITY INTERESTS

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### DEBT SECURITIES

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Schedule I-1
PATENTS, TRADEMARKS AND COPYRIGHTS

Schedule II-1
COMMERCIAL TORT CLAIMS

Schedule III-1
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<th>Location of Chief Executive Office</th>
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Schedule IV-1
FORM OF TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT is dated as of [               ], by [·] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor Wilmington Trust, National Association, in its capacity as collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

Whereas, the Grantors are party to that certain Third Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”):

(a) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those
listed on Schedule I;

(b) all goodwill associated therewith or symbolized thereby;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]

Exhibit II-2
IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[           ],
as Grantor

By:
Name: __________________________
Title: __________________________

Exhibit II-3
Accepted and Agreed:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent

By:  
Name:  
Title:  

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Exhibit II-4
FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT is dated as of [ ], by [·] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Wilmington Trust, National Association, in its capacity as collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Third Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”):

(a) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I;

(b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

Exhibit III-1
all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]

Exhibit III-2
IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[            ],
as Grantor

By:
Name: ____________________________
Title: ____________________________

Exhibit III-3
Accepted and Agreed:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent

By: ________________________________
Name: ______________________________
Title: ______________________________

Exhibit III-4
FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT is dated as of [ ], by [ ] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Wilmington Trust, National Association, in its capacity as Trustee and collateral agent (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Third Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor's right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”):

(a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

(b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule I;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with

Exhibit IV-1
SECTION 3. **Security Agreement.** The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. **Recordation.** This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office. Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

SECTION 5. **Counterparts.** This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]

Exhibit IV-2
IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[               ],
as Grantor

By: ____________________________________________
Name: __________________________
Title: ____________________________

Exhibit IV-3
Accepted and Agreed:
WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent

By:  
Name:  
Title:  

Exhibit IV-4
SCHEDULE I

to
COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

Exhibit IV-5
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<th>Grantor</th>
<th>Issuer</th>
<th>Type of Organization</th>
<th>Jurisdiction of Organization / Formation</th>
<th># of Shares Owned</th>
<th>Total Shares Outstanding</th>
<th>% of Interest Pledged</th>
<th>Certificate No.</th>
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<td>Total Shares Outstanding</td>
<td>% of Interest Pledged</td>
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<td>Par Value</td>
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<td>Bergdorf Goodman Inc.</td>
<td>Bergdorf Graphics, Inc.</td>
<td>Corporation</td>
<td>New York</td>
<td>200</td>
<td>200</td>
<td>100%</td>
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<td>NMG Salon Holdings LLC</td>
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<td>The Neiman Marcus Group LLC</td>
<td>The NMG Subsidiary LLC</td>
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<td>The Neiman Marcus Group LLC</td>
<td>Fashionphile Group, LLC</td>
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**DEBT SECURITIES**

1. That certain Intercompany Note, dated as of June 7, 2019, by and among each Payor (as defined therein) and each Maker (as defined therein).
2. Intercompany receivable held by NM Nevada Trust from The Neiman Marcus Group LLC, which was approximately $2,880,299,470 as of May 31, 2019.

3. Intercompany receivable held by NM Nevada Trust from Bergdorf Goodman Inc., which was approximately $473,027,518 as of May 31, 2019.
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<td>1. Another perspective / from Horchow.</td>
<td>TX0000887328</td>
<td>12/30/1981</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>4. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
<td>CSN0040942</td>
<td>1989</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>TX0000884099</td>
<td>1/15/1982</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>7. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
<td>TX0001047557</td>
<td>1/17/1983</td>
<td>The Neiman Marcus Group LLC (f/k/a The Neiman Marcus Group, Inc.) d/b/a Horchow Mail Order, Inc.</td>
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<td>TX0001741165</td>
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<td>TX0001741167</td>
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<td>TX0002237684</td>
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<td>24. Grand Finale : sales, close-outs &amp; special values from famous companies.</td>
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<td>26. Trifles : [catalogue].</td>
<td>TX0002498719</td>
<td>2/2/1989</td>
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<td>27. Trifles : [catalogue].</td>
<td>CSN0042553</td>
<td>1989</td>
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<td>28. SGF : savings on gifts and furnishings.</td>
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<td>31. Easter candletower.</td>
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<td>2/19/1992</td>
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<td>32. Pigtails and froglegs : a family cookbook from Neiman Marcus.</td>
<td>TX0003623121</td>
<td>9/16/1993</td>
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<td>33. Jeweled tiger ornament.</td>
<td>VA0001172404</td>
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<td>35. Jungle Harlequin.</td>
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<td>36. Amber crystal turtle.</td>
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<td>37. Mahogany egg.</td>
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<td>38. Amber scallops.</td>
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<td>39. Jungle florentine.</td>
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<td>41. Green jeweled egg.</td>
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<td>43. Small golden finial ornament.</td>
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<td>44. Large plum finial ornament.</td>
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<td>45. Large red finial ornament.</td>
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<td>46. Large topaz finial ornament.</td>
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<td>47. Bejeweled butterfly ornament.</td>
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<td>49. Dragonfly egg ornament.</td>
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<td>51. Jeweled heart ornament.</td>
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<td>52. Plum ball ornament.</td>
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<td>53. Red crystal ball ornament.</td>
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<td>54. Plum ball ornament. Series: Jay Strongwater Christmas ornament ; NM20030</td>
<td>VA0001172444</td>
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<td>55. Jay Strongwater Christmas ornament, gold moon/stars, NM20033. Title: Gold moons and stars.</td>
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<td>56. Amber daisy ball ornament. Series: Jay Strongwater Christmas ornament ; NM20034</td>
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<td>58. Plum swirls ball ornament. Series: Jay Strongwater Christmas ornament, NM20036</td>
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<td>59. Red swirls ball ornament. Series: Jay Strongwater Christmas ornament, NM20037</td>
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<td>60. Red glass heart ornament. Series: Jay Strongwater Christmas ornament, NM20038</td>
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<td>61. Red jeweled ball ornament. Series: Jay Strongwater Christmas ornament, NM20039</td>
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<td>62. Jeweled gift ornament. Series: Jay Strongwater Christmas ornament ; NM20040</td>
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<td>63. Red bow egg ornament. Series: Jay Strongwater Christmas ornament, NM20041</td>
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<td>66. Red scroll egg ornament. Series: Jay Strongwater Christmas ornament ; NM20045</td>
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<td>1/31/2003</td>
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<td>67. Plum lattice heart ornament. Series: Jay Strongwater Christmas ornament, NM20046</td>
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<td>1/31/2003</td>
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<td>68. Red frog egg ornament. Series: Jay Strongwater Christmas ornament ; NM20047</td>
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<td>1/31/2003</td>
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<td>69. Green frog egg. Series: Jay Strongwater Christmas ornament, NM20048</td>
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<td>72. Red butterfly egg ornament. Series: Jay Strongwater Christmas ornament, NM20051</td>
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<td>73. Green butterfly ornament. Series: Jay Strongwater Christmas ornament, NM20052</td>
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<td>The NMG Subsidiary LLC</td>
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Reference is made to the class action settlement involving Visa and Mastercard, who separately and together with certain banks, engaged with certain actions that resulted in merchants paying excessive interchange fees when accepting Visa and Mastercard credit and debit cards in connection with store and online purchases. Under the settlement, Visa, Mastercard and other bank defendants have agreed to provide approximately $6.24 billion in class settlement funds. The net class settlement fund will be used to pay valid claims of merchants that accepted Visa and Mastercard credit or debit cards between January 1, 2004 through January 25, 2019.

The Court has given preliminary approval to this settlement. A Court hearing is set for November 7, 2019 for the Court to officially approve of the settlement.

Merchants have until July 23, 2019 to decide if they will stay in the settlement and wait to file a claim, object to the settlement and file a notice to appear with the Court, or to opt out and make a separate claim.

The Company is in the process of evaluating the potential recovery on its portion of the claims and believes there is a reasonable chance such recovery will exceed $2.5 million.
SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”), dated as of June 6, 2019 is by and among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), The Neiman Marcus Group LLC, a Delaware limited liability company (the “New LLC Co-Issuer”) and The NMG Subsidiary LLC (the “Subsidiary Co-Issuer” and, together with the LLC Co-Issuer, the Corporate Co-Issuer and the New LLC Co-Issuer, the “Issuers”), each of the parties identified as a Guarantor on the signature pages hereto (each, a “Guarantor” and collectively, the “Guarantors”) and Drivetrain Trust Company LLC (as successor to U.S. Bank National Association), as trustee (the “Trustee”) under the Indenture, dated as of October 21, 2013, as supplemented by the First Supplemental Indenture, dated as of October 25, 2013 (as further amended, supplemented, waived or otherwise modified from time to time prior to the date hereof, the “Indenture”). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in the Indenture.

W I T N E S S E T H:

WHEREAS, the Issuers, the Guarantors party thereto and the Trustee have heretofore executed and delivered the Indenture providing for the issuance by the Issuers of the 8.000% Senior Cash Pay Notes due 2021 (the “Notes”);

WHEREAS, the Issuers have solicited consents from the Holders of the Notes to certain proposed amendments to the Indenture, in accordance with the terms and conditions of the Confidential Offering Memorandum and Consent Solicitation Statement, dated April 29, 2019 (as supplemented to the date hereof, the “Statement”);

WHEREAS, Section 9.2 of the Indenture provides that, with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, the Issuers, the Guarantors party thereto and the Trustee may amend or supplement the Indenture or the Notes in accordance with such Section 9.2;

WHEREAS, the Holders of 91.6% of the aggregate principal amount of the outstanding Notes have consented to the substance of this Supplemental Indenture and the transactions contemplated hereby as contemplated by the Statement;

WHEREAS, the Issuers have heretofore delivered or are delivering contemporaneously herewith to the Trustee the Officer’s Certificate and the Opinion of Counsel described in Sections 9.5, 11.2 and 11.3 of the Indenture; and

WHEREAS, all other acts and proceedings required by law and the Indenture necessary to authorize the execution and delivery of this Supplemental Indenture and to make this Supplemental Indenture a valid and binding agreement for the purposes expressed herein, in accordance with its terms, have been complied with or have been duly done or performed.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto, intending to be legally bound hereby, agree as follows:
ARTICLE ONE

AMENDMENTS

SECTION 1.01 Deletion of Provisions. The Indenture is hereby amended to delete the following sections in their entirety, and, in the case of each such section, insert in lieu thereof the phrase “[Intentionally Omitted]” and any and all references thereto (including any definitions the references to which would be eliminated as a result of such deletions), and any and all obligations thereunder, and references to any events of default related thereto are hereby deleted throughout the Indenture and such sections and references shall be of no further force or effect.

(a) Section 3.2 entitled “Reports and Other Information.”
(b) Section 3.3 entitled “Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.”
(c) Section 3.4 entitled “Limitation on Restricted Payments.”
(d) Section 3.5 entitled “Liens.”
(e) Section 3.6 entitled “Dividend and Other Payment Restrictions Affecting Subsidiaries.”
(f) Section 3.7 entitled “Asset Sales.”
(g) Section 3.8 entitled “Transactions with Affiliates.”
(h) Section 3.9 entitled “Change of Control.”
(i) Section 3.10 entitled “Maintenance of Insurance.”
(j) Section 3.11 entitled “Additional Guarantors.”
(k) Section 3.12 entitled “Compliance Certificate; Statement by Officers as to Default.”
(l) Section 3.13 entitled “Designation of Restricted and Unrestricted Subsidiaries.”
(m) Section 3.15 entitled “Stay, Extension and Usury Laws.”
(n) Clauses (c), (d), (e), (f), (g) and (h) of Section 6.1 entitled “Events of Default.”
(o) Article IV entitled “Merger; Consolidation or Sale of All or Substantially All Assets.”

SECTION 1.02 Amended Provisions. The Indenture is hereby amended to:
(a) In Section 6.5, replace the words “security and indemnity satisfactory to it against any loss, liability or expense” with the words “a Satisfactory Indemnity with respect to such direction” and replace the words “security or indemnification satisfactory to it in its sole discretion against all losses, liabilities and expenses that may be caused by taking or not taking such action” with the words “a Satisfactory Indemnity with respect to taking or not taking such action”.

(b) In Section 6.6, replace the words in the first paragraph “indemnity or security satisfactory to it against any loss, liability or expense”, the words in clause (c) “security or indemnity reasonably satisfactory to it in respect of any loss, liability or expense” and the words in clause (d) “security or indemnity” with, in each case, the words “a Satisfactory Indemnity”.

(c) In Section 6.6, delete the lead-in to the last sentence of the first paragraph thereof in its entirety and replace it with the following: “Except to enforce the right to receive payment of principal, premium, if any, or interest, when due, no Holder may pursue any remedy upon, arising from, in connection with, under or with respect to this Indenture, the Notes, the Recapitalization Transactions or the Released Claims (as set forth in Section 11.18 of this Indenture) or for the appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy unless:”

(d) In Section 6.6(b), add “To the fullest extent permitted by law,” before “Holders”.

(e) In Section 6.6(b), replace the words “25.0%” with the words “100.0%”.

(f) In Section 6.6(d) and (e), replace the words “60 days” with “120 days”.

(g) In Section 6.11, replace the words “10.0%” with the words “50.0%”.

(h) In Section 7.1, replace the words in clause (f) “indemnity satisfactory to it” with the words “a Satisfactory Indemnity” and replace the words in clause (h) “security, prefunding or indemnity satisfactory to it against the costs, expenses (including reasonable attorneys’ fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction” with the words “a Satisfactory Indemnity with respect to such request or direction”.

(i) In Section 7.7(c), replace the word “mail” with “deliver”.

(j) In Section 7.7(d), replace the words “10.0%” with the words “66 2/3%”.

SECTION 1.03 Additional Provisions. The Indenture is hereby amended to insert the following sections:

(a) Section 6.12. Provisions for Benefit of Issuers and Trustee. Notwithstanding anything else in this Indenture to the contrary, no provision in this Indenture shall be construed as solely for the benefit of the Holders.
Section 11.17. Ratification of Certain Transactions.

(a) Each of the Issuers, the Guarantors and, by its tender of its Notes, each Consenting Cash Pay Noteholder (in its capacity as a Holder of the Notes) hereby acknowledges, ratifies and agrees to the consummation of the Recapitalization Transactions.

(c) Section 11.18. Waiver of Defaults and Events of Default. Effective as of the Second Supplemental Effective Date, by its tender of its Notes, each Consenting Cash Pay Noteholder (in its capacity as a Holder of the Notes), collectively constituting the Holders of at least a majority in aggregate principal amount of the outstanding Notes, waives, rescinds, and cancels any existing or past breach or alleged breach of any provision of this Indenture, if any, or any existing or past Default or Event of Default or alleged Default or Event of Default, if any, that arose or is alleged to have arisen as a result of, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith.

(d) Section 11.19. Releases.

(a) Releases by the Releasing Parties. Effective as of the Second Supplemental Effective Date, by accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each of the Releasing Parties hereby agrees to conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Parties or the Releasing Parties, that the Trustee (solely in respect of, and on behalf of, such Releasing Parties) or any of the Releasing Parties would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Equity Security in, a Company Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith (collectively, any Claim, Cause of Action, or any other debt, obligation, right, suit, damage, judgment, action, remedy, or liability which is released by such Releasing Party in clauses (i) through (v), the “Released Claims” and each a “Released Claim”). Notwithstanding anything to the contrary in the foregoing, nothing contained herein shall release, remise or discharge (1) any obligation of any Person under the Definitive Documents or any Recapitalization Transaction in effect after the Second Supplemental Effective Date or (2) with
respect to the items in clauses (iv) and (v) of this Section 11.19(a), any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Each Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding anything to the contrary in this Section 11.19(a), nothing in this Indenture shall or be deemed to (or is intended to) limit any of the Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under Bankruptcy Law, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of the Indenture, the Transaction Support Agreement, the Definitive Documents, the Commitment Letter, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt, the release set forth in this Section 11.19 is hereby granted by or on behalf of each of the Releasing Parties solely in its capacity as a Holder of the Notes that it holds, and on behalf of its Related Parties, only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party, in each case, in accordance with the terms and conditions set forth in this Indenture.

(b) No Additional Representations and Warranties. No Released Party, in any capacity, has warranted or otherwise made any representations concerning any Released Claim (including any representation or warranty concerning the existence, non-existence, validity, or invalidity of any Released Claim).

(c) Release of Unknown Claims. By accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each of the Releasing Parties (in its capacity as a Holder of the Notes) expressly acknowledges that although ordinarily a general release may not extend to any Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, it has carefully considered and taken into account in determining to enter into the releases set forth in this Section 11.19 the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party (in its capacity as a Holder of the Notes) expressly waives and relinquishes any and all rights such Person may have or conferred upon such Person under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the releases set forth in this Section 11.19 or which may in any way limit the effect or scope of such releases with respect to the Released Claims, which such Person did not know or suspect to exist in such Person’s favor at the time of providing such releases, which in each case if known by it may have materially affected its settlement with any Released Party, including any rights under Section 1542 of the California Civil Code or any analogous applicable state or federal law or regulation. Each of the Releasing Parties expressly acknowledges that the releases and covenants not to sue contained in this
Indenture are effective regardless of whether those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or unforeseen or unforeseen.

It is the intention of the Releasing Parties that the releases set forth in this Section 11.19 shall be effective as a bar to any and all Claims and Causes of Action of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified in this Indenture. In furtherance of this intention, by accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each Releasing Party, expressly waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law, which are as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

By accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each Releasing Party (in its capacity as a Holder of the Notes) acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. Thus, notwithstanding the provisions of Section 1542 of the California Civil Code, and for the purpose of implementing a full and complete release and discharge of the Released Parties, by accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each Releasing Party (in its capacity as a Holder of the Notes) expressly acknowledges that this Indenture is intended to include in its effect without limitation all of the claims, causes of action and liabilities which the Releasing Parties do not know or suspect to exist in their favor as of the Second Supplemental Effective Date, and this Indenture contemplates extinguishment of all such claims, causes of action and liabilities.

(d) **Covenant to Refrain from Certain Actions.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS INDENTURE (INCLUDING IN THE SECOND-TO-LAST SENTENCE OF SECTION 11.19(a)), FROM AND AFTER THE SECOND SUPPLEMENTAL EFFECTIVE DATE, BY ACCEPTING THE BENEFITS OF THIS INDENTURE AND BY ITS TENDER OF ITS NOTES AS CONTEMPLATED BY THE STATEMENT, EACH OF THE RELEASING PARTIES AGREES AND COVENANTS NOT TO, AND SHALL NOT, AND SHALL NOT ASSIST OR OTHERWISE AID ANY OTHER PERSON TO, (A) COMMENCE OR CONTINUE, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION, OR OTHER PROCEEDING; (B) ENFORCE, ATTACH, COLLECT, OR RECOVER IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (C) CREATE, PERFECT, OR ENFORCE ANY LIEN OR ENCUMBRANCE; (D) ASSERT A SETOFF, RIGHT OF SUBROGATION, OR RECOUPEMENT OF ANY KIND; (E) COMMENCE OR CONTINUE IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, OR (F) ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF ANY CLAIM OR CAUSE OF ACTION, IN EACH CASE, ON ACCOUNT OF OR WITH RESPECT TO ANY RELEASED CLAIM OR ANY CLAIM OR CAUSE OF ACTION THAT WILL BE A RELEASED CLAIM ON THE SECOND SUPPLEMENTAL EFFECTIVE DATE. NOTHING IN THIS INDENTURE SHALL OR BE
DEEMED TO (OR IS INTENDED TO) LIMIT ANY OF THE RELEASING PARTIES’ RIGHTS TO ASSERT OR PROSECUTE ANY AFFIRMATIVE DEFENSES OR OTHERWISE RAISE ANY DEFENSE OR TAKE ANY ACTION TO DEFEND ITSELF OR THEMSELVES, INCLUDING ANY DEFENSE AVAILABLE UNDER BANKRUPTCY LAW, IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION (WHETHER DIRECT OR INDIRECT) BROUGHT BY ANY PERSON RELATING TO ANY OF THE CLAIMS OR CAUSES OF ACTION ARISING FROM, IN WHOLE OR IN PART, THE RELEASED CLAIMS OR (X) THE FORMULATION, PREPARATION, DISSEMINATION, NEGOTIATION, OR FILING OF THE TRANSACTION SUPPORT AGREEMENT, THE DEFINITIVE DOCUMENTS, OR ANY RECAPITALIZATION TRANSACTION, CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE TRANSACTION SUPPORT AGREEMENT OR THE DEFINITIVE DOCUMENTS AND (Y) THE PURSUIT OF CONSUMMATION, THE ADMINISTRATION AND IMPLEMENTATION OF THE RECAPITALIZATION TRANSACTIONS, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES IN CONNECTION THEREWITH.

(e) Turnover of Subsequently Recovered Assets. (i) Subject to the occurrence of the Second Supplemental Effective Date, in the event that any Releasing Party (including any successor or assignee thereof) receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against NMG or the MT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), such Releasing Party shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of the Issuers, NMG or the applicable MT Entity. NMG or the applicable MT Entity shall distribute any such recoveries turned over or assigned to it in accordance with the applicable Definitive Documents. Notwithstanding anything to the contrary in this Indenture (but subject to Section 11.19(e)(ii)), each of the Issuers shall be entitled to enforce this Section 11.19(e)(i) on behalf of NMG or any MT Entity. The Releasing Parties will be bound by this Section 11.19(e) notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

(ii) Notwithstanding anything to the contrary in this Indenture, (i) Section 11.19(e)(i) shall only apply to the Releasing Parties in their capacities as holders of Notes, and shall not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor in possession or any similar financing and (ii) to the extent a Releasing Party receives consideration on account of a Claim secured by assets or property of any Company Party or its subsidiaries (other than, for the avoidance of doubt, the Specified Claims or any such assets or property contributed to or otherwise obtained by any Company Party or its subsidiaries on account of the Specified Claims), such consideration will not be subject to Section 11.19(e)(i).

SECTION 1.04 Definitions. Section 1.1 of the Indenture is hereby amended to add in the appropriate alphabetical order the following new definitions:
“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the date hereof, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

“Claim” means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Commitment Letter” means the commitment letter between the Sponsors and certain of the holders of the Unsecured Notes (as of immediately prior to the Second Supplemental Effective Date) relating to the New Second Lien Notes.

“Company Party” means Neiman Marcus Group, Inc., a Delaware corporation (“NMG”), and each of its Subsidiaries that has executed and delivered counterpart signature pages to the Transaction Support Agreement.

“Consenting Cash Pay Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Consenting PIK Toggle Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the PIK Toggle Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.
“Consenting Term Loan Lenders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Term Loans that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Consenting Unsecured Noteholders” means, collectively, the Consenting Cash Pay Noteholders and the Consenting PIK Toggle Noteholders. “Consenting Unsecured Noteholders” includes Consenting Term Loan Lenders that are also holders of Unsecured Notes.

“Consenting Stakeholders” means, collectively, the Consenting Unsecured Noteholders, the Consenting Term Loan Lenders and the Sponsors.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions.

“Equity Securities” means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).

“Exchange Offer and Consent Solicitation” means the Exchange Offer and Consent Solicitation, commencing as of April 29, 2019 relating to the Unsecured Notes, issued by the Issuers.

“Existing Common Stock” means the shares of common stock issued by the LLC Co-Issuer and outstanding.

“MT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MyTheresa Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.

“MyTheresa Designation” means, collectively, all designations by any Company Party or any of their Related Parties prior to the Second Supplemental Effective Date of any of the MT Entities as “unrestricted” subsidiaries under the Indenture, the Senior Credit Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Company Party (including but not limited to NMG International LLC, a Delaware limited liability company) prior to the Second Supplemental Effective Date to or for the benefit of any other
Company Parties of (1) any Equity Securities in the MT Entities, (2) any indebtedness owed by the MT Entities to any Company Party (including but not limited to NMG International LLC), and (3) any and all other Claims or Equity Securities of any Company Party (including but not limited to NMG International LLC) in the MT Entities, and all acts or omissions of any Company Party or any of its Related Parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1)—(3).

“MYT Holdco” means MYT Holding Co., a direct wholly owned subsidiary of MYT Parent, a newly formed Delaware corporation, together with its successors.

“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.

“Nancy Transaction” means, collectively, (a) the formation of Nancy Holdings LLC, a Delaware limited liability company, (b) all designations prior to the Second Supplemental Effective Date by any Company Party or any of its Related Parties of Nancy Holdings LLC as an “unrestricted” subsidiary under this Indenture, the Senior Credit Agreement, or the ABL Credit Agreement, (c) all contributions, investments, conveyances, or transfers of any real properties or any interests associated with such real properties by any Company Party or any of its Related Parties in or to Nancy Holdings LLC prior to the Second Supplemental Effective Date, (d) all leases of real properties or any interests associated with such real properties between Nancy Holdings LLC as lessor, and any Company Party as lessee, entered into prior to the Second Supplemental Effective Date, and (e) all acts or omissions taken prior to the Second Supplemental Effective Date by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing.

“New Second Lien Notes” means the New Second Lien Notes due 2024 issued under that certain indenture, dated as of June 7, 2019, by and among the Issuers, Neiman Marcus Group, LLC, the Subsidiary Co-Issuer and Ankura Trust Company, LLC, as trustee.

“New Third Lien Notes” means the New Third Lien Notes due 2024 issued under that certain indenture, dated as of June 7, 2019, by and among the Issuers, Neiman Marcus Group, LLC, the Subsidiary Co-Issuer and Wilmington Trust, National Association, as trustee.

“PIK Toggle Notes” means the 8.750%/9.500% Senior PIK Toggle Notes due 2021.
Recapitalization Transactions means the consensual recapitalization of certain of the Company Parties’ outstanding indebtedness and equity interests consisting of the consummation of the exchange offers involving the exchange of the Notes and/or the PIK Toggle Notes for New Third Lien Notes, the issuance of the New Second Lien Notes and the issuance of the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock on terms and conditions consistent with the Transaction Support Agreement.

Related Parties means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity.

Released Party means, collectively, (a) each of the Company Parties, (b) each of the Consenting Stakeholders, and (c) the Related Parties of each of the foregoing Persons in clauses (a) and (b) of this definition.

Releasing Party means collectively, (a) each of the Consenting Cash Pay Noteholders, in its capacity as a Holder of the Notes, and (b) to the maximum extent permitted by law, each of the Consenting Cash Pay Noteholders on behalf of its Related Parties.

Satisfactory Indemnity means an indemnity to the Trustee from one or more Holders (the “Instructing Holders”) relating to requesting, instructing or directing the Trustee to exercise or enforce any of the Trustee’s rights or powers, engage in litigation, incur any expense or risk the Trustee’s funds, incur any financial liability or take any action or refrain from taking any action, including when any action is referred to hereunder as a duty of the Trustee (collectively, an “Instruction”), which indemnity shall be satisfactory to the Trustee (in its sole discretion) and shall be required to (unless such requirement has been expressly waived by the Trustee (acting in its sole discretion)):

(a) extend to the Trustee and each director, officer, employee and agent of the Trustee and any other person requested by the Trustee (each, an “Indemnified Person”);

(b) include reimbursement for, without limitation, any and all losses, liabilities, judgments, claims, causes of action, costs and expenses (including fees and disbursements of legal counsel, including, if applicable, local counsel, litigation counsel and any required specialist counsels) incurred or suffered by an Indemnified Person in any way, directly or indirectly, arising out of, related to, or connected with the compliance by any Indemnified Person with such Instruction or the taking or not taking or action in accordance with such Instruction (collectively, “Losses”), including, without limitation, (i) any claim, cause of action, litigation, proceeding, action or investigation (whether civil, criminal or administrative and whether sounding in tort, contract or otherwise and whether such Indemnified Person is a party to such litigation, proceeding or investigation) in any way directly or indirectly, arising out of, related to, or connected with, the taking, by any Indemnified Person, of action in accordance with such Instruction and (ii) Losses resulting
from, arising out of or in any manner connected with, directly or indirectly, (a) a determination that any Indemnified Person breached its or their duties under the Indenture or any document executed in connection therewith as a result of relying upon and complying with such Instruction and (b) the enforcement of the indemnity;

(c) be on a joint and several basis from Instructing Holders holding an aggregate principal amount of outstanding Notes sufficient to make such Instruction under the terms of the Indenture, where such holdings are evidenced by DTC authorization letters, dated as of the same date, provided to the Trustee and to the Issuer stating that DTC has authorized such Instructing Holders to take action on behalf of DTC as the registered Holder;

(d) provide a cash deposit or letter of credit in an amount requested by the Trustee sufficient (in the Trustee’s sole and absolute discretion) to ensure that the Trustee does not, in connection with taking action under the Instruction, risk its own funds or incur any financial liability as a result of any Losses, including reimbursement for all expenses, such cash deposit or letter of credit to remain in escrow or outstanding during any relevant statute of limitations period, notwithstanding any Instructing Holder’s recession or withdrawal of the Instruction; and

(e) provide for any other terms the Trustee shall request relating to such indemnification.

“Senior Credit Agreement Amendment” means the amendment to the Senior Credit Agreement, dated as of June 7, 2019, by and among the Issuers, Credit Suisse AG, as administrative agent and collateral agent, and the Consenting Term Lenders.

“Term Loans” means terms loans under the Senior Credit Agreement.

“Second Supplemental Effective Date” mean June 7, 2019.

“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Transaction Support Agreement” means the transaction support agreement, dated as of March 25, 2019, by and among the Company Parties, the Consenting Unsecured Noteholders, the Consenting Term Loan Lenders, and the Sponsors.

“Unsecured Notes” means the Notes and the PIK Toggle Notes.

**ARTICLE TWO**

**ASSUMPTION OF OBLIGATIONS**

SECTION 2.01 **Agreement to Assume Obligations.** The New LLC Co-Issuer and the Subsidiary Co-Issuer expressly confirm that, effective immediately upon their execution and
delivery of their respective counterpart signature page to this Second Supplemental Indenture and thereafter, each of the New LLC Co-Issuer and the Subsidiary Co-Issuer assumes, and hereby agrees to perform and observe to be bound by, each and every one of the covenants, promises, agreements, terms, obligations, duties and liabilities of an “Issuer” under the Indenture and each of the Notes. By virtue of the foregoing, immediately upon their execution and delivery of their respective counterpart signature page to this Second Supplemental Indenture and thereafter, each of the New LLC Co-Issuer and the Subsidiary Co-Issuer hereby accepts and assumes joint and several liability, with each of the LLC Co-Issuer and the Corporate Co-Issuer, with respect to each representation, warranty, covenant or obligation made by any of the Issuers in the Indenture. For the avoidance of doubt, each of the New LLC Co-Issuer and the Subsidiary Co-Issuer agrees to be bound by all of the provisions of the Indenture applicable to an Issuer and to perform all of the obligations and agreements of an Issuer under the Indenture.

ARTICLE THREE
MISCELLANEOUS

SECTION 3.01 No Recourse Against Others. No manager, managing director, director, officer, employee, incorporator or holder of any Equity Securities in the Issuers, any Subsidiary or any Parent Entity, as such, will have any liability for any obligations of the Issuers or the Guarantors under the Notes, the Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes, by accepting a Note, waives and releases all such liability. This waiver and release are part of the consideration for issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

SECTION 3.02 Effective Date of this Supplemental Indenture. This Supplemental Indenture shall be effective as of June 7, 2019 upon consummation of the Exchange Offer and Consent Solicitation.

SECTION 3.03 Reference to and Effect on the Indenture. On and after the effective date, each reference in the Indenture to “this Indenture,” “hereunder,” “hereof,” or “herein” (and all references to the Indenture in any other agreements, documents or instruments) shall mean and be a reference to the Indenture as supplemented by this Supplemental Indenture, unless the context otherwise requires. The Indenture, as supplemented by this Supplemental Indenture, shall be read, taken and construed as one and the same instrument. Except as specifically amended above, the Indenture shall remain in full force and effect and is hereby ratified and confirmed.

SECTION 3.04 Governing Law. This Supplemental Indenture will be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 3.05 Waiver of Jury Trial. EACH OF THE ISSUERS, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.
SECTION 3.06  **Severability.** In case any provision in this Supplemental Indenture or the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

SECTION 3.07  **Successors.** All agreements of the Issuers and each Guarantor in this Supplemental Indenture, the Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Supplemental Indenture and the Notes will bind its respective successors.

SECTION 3.08  **Trust Indenture Act Controls.** No modification of any provisions of the Indenture effected by this Supplemental Indenture is intended to eliminate or limit any provision of the Indenture that is required to be included therein by the Trust Indenture Act of 1939, as amended, as in force as of the effectiveness of this Supplemental Indenture.

SECTION 3.09  **The Trustee.** The Trustee will not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Issuers. In executing this Supplemental Indenture, the Trustee is acting solely in conclusive reliance on the consents provided as contemplated by the Statement and the Officer’s Certificate and Opinion of Counsel delivered to it in accordance with the express provisions of the Indenture on or about the date hereof in connection herewith.

SECTION 3.10  **Counterparts.** The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a “pdf” or “tif”) will be effective as delivery of a manually executed counterpart thereof.

SECTION 3.11  **Effect of Headings.** The section headings herein are for convenience only and will not affect the construction hereof.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NEIMAN MARCUS GROUP LTD LLC

By:  /s/ Tracy M. Preston
     Name:  Tracy M. Preston
     Title:  Senior Vice President, General Counsel, Corporate Secretary
             and Chief Compliance Officer

MARIPOSA BORROWER, INC.

By:  /s/ Tracy M. Preston
     Name:  Tracy M. Preston
     Title:  Vice President and Secretary

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
THE NMG SUBSIDIARY LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

THE NEIMAN MARCUS GROUP LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
GUARANTORS

BERGDORF GOODMAN INC.
BERGDORF GRAPHICS, INC.
BG PRODUCTIONS, INC.
NM BERMUDA, LLC
NM FINANCIAL SERVICES, INC.
NM NEVADA TRUST
NMGP, LLC
WORTH AVENUE LEASING COMPANY

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NMG GLOBAL MOBILITY, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President, General Counsel and Secretary

NEMA BEVERAGE CORPORATION
NEMA BEVERAGE HOLDING CORPORATION
NEMA BEVERAGE PARENT CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President
GUARANTORS

NMG CALIFORNIA SALON LLC
NMG FLORIDA SALON LLC
NMG SALONS LLC
NMG TEXAS SALON LLC

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Chief Executive Officer and President

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
GUARANTORS

NMG TERM LOAN PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
GUARANTORS

NMG NOTES PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
NM ENTITIES

MYT PARENT CO.
MYT HOLDING CO.
MYT INTERMEDIATE HOLDING CO.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
DRIVETRAIN TRUST COMPANY LLC, as Trustee

By: /s/ Timothy Daileader

Name: Timothy Daileader
Title: Authorized Signatory

[Signature Page to Second Supplemental Indenture (Cash Pay Notes)]
SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”), dated as of June 6, 2019 is by and among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), The Neiman Marcus Group LLC, a Delaware limited liability company (the “New LLC Co-Issuer”) and The NMG Subsidiary LLC (the “Subsidiary Co-Issuer” and, together with the LLC Co-Issuer, the Corporate Co-Issuer and the New LLC Co-Issuer, the “Issuers”), each of the parties identified as a Guarantor on the signature pages hereto (each, a “Guarantor” and collectively, the “Guarantors”) and Drivetrain Trust Company LLC (as successor to U.S. Bank National Association), as trustee (the “Trustee”) under the Indenture, dated as of October 21, 2013, as supplemented by the First Supplemental Indenture, dated as of October 25, 2013 (as further amended, supplemented, waived or otherwise modified from time to time prior to the date hereof, the “Indenture”). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in the Indenture.

W I T N E S S E T H:

WHEREAS, the Issuers, the Guarantors party thereto and the Trustee have heretofore executed and delivered the Indenture providing for the issuance by the Issuers of the 8.750%/9.500% Senior PIK Toggle Notes due 2021 (the “Notes”);

WHEREAS, the Issuers have solicited consents from the Holders of the Notes to certain proposed amendments to the Indenture, in accordance with the terms and conditions of the Confidential Offering Memorandum and Consent Solicitation Statement, dated April 29, 2019 (as supplemented to the date hereof, the “Statement”);

WHEREAS, Section 9.2 of the Indenture provides that, with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, the Issuers, the Guarantors party thereto and the Trustee may amend or supplement the Indenture or the Notes in accordance with such Section 9.2;

WHEREAS, the Holders of 91.37% of the aggregate principal amount of the outstanding Notes have consented to the substance of this Supplemental Indenture and the transactions contemplated hereby as contemplated by the Statement;

WHEREAS, the Issuers have heretofore delivered or are delivering contemporaneously herewith to the Trustee the Officer’s Certificate and the Opinion of Counsel described in Sections 9.5, 11.2 and 11.3 of the Indenture; and

WHEREAS, all other acts and proceedings required by law and the Indenture necessary to authorize the execution and delivery of this Supplemental Indenture and to make this Supplemental Indenture a valid and binding agreement for the purposes expressed herein, in accordance with its terms, have been complied with or have been duly done or performed.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto, intending to be legally bound hereby, agree as follows:
ARTICLE ONE

AMENDMENTS

SECTION 1.01  Deletion of Provisions. The Indenture is hereby amended to delete the following sections in their entirety, and, in the case of each such section, insert in lieu thereof the phrase “[Intentionally Omitted]” and any and all references thereto (including any definitions the references to which would be eliminated as a result of such deletions), and any and all obligations thereunder, and references to any events of default related thereto are hereby deleted throughout the Indenture and such sections and references shall be of no further force or effect.

(a) Section 3.2 entitled “Reports and Other Information.”

(b) Section 3.3 entitled “Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.”

(c) Section 3.4 entitled “Limitation on Restricted Payments.”

(d) Section 3.5 entitled “Liens.”

(e) Section 3.6 entitled “Dividend and Other Payment Restrictions Affecting Subsidiaries.”

(f) Section 3.7 entitled “Asset Sales.”

(g) Section 3.8 entitled “Transactions with Affiliates.”

(h) Section 3.9 entitled “Change of Control.”

(i) Section 3.10 entitled “Maintenance of Insurance.”

(j) Section 3.11 entitled “Additional Guarantors.”

(k) Section 3.12 entitled “Compliance Certificate; Statement by Officers as to Default.”

(l) Section 3.13 entitled “Designation of Restricted and Unrestricted Subsidiaries.”

(m) Section 3.15 entitled “Stay, Extension and Usury Laws.”

(n) Clauses (c), (d), (e), (f), (g) and (h) of Section 6.1 entitled “Events of Default.”

(o) Article IV entitled “Merger; Consolidation or Sale of All or Substantially All Assets.”

SECTION 1.02  Amended Provisions. The Indenture is hereby amended to:
In Section 6.5, replace the words “security and indemnity satisfactory to it against any loss, liability or expense” with the words “a Satisfactory Indemnity with respect to such direction” and replace the words “security or indemnification satisfactory to it in its sole discretion against all losses, liabilities and expenses that may be caused by taking or not taking such action” with the words “a Satisfactory Indemnity with respect to taking or not taking such action”.

In Section 6.6, replace the words in the first paragraph “indemnity or security satisfactory to it against any loss, liability or expense”, the words in clause (c) “security or indemnity reasonably satisfactory to it in respect of any loss, liability or expense” and the words in clause (d) “security or indemnity” with, in each case, the words “a Satisfactory Indemnity”.

In Section 6.6, delete the lead-in to the last sentence of the first paragraph thereof in its entirety and replace it with the following: “Except to enforce the right to receive payment of principal, premium, if any, or interest, when due, no Holder may pursue any remedy upon, arising from, in connection with, under or with respect to this Indenture, the Notes, the Recapitalization Transactions or the Released Claims (as set forth in Section 11.18 of this Indenture) or for the appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy unless:”

In Section 6.6(b), add “To the fullest extent permitted by law,” before “Holders”.

In Section 6.6(b), replace the words “25.0%” with the words “100.0%”.

In Section 6.6(d) and (e), replace the words “60 days” with “120 days”.

In Section 6.11, replace the words “10.0%” with the words “50.0%”.

In Section 7.1, replace the words in clause (f) “indemnity satisfactory to it” with the words “a Satisfactory Indemnity” and replace the words in clause (h) “security, prefunding or indemnity satisfactory to it against the costs, expenses (including reasonable attorneys’ fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction” with the words “a Satisfactory Indemnity with respect to such request or direction”.

In Section 7.7(c), replace the word “mail” with “deliver”.

In Section 7.7(d), replace the words “10.0%” with the words “66 2/3%”.

SECTION 1.03 Additional Provisions. The Indenture is hereby amended to insert the following sections:

(a) Section 6.12. Provisions for Benefit of Issuers and Trustee. Notwithstanding anything else in this Indenture to the contrary, no provision in this Indenture shall be construed as solely for the benefit of the Holders.
Section 11.17. Ratification of Certain Transactions.

Each of the Issuers, the Guarantors and, by its tender of its Notes, each Consenting PIK Toggle Noteholder (in its capacity as a Holder of the Notes) hereby acknowledges, ratifies and agrees to the consummation of the Recapitalization Transactions.

Section 11.18. Waiver of Defaults and Events of Default. Effective as of the Second Supplemental Effective Date, by its tender of its Notes, each Consenting PIK Toggle Noteholder (in its capacity as a Holder of the Notes), collectively constituting the Holders of at least a majority in aggregate principal amount of the outstanding Notes, waives, rescinds, and cancels any existing or past breach or alleged breach of any provision of this Indenture, if any, or any existing or past Default or Event of Default or alleged Default or Event of Default, if any, that arose or is alleged to have arisen as a result of, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith.

Section 11.19. Releases.

Releases by the Releasing Parties. Effective as of the Second Supplemental Effective Date, by accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each of the Releasing Parties hereby agrees to conclusively, absolutely, unconditionally, irrevocably, and forever fully release, remise, and discharge each of the Released Parties (and each such Released Party shall be deemed forever released, remised, and discharged by or on behalf of the Releasing Parties) and their respective assets and properties from any and all Claims and Causes of Action, including any derivative claims asserted on behalf of any of the Company Parties or the Releasing Parties, that the Trustee (solely in respect of, and on behalf of, such Releasing Parties) or any of the Releasing Parties would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Equity Security in, a Company Party or other Person, based on or relating to, or in any manner arising from, in whole or in part, (i) the MyTheresa Designation, (ii) the MyTheresa Distribution, (iii) the Nancy Transaction, (iv) the formulation, preparation, dissemination, negotiation, or filing of the Transaction Support Agreement, the Definitive Documents, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Transaction Support Agreement or the Definitive Documents, or (v) the pursuit of consummation, the administration or implementation of any of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith (collectively, any Claim, Cause of Action, or any other debt, obligation, right, suit, damage, judgment, action, remedy, or liability which is released by such Releasing Party in clauses (i) through (v), the “Released Claims” and each a “Released Claim”). Notwithstanding anything to the contrary in the foregoing, nothing contained herein shall release, remise or discharge (1) any obligation of any Person under the Definitive Documents or any Recapitalization Transaction in effect after the Second Supplemental Effective Date or (2) with
respect to the items in clauses (iv) and (v) of this Section 11.19(a), any Claim or Cause of Action that is determined by a final non-appealable judgment of a court of competent jurisdiction to have constituted fraud or willful misconduct. Each Releasing Party hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Person in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. Notwithstanding anything to the contrary in this Section 11.19(a), nothing in this Indenture shall or be deemed to (or is intended to) limit any of the Releasing Parties’ rights to assert or prosecute any affirmative defenses or otherwise raise any defense or take any action to defend itself or themselves, including any defense available under Bankruptcy Law, in connection with any Claim or Cause of Action (whether direct or indirect) brought by any Person relating to any of the above-referenced Claims and Causes of Action arising from, in whole or in part, (x) the formulation, preparation, dissemination, negotiation, or filing of the Indenture, the Transaction Support Agreement, the Definitive Documents, the Commitment Letter, any Recapitalization Transaction, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Transaction Support Agreement or the Definitive Documents, and (y) the pursuit of consummation, the administration and implementation of the Recapitalization Transactions, including the issuance or distribution of securities in connection therewith. For the avoidance of doubt, the release set forth in this Section 11.19 is hereby granted by or on behalf of each of the Releasing Parties solely in its capacity as a Holder of the Notes that it holds, and on behalf of its Related Parties, only to the extent that a Holder, acting in its capacity as a Holder, has the authority to bind such Related Party, in each case, in accordance with the terms and conditions set forth in this Indenture.

(b) **No Additional Representations and Warranties.** No Released Party, in any capacity, has warranted or otherwise made any representations concerning any Released Claim (including any representation or warranty concerning the existence, non-existence, validity, or invalidity of any Released Claim).

(c) **Release of Unknown Claims.** By accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each of the Releasing Parties (in its capacity as a Holder of the Notes) expressly acknowledges that although ordinarily a general release may not extend to any Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, it has carefully considered and taken into account in determining to enter into the releases set forth in this Section 11.19 the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party (in its capacity as a Holder of the Notes) expressly waives and relinquishes any and all rights such Person may have or conferred upon such Person under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the releases set forth in this Section 11.19 which may in any way limit the effect or scope of such releases with respect to the Released Claims, which such Person did not know or suspect to exist in such Person’s favor at the time of providing such releases, which in each case if known by it may have materially affected its settlement with any Released Party, including any rights under Section 1542 of the California Civil Code or any analogous applicable state or federal law or regulation. Each of the Releasing Parties expressly acknowledges that the releases and covenants not to sue contained in this
Indenture are effective regardless of whether those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or foreseen or unforeseen.

It is the intention of the Releasing Parties that the releases set forth in this Section 11.19 shall be effective as a bar to any and all Claims and Causes of Action of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified in this Indenture. In furtherance of this intention, by accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each Releasing Party, expressly waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law, which are as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

By accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each Releasing Party (in its capacity as a Holder of the Notes) acknowledges that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. Thus, notwithstanding the provisions of Section 1542 of the California Civil Code, and for the purpose of implementing a full and complete release and discharge of the Released Parties, by accepting the benefits of this Indenture and by its tender of its Notes as contemplated by the Statement, each Releasing Party (in its capacity as a Holder of the Notes) expressly acknowledges that this Indenture is intended to include in its effect without limitation all of the claims, causes of action and liabilities which the Releasing Parties do not know or suspect to exist in their favor as of the Second Supplemental Effective Date, and this Indenture contemplates extinguishment of all such claims, causes of action and liabilities.

(d) Covenant to Refrain from Certain Actions. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS INDENTURE (INCLUDING IN THE SECOND-TO-LAST SENTENCE OF SECTION 11.19(a)), FROM AND AFTER THE SECOND SUPPLEMENTAL EFFECTIVE DATE, BY ACCEPTING THE BENEFITS OF THIS INDENTURE AND BY ITS TENDER OF ITS NOTES AS CONTEMPLATED BY THE STATEMENT, EACH OF THE RELEASING PARTIES AGREES AND COVENANTS NOT TO, AND SHALL NOT, AND SHALL NOT ASSIST OR OTHERWISE AID ANY OTHER PERSON TO, (A) COMMENCE OR CONTINUE, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION, OR OTHER PROCEEDING; (B) ENFORCE, ATTACH, COLLECT, OR RECOVER IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (C) CREATE, PERFECT, OR ENFORCE ANY LIEN OR ENCUMBRANCE; (D) ASSERT A SETOFF, RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND; (E) COMMENCE OR CONTINUE IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, OR (F) ASSIGN, TRANSFER, OR OTHERWISE DISPOSE OF ANY CLAIM OR CAUSE OF ACTION, IN EACH CASE, ON ACCOUNT OF OR WITH RESPECT TO ANY RELEASED CLAIM OR ANY CLAIM OR CAUSE OF ACTION THAT WILL BE A RELEASED CLAIM ON THE SECOND SUPPLEMENTAL EFFECTIVE DATE. NOTHING IN THIS INDENTURE SHALL OR BE
DEEMED TO (OR IS INTENDED TO) LIMIT ANY OF THE RELEASING PARTIES’ RIGHTS TO ASSERT OR PROSECUTE ANY AFFIRMATIVE DEFENSES OR OTHERWISE RAISE ANY DEFENSE OR TAKE ANY ACTION TO DEFEND ITSELF OR THEMSELVES, INCLUDING ANY DEFENSE AVAILABLE UNDER BANKRUPTCY LAW, IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION (WHETHER DIRECT OR INDIRECT) BROUGHT BY ANY PERSON RELATING TO ANY OF THE CLAIMS OR CAUSES OF ACTION ARISING FROM, IN WHOLE OR IN PART, THE RELEASED CLAIMS OR (X) THE FORMULATION, PREPARATION, DISSEMINATION, NEGOTIATION, OR FILING OF THE TRANSACTION SUPPORT AGREEMENT, THE DEFINITIVE DOCUMENTS, OR ANY RECAPITALIZATION TRANSACTION, CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE TRANSACTION SUPPORT AGREEMENT OR THE DEFINITIVE DOCUMENTS AND (Y) THE PURSUIT OF CONSUMMATION, THE ADMINISTRATION AND IMPLEMENTATION OF THE RECAPITALIZATION TRANSACTIONS, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES IN CONNECTION THEREWITH.

(e)   Turnover of Subsequently Recovered Assets. (i) Subject to the occurrence of the Second Supplemental Effective Date, in the event that any Releasing Party (including any successor or assignee thereof) receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against NMG or the MT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), such Releasing Party shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of the Issuers, NMG or the applicable MT Entity. NMG or the applicable MT Entity shall distribute any such recoveries turned over or assigned to it in accordance with the applicable Definitive Documents. Notwithstanding anything to the contrary in this Indenture (but subject to Section 11.19(e)(ii)), each of the Issuers shall be entitled to enforce this Section 11.19(e)(i) on behalf of NMG or any MT Entity. The Releasing Parties will be bound by this Section 11.19(e) notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

(ii)   Notwithstanding anything to the contrary in this Indenture, (i) Section 11.19(e)(i) shall only apply to the Releasing Parties in their capacities as holders of Notes, and shall not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor in possession or any similar financing and (ii) to the extent a Releasing Party receives consideration on account of a Claim secured by assets or property of any Company Party or its subsidiaries (other than, for the avoidance of doubt, the Specified Claims or any such assets or property contributed to or otherwise obtained by any Company Party or its subsidiaries on account of the Specified Claims), such consideration will not be subject to Section 11.19(e)(i).

SECTION 1.04 Definitions. Section 1.1 of the Indenture is hereby amended to add in the appropriate alphabetical order the following new definitions:

“Cash Pay Notes” means the 8.000% Senior Cash Pay Notes due 2021.
“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the date hereof, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

“Claim” means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Commitment Letter” means the commitment letter between the Sponsors and certain of the holders of the Unsecured Notes (as of immediately prior to the Second Supplemental Effective Date) relating to the New Second Lien Notes.

“Company Party” means Neiman Marcus Group, Inc., a Delaware corporation (“NMG”), and each of its Subsidiaries that has executed and delivered counterpart signature pages to the Transaction Support Agreement.

“Consenting Cash Pay Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Consenting PIK Toggle Noteholders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the PIK Toggle Notes that agreed to be bound by the terms and conditions of the Transaction Support Agreement.
“Consenting Term Loan Lenders” means the holders of, nominees, investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold certain of the Term Loans that agreed to be bound by the terms and conditions of the Transaction Support Agreement.

“Consenting Unsecured Noteholders” means, collectively, the Consenting Cash Pay Noteholders and the Consenting PIK Toggle Noteholders. “Consenting Unsecured Noteholders” includes Consenting Term Loan Lenders that are also holders of Unsecured Notes.

“Consenting Stakeholders” means, collectively, the Consenting Unsecured Noteholders, the Consenting Term Loan Lenders and the Sponsors.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions.

“Equity Securities” means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).

“Exchange Offer and Consent Solicitation” means the Exchange Offer and Consent Solicitation, commencing as of April 29, 2019 relating to the Unsecured Notes, issued by the Issuers.

“Existing Common Stock” means the shares of common stock issued by the LLC Co-Issuer and outstanding.

“MT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MyTheresa Assets” means the assets described in clauses (1), (2), and (3) of the definition of MyTheresa Distribution.

“MyTheresa Designation” means, collectively, all designations by any Company Party or any of their Related Parties prior to the Second Supplemental Effective Date of any of the MT Entities as “unrestricted” subsidiaries under the Indenture, the Senior Credit Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Company Party (including but not limited to NMG International LLC, a Delaware limited liability company) prior to the Second Supplemental Effective Date to or for the benefit of any other
Company Parties of (1) any Equity Securities in the MT Entities, (2) any indebtedness owed by the MT Entities to any Company Party (including but not limited to NMG International LLC), and (3) any and all other Claims or Equity Securities of any Company Party (including but not limited to NMG International LLC) in the MT Entities, and all acts or omissions of any Company Party or any of its Related Parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1)—(3).

“MYT Holdco” means MYT Holding Co., a direct wholly owned subsidiary of MYT Parent, a newly formed Delaware corporation, together with its successors.

“MYT Parent” means MYT Parent Co., a newly formed Delaware corporation, together with its successors.

“MYT Holdco Preferred Series A Certificate” means the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Preferred Series B Certificate” means the certificate of designation governing the MYT Holdco Series B Preferred Stock.

“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series A Certificate.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of the MYT Holdco under the MYT Holdco Preferred Series B Certificate.

“Nancy Transaction” means, collectively, (a) the formation of Nancy Holdings LLC, a Delaware limited liability company, (b) all designations prior to the Second Supplemental Effective Date by any Company Party or any of its Related Parties of Nancy Holdings LLC as an “unrestricted” subsidiary under this Indenture, the Senior Credit Agreement, or the ABL Credit Agreement, (c) all contributions, investments, conveyances, or transfers of any real properties or any interests associated with such real properties by any Company Party or any of its Related Parties in or to Nancy Holdings LLC prior to the Second Supplemental Effective Date, (d) all leases of real properties or any interests associated with such real properties between Nancy Holdings LLC as lessee, and any Company Party as lessor, entered into prior to the Second Supplemental Effective Date, and (e) all acts or omissions taken prior to the Second Supplemental Effective Date by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing.

“New Second Lien Notes” means the New Second Lien Notes due 2024 issued under that certain indenture, dated as of June 7, 2019, by and among the Issuers, Neiman Marcus Group, LLC, the Subsidiary Co-Issuer and Ankura Trust Company, LLC, as trustee.

“New Third Lien Notes” means the New Third Lien Notes due 2024 issued under that certain indenture, dated as of June 7, 2019, by and among the Issuers, Neiman Marcus Group, LLC, the Subsidiary Co-Issuer and Wilmington Trust, National Association, as trustee.

“PIK Toggle Notes” means the 8.750%/9.500% Senior PIK Toggle Notes due 2021.
“Recapitalization Transactions” means the consensual recapitalization of certain of the Company Parties’ outstanding indebtedness and equity interests consisting of the consummation of the exchange offers involving the exchange of the Notes and/or the Cash Pay Notes for New Third Lien Notes, the issuance of the New Second Lien Notes and the issuance of the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock on terms and conditions consistent with the Transaction Support Agreement.

“Related Parties” means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity.

“Released Party” means, collectively, (a) each of the Company Parties, (b) each of the Consenting Stakeholders, and (c) the Related Parties of each of the foregoing Persons in clauses (a) and (b) of this definition.

“Releasing Party” means collectively, (a) each of the Consenting PIK Toggle Noteholders, in its capacity as a Holder of the Notes, and (b) to the maximum extent permitted by law, each of the Consenting PIK Toggle Noteholders on behalf of its Related Parties.

“Satisfactory Indemnity” means an indemnity to the Trustee from one or more Holders (the “Instructing Holders”) relating to requesting, instructing or directing the Trustee to exercise or enforce any of the Trustee’s rights or powers, engage in litigation, incur any expense or risk the Trustee’s funds, incur any financial liability or take any action or refrain from taking any action, including when any action is referred to hereunder as a duty of the Trustee (collectively, an “Instruction”), which indemnity shall be satisfactory to the Trustee (in its sole discretion) and shall be required to (unless such requirement has been expressly waived by the Trustee (acting in its sole discretion)):

(a) extend to the Trustee and each director, officer, employee and agent of the Trustee and any other person requested by the Trustee (each, an “Indemnified Person”);

(b) include reimbursement for, without limitation, any and all losses, liabilities, judgments, claims, causes of action, costs and expenses (including fees and disbursements of legal counsel, including, if applicable, local counsel, litigation counsel and any required specialist counsels) incurred or suffered by an Indemnified Person in any way, directly or indirectly, arising out of, related to, or connected with the compliance by any Indemnified Person with such Instruction or the taking or not taking or action in accordance with such Instruction (collectively, “Losses”), including, without limitation, (i) any claim, cause of action, litigation, proceeding, action or investigation (whether civil, criminal or administrative and whether sounding in tort, contract or otherwise and whether such Indemnified Person is a party to such litigation, proceeding or investigation) in any way directly or indirectly, arising out of, related to, or connected with the taking, by any
Indemnified Person, of action in accordance with such Instruction and (ii) Losses resulting from, arising out of or in any manner connected with, directly or indirectly, (a) a determination that any Indemnified Person breached its or their duties under the Indenture or any document executed in connection therewith as a result of relying upon and complying with such Instruction and (b) the enforcement of the indemnity;

(c) be on a joint and several basis from Instructing Holders holding an aggregate principal amount of outstanding Notes sufficient to make such Instruction under the terms of the Indenture, where such holdings are evidenced by DTC authorization letters, dated as of the same date, provided to the Trustee and to the Issuer stating that DTC has authorized such Instructing Holders to take action on behalf of DTC as the registered Holder;

(d) provide a cash deposit or letter of credit in an amount requested by the Trustee sufficient (in the Trustee’s sole and absolute discretion) to ensure that the Trustee does not, in connection with taking action under the Instruction, risk its own funds or incur any financial liability as a result of any Losses, including reimbursement for all expenses, such cash deposit or letter of credit to remain in escrow or outstanding during any relevant statute of limitations period, notwithstanding any Instructing Holder’s recession or withdrawal of the Instruction; and

(e) provide for any other terms the Trustee shall request relating to such indemnification.

“Senior Credit Agreement Amendment” means the amendment to the Senior Credit Agreement, dated as of June 7, 2019, by and among the Issuers, Credit Suisse AG, as administrative agent and collateral agent, and the Consenting Term Lenders.

“Term Loans” means terms loans under the Senior Credit Agreement.

“Second Supplemental Effective Date” mean June 7, 2019.

“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Transaction Support Agreement” means the transaction support agreement, dated as of March 25, 2019, by and among the Company Parties, the Consenting Unsecured Noteholders, the Consenting Term Loan Lenders, and the Sponsors.

“Unsecured Notes” means the Notes and the Cash Pay Notes.
ARTICLE TWO

ASSUMPTION OF OBLIGATIONS

SECTION 2.01 Agreement to Assume Obligations. The New LLC Co-Issuer and the Subsidiary Co-Issuer expressly confirm that, effective immediately upon their execution and delivery of their respective counterpart signature page to this Second Supplemental Indenture and thereafter, each of the New LLC Co-Issuer and the Subsidiary Co-Issuer assumes, and hereby agrees to perform and observe to be bound by, each and every one of the covenants, promises, agreements, terms, obligations, duties and liabilities of an “Issuer” under the Indenture and each of the Notes. By virtue of the foregoing, immediately upon their execution and delivery of their respective counterpart signature page to this Second Supplemental Indenture and thereafter, each of the New LLC Co-Issuer and the Subsidiary Co-Issuer hereby accepts and assumes joint and several liability, with each of the LLC Co-Issuer and the Corporate Co-Issuer, with respect to each representation, warranty, covenant or obligation made by any of the Issuers in the Indenture. For the avoidance of doubt, each of the New LLC Co-Issuer and the Subsidiary Co-Issuer agrees to be bound by all of the provisions of the Indenture applicable to an Issuer and to perform all of the obligations and agreements of an Issuer under the Indenture.

ARTICLE THREE

MISCELLANEOUS

SECTION 3.01 No Recourse Against Others. No manager, managing director, director, officer, employee, incorporator or holder of any Equity Securities in the Issuers, any Subsidiary or any Parent Entity, as such, will have any liability for any obligations of the Issuers or the Guarantors under the Notes, the Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes, by accepting a Note, waives and releases all such liability. This waiver and release are part of the consideration for issuance of the Notes. This waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

SECTION 3.02 Effective Date of this Supplemental Indenture. This Supplemental Indenture shall be effective as of June 7, 2019 upon consummation of the Exchange Offer and Consent Solicitation.

SECTION 3.03 Reference to and Effect on the Indenture. On and after the effective date, each reference in the Indenture to “this Indenture,” “hereunder,” “hereof,” or “herein” (and all references to the Indenture in any other agreements, documents or instruments) shall mean and be a reference to the Indenture as supplemented by this Supplemental Indenture, unless the context otherwise requires. The Indenture, as supplemented by this Supplemental Indenture, shall be read, taken and construed as one and the same instrument. Except as specifically amended above, the Indenture shall remain in full force and effect and is hereby ratified and confirmed.

SECTION 3.04 Governing Law. This Supplemental Indenture will be governed by, and construed in accordance with, the laws of the State of New York.
SECTION 3.05 Waiver of Jury Trial. EACH OF THE ISSUERS, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 3.06 Severability. In case any provision in this Supplemental Indenture or the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

SECTION 3.07 Successors. All agreements of the Issuers and each Guarantor in this Supplemental Indenture, the Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Supplemental Indenture and the Notes will bind its respective successors.

SECTION 3.08 Trust Indenture Act Controls. No modification of any provisions of the Indenture effected by this Supplemental Indenture is intended to eliminate or limit any provision of the Indenture that is required to be included therein by the Trust Indenture Act of 1939, as amended, as in force as of the effectiveness of this Supplemental Indenture.

SECTION 3.09 The Trustee. The Trustee will not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Issuers. In executing this Supplemental Indenture, the Trustee is acting solely in conclusive reliance on the consents provided as contemplated by the Statement and the Officer’s Certificate and Opinion of Counsel delivered to it in accordance with the express provisions of the Indenture on or about the date hereof in connection herewith.

SECTION 3.10 Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telexcipient, facsimile or other electronic transmission (i.e. a “pdf” or “tif”) will be effective as delivery of a manually executed counterpart thereof.

SECTION 3.11 Effect of Headings. The section headings herein are for convenience only and will not affect the construction hereof.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NEIMAN MARCUS GROUP LTD LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

MARIPOSA BORROWER, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
THE NMG SUBSIDIARY LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

THE NEIMAN MARCUS GROUP LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President, General Counsel, Corporate Secretary
and Chief Compliance Officer

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
GUARANTORS
BERGDORF GOODMAN INC.
BERGDORF GRAPHICS, INC.
BG PRODUCTIONS, INC.
NM BERMUDA, LLC
NM FINANCIAL SERVICES, INC.
NM NEVADA TRUST
NMGP, LLC
WORTH AVENUE LEASING COMPANY

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

NMG GLOBAL MOBILITY, INC.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President, General Counsel and Secretary

NEMA BEVERAGE CORPORATION
NEMA BEVERAGE HOLDING CORPORATION
NEMA BEVERAGE PARENT CORPORATION

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: President

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
GUARANTORS

NMG CALIFORNIA SALON LLC
NMG FLORIDA SALON LLC
NMG SALONS LLC
NMG TEXAS SALON LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Senior Vice President and General Counsel

NMG SALON HOLDINGS LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Chief Executive Officer and President

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
GUARANTORS

NMG NOTES PROPCO LLC

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President and Secretary

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
GUARANTORS

NMG TERM LOAN PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
NM ENTITIES
MYT PARENT CO.
MYT HOLDING CO.
MYT INTERMEDIATE HOLDING CO.

By:  /s/ Tracy M. Preston
Name:  Tracy M. Preston
Title:  Vice President and Secretary

[Signature Page to Second Supplemental Indenture (PIK Toggle Notes)]
THIRD SUPPLEMENTAL INDENTURE

Third Supplemental Indenture (this “Third Supplemental Indenture”), dated as of June 7, 2019, between The Neiman Marcus Group LLC, a Delaware corporation (the “Company”), and Wilmington Savings Fund Society, FSB, as trustee (the “Trustee”).

W I T N E S S E T H:

WHEREAS, the Company and the Trustee previously have entered into an indenture, dated as of May 27, 1998 (the “Base Indenture”), providing for the issuance of the Company’s 7.125% Senior Debentures due 2028 (the “2028 Debentures”) (the Base Indenture together with the terms of the 2028 Debentures as established as contemplated by Section 301 thereof, the First Supplemental Indenture thereto and the Second Supplemental Indenture thereto is referred to herein as the “Original Indenture” and the Original Indenture as it may from time to time be supplemented or amended, including by this Third Supplemental Indenture, is referred to herein as the “Indenture”);

WHEREAS, Neiman Marcus Group LTD LLC, a Delaware corporation (the “Parent Guarantor”), has guaranteed the 2028 Debentures pursuant to the First Supplemental Indenture to the Indenture;

WHEREAS, Section 902 of the Base Indenture permits the Company, when authorized by a Board Resolution, and the Trustee to enter into one or more indentures supplemental to the Indenture with the consent of a majority of holders of any securities issued thereunder;

WHEREAS, the 2028 Debentures are a series of Securities authenticated and delivered under the Indenture, and for purposes of this Third Supplemental Indenture, all references to “Securities” shall be deemed to refer to the 2028 Debentures;

WHEREAS, the holder of a majority of the aggregate principal amount of the outstanding 2028 Debentures on the date hereof (together with certain of its affiliated investment funds or assignees, the “Majority Holder”) has consented to amend the Indenture and waive any existing defaults or events of defaults and has directed the Trustee to execute this Third Supplemental Indenture;

WHEREAS, the Company has requested that the Trustee join in the execution of this Third Supplemental Indenture; and

WHEREAS, all things necessary to make this Third Supplemental Indenture a valid agreement of the parties and a valid supplement to the Indenture have been done.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree:
ARTICLE ONE
DEFINITIONS

SECTION 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Original Indenture, as supplemented and amended hereby. All definitions in the Original Indenture shall be read in a manner consistent with the terms of this Third Supplemental Indenture.

ARTICLE TWO
AMENDMENTS

SECTION 2.01 Amended and Restated Provisions to the Indenture. The following amendment to the Indenture is hereby made:

(1) All section references in the Base Indenture are hereby amended to remove any and all periods, such that Section 1.01 shall be amended as Section 101, Section 1.02 shall be amended as Section 102 and so on and so forth.

(2) All sections in the Base Indenture shall be renumbered in the following format in order to correspond with the number assigned to such section in the Table of Contents in Base Indenture: Section 101, 102, 103 and so on and so forth.

(3) Section 704 of the Base Indenture is deleted in its entirety, and replaced with the following:

Section 704 Reports by Company.

(a) Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act of 1934, the Company will provide to the Holders and the Trustee the following reports:

(i) within 90 days after the end of each fiscal year (or such longer period as would be provided by the Commission if the Company were then subject to Commission reporting requirements as a non-accelerated filer), an annual report containing:

(A) audited annual financial statements of the Company and a report thereon from the Company’s independent accounting firm; and

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section similar in scope to the information required under such caption by Form 10-K of the Exchange Act of 1934;

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or such longer period as would be permitted by the
Commission if the Company were then subject to Commission reporting requirements as a non-accelerated filer), quarterly reports containing:

(A) unaudited quarterly financial statements of the Company for the fiscal quarter most recently ended and the corresponding fiscal quarter of the prior fiscal year; and

(B) a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” similar in scope to the information required under such caption by Form 10-Q of the Exchange Act of 1934 and, in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter.

(iii) within the time period specified for filing current reports on Form 8-K by the Commission, all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports for any of the following events: (A) significant acquisitions or dispositions, (B) the bankruptcy of the Company or a Significant Subsidiary, (C) the acceleration of any Indebtedness of the Company or any Restricted Subsidiary having a principal amount in excess of $50.0 million, (D) a change in the Company’s certifying independent auditor, (E) the appointment or departure of the Chief Executive Officer or Chief Financial Officer (or persons fulfilling similar duties) of the Company, (F) non-reliance on previously issued financial statements and (G) change of control transactions.

(b) For the avoidance of doubt, notwithstanding the foregoing, (i) the Company will not be required to furnish any information, certificates or reports required by (A) Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (B) Regulation G or Item 10(e) of Regulation S-K promulgated by the Commission with respect to any non-generally accepted accounting principles financial measures contained therein, (ii) the reports referred to above will not be required to contain the separate financial statements or other information contemplated by Rule 3-05, Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X and (iii) the reports referred to above will not be required to present compensation or beneficial ownership information.

(c) At any time that the Company (and any applicable Parent Entity) is not subject to the reporting requirements of Section 13 and 15(d) of the Exchange Act of 1934, in lieu of filing such reports with the Commission, the Company may make available such information electronically (including by posting to a non-public, password-protected website maintained by the Company or a third party) to any Holder, any bona fide prospective investor of the Securities, any bona fide market maker (or person who intends to be a market maker) in the Securities or any bona fide securities analyst, in each case, who provides to the Company its email address, employer name and other information reasonably requested by the Company. Any Person who requests such financial information from the Company or seeks to
participate in any conference call required by this covenant will be required to represent to and agree with the Company (and by accepting such financial information, such Person will be deemed to have represented to and agreed with the Company) to the Company’s good faith satisfaction that:

(i) it is a Holder, a bona fide prospective investor in the Securities, a bona fide market maker (or intended market maker) with respect to the Securities or a bona fide securities analyst, as applicable;

(ii) if it is a prospective purchaser of the Securities, it is (a) a Qualified Institutional Buyer (as defined in Rule 144A of the Securities Act of 1933, as amended), or (b) a non U.S. Person (as defined in Regulation S under the Securities Act of 1933), or (c) an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating an investment in the Securities (or, if it is a bona fide market maker or intended market maker, only in connection with making a market in the Securities or, if it is a bona fide securities analyst, for preparing analysis for Holders and prospective purchasers of the Securities that otherwise have access to the financial information in compliance with this covenant); and

(vi) it (A) will not use such information in any manner intended to compete with the business of the Company and (B) is not a Person (which includes such Person’s Affiliates, other than the Affiliates of a bona fide securities research analyst with whom such research analyst does not share such information) that (1) is principally engaged in a Similar Business or (2) derives a significant portion of its revenues from operating or owning a business substantially Similar Business.

(d) To the extent not satisfied by the foregoing, for so long as any Securities are outstanding (unless satisfied and discharged or defeased), the Company will furnish to Holders and prospective purchasers of the Securities, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act of 1933 (or any successor provision).

(e) Notwithstanding the foregoing, the financial statements, information, auditors’ reports and other documents required to be provided as described above, may be, rather than those of the Company, those of any Parent Entity so long as that Parent Entity is a guarantor of the Securities; provided that the same is accompanied by consolidating information that explains in reasonable detail the
The Company will be deemed to have satisfied the reporting requirements pursuant to Section 704(a) if (i) at any time that the Company or any Parent Entity is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or is a voluntary filer, the Company or any Parent Entity has filed such reports containing such information (including the information required pursuant to the first sentence of Section 704(e), which, for the avoidance of doubt, need not be filed with the Commission via EDGAR to the extent it is otherwise provided to Holders in accordance with this Section 704) with the Commission via the EDGAR (or successor) filing system or (ii) at any time that the Company or any Parent Entity does not file such reports with the Commission via the EDGAR (or a successor) filing system, the Company or any Parent Entity makes such reports available electronically (including by posting to a non-public, password-protected website as provided above) pursuant to this Section 704.

Promptly after the date the annual and quarterly financial information for the prior fiscal period have been furnished pursuant to Section 704(a)(i) or Section 704(a)(ii), the Company will hold a quarterly conference call to review the most recent financial results. Prior to the date such conference call is to be held, the Company will post to its website or a non-public, password-protected website maintained by the Company or a third party an announcement of such quarterly conference call for the benefit of the Trustee, the Holders, beneficial owners of the Securities, prospective purchasers of the Securities, securities analysts and market making financial institutions, which announcement will contain the time and the date of such conference call and direct the recipients thereof to contact an individual at the Company (for whom contact information will be provided in such notice) to obtain information on how to access such quarterly conference call; provided that any Person who attends such conference call with the Company will be required to represent to and agree with the Company (and by attending such conference call, such person will be deemed to have represented and agreed with the Company) to clauses (i) through (vi) of Section 704(c).

If the Company has designated any of its Subsidiaries to be Unrestricted Subsidiaries, then the annual and quarterly financial information required by Section 704(a) will also include a reasonably detailed presentation, as determined in good faith by senior management of the Company, either on the face of the financial statements or in the footnotes to the financial statements and in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries.
(4) Section 507 of the Base Indenture is deleted in its entirety, and replaced with the following:

Section 507  Limitation on Suits. Except to enforce the right to receive payment of principal, premium, if any, or interest, when due, no Holder may pursue any remedy with respect to this Indenture or the Securities unless:

(a) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(b) Holders of at least 25.0% in principal amount of the Outstanding Securities have requested in writing the Trustee to pursue the remedy in its own name as Trustee hereunder;

(c) such Holders have offered the Trustee security or indemnity reasonably satisfactory to it in respect of any loss, liability or expense to be incurred in compliance with such request;

(d) the Trustee has not complied with such request within 60 days after the receipt of such notice, request and offer of security or indemnity or the Trustee has indicated in writing to such Holders that it will not comply with such request within such 60-days period; and

(e) if the direction is given by Holders of less than 50% in principal amount, the Holders of a majority in principal amount of the Outstanding Securities have not given the Trustee a written direction inconsistent with such request within such 60-day period.

SECTION 2.02  Amended Provisions. The Indenture is hereby amended to:

(1) In Section 1006, delete subsection (15) thereof in its entirety and replace it with the following: “any Lien not permitted by clauses (1) through (14) above or clause (16) below securing debt which, together with (i) the aggregate outstanding principal amount of all other debt of the Company and its Restricted Subsidiaries which would otherwise be subject to the foregoing restrictions, (ii) the aggregate Value of existing Sale and Leaseback Transactions which would be subject to the restrictions of Section 1007 but for this clause (15), and (iii) the aggregate fair value, as determined by the Company, of the Call Right Collateral, does not at any time exceed 15% of Consolidated Net Assets.”

(2) In Section 1006, insert the following new subsection (16) after subsection (15): “(16) Liens on (a) the Notes PropCo Assets that are not Non-Mortgageable Leases and (b) to the extent not dissolved in accordance with the definition of “Notes PropCo”, the Notes PropCo Equity Interests ((a) and (b), the “Call Right Collateral”); provided that the Securities shall be secured by third priority liens thereon which shall be pari passu with the third priority liens of the Extended Term Loans on such Call Right Collateral; provided, that, if there is a Call Right Cap Recovery, then solely thereafter,
the Securities will be secured by second priority liens on such Call Right Collateral which liens shall be junior only to the liens of the Extended Term Loans on such Call Right Collateral but senior to the liens of the New Second Lien Notes and the New Third Lien Notes on such Call Right Collateral, except that following the Discharge of the First Lien Obligations, the Securities shall be secured as set forth in Section 2.3(b) of the Junior Lien Intercreditor Agreement (as in effect on the date hereof).

(3) At the end of Section 1006, insert the following:

“Notwithstanding anything set forth above, none of the exceptions in clauses (1) through (16) above shall apply to Liens granted in accordance with the first paragraph of this Section 1006 with respect to any Principal Properties set forth on Exhibit A, Exhibit B or Exhibit C to this Third Supplemental Indenture to the extent such Principal Properties are not Non-Mortgageable Leases other than (i) clause (16) with respect to the Call Right Collateral and (ii) clause (15) with respect to Principal Properties that no longer constitute collateral securing any of the indebtedness subject to the Junior Lien Intercreditor Agreement (whether or not such indebtedness is outstanding as of the date hereof).

Further, for the avoidance of doubt, Section 1006 shall not apply to, and shall not limit in any way, the liens granted in favor of the New Second Lien Notes (or the other Second Lien Obligations (as defined in the Junior Lien Intercreditor Agreement)) or the New Third Lien Notes (or the other Third Lien Obligations (as defined in the Junior Lien Intercreditor Agreement)) with respect to the Other Second Lien Collateral or Other Third Lien Collateral.

SECTION 2.03 Additional Provisions. The Indenture is hereby amended to insert the following sections:

(1) Section 1010. Principal Properties. Notwithstanding anything else in this Indenture to the contrary, for so long as any Securities are outstanding, the Company shall not designate as non-Principal Properties any real estate properties owned or leased by the Company and/or its Subsidiaries as of April 5, 2019, including all of the owned real estate properties and real estate leases (whether operating leases, ground leases, or otherwise), set forth on Exhibit A, Exhibit B and Exhibit C to this Third Supplemental Indenture, all of which shall be deemed “Principal Properties”.

(2) Section 1110. Turnover Provisions.

(a) Subject to the occurrence of the Third Supplemental Effective Date, in the event that any Releasing Party receives any funds, property, or value on account of any Claims, Causes of Action, or litigation against NMG or the MT Entities (or any direct or indirect parent company of such entities) arising from the MyTheresa Designation or the MyTheresa Distribution (collectively, the “Specified Claims”), such Releasing Party shall promptly turn over and assign any such funds, property, or value (including any Equity Securities in any of the MT Entities or proceeds of such Equity Securities, or any increased recoveries resulting therefrom) to, at the election of the Company, NMG or the applicable MT Entity. NMG or the applicable MyTheresa
Entity shall distribute any such recoveries turned over or assigned to it in accordance with the applicable Definitive Documents. Notwithstanding anything to the contrary in this Indenture (but subject to Section 1110(b), the Company shall be entitled to enforce this Section 1110(a) on behalf of NMG or any MyTheresa Entity. The Releasing Parties will be bound by this Section 1110 notwithstanding the nature of any Claim, Cause of Action, or litigation relating to the Recapitalization Transactions or any judgment or order entered on any such Claim, Cause of Action or litigation.

(b) Notwithstanding anything to the contrary in this Indenture, (i) Section 1110(a) shall only apply to the Releasing Parties in their capacities as holders of the 2028 Debentures and shall not, for the avoidance of doubt, apply to any Releasing Party in its capacity as a provider of debtor in possession or any similar financing and (ii) to the extent a Releasing Party receives consideration on account of a Claim secured by assets or property of any Company Party or its subsidiaries (other than, for the avoidance of doubt, the Specified Claims or any such assets or property contributed to or otherwise obtained by any Company Party or its subsidiaries on account of the Specified Claims), such consideration will not be subject to Section 1110(a).

(c) For purposes of this Section 1110, the following terms shall have the following meanings:

"Company Releasing Parties" means each of the Company Parties and, to the maximum extent permitted by law, each of the Company Parties on behalf of its Related Parties.

"Consenting Stakeholders" means (i) the Sponsors and (ii) holders of, nominees investment managers, advisors or subadvisors to funds and/or accounts, or trustees of trusts, that hold (a) outstanding claims under the Existing Credit Agreement (as defined in the Extended Term Loan Credit Agreement), (b) certain of the Cash Pay Notes, (c) certain of the PIK Toggle Notes, or (d) the 2028 Debentures, in each case, that have executed and delivered counterpart signature pages to the TSA, or signature pages to a joinder substantially in the form attached as Exhibit B to the TSA or a transfer agreement substantially in the form attached as Exhibit C to the TSA (as applicable) to counsel to the Company Parties.

"Consenting Stakeholder Releasing Parties" means each of the Consenting Stakeholders that holds 2028 Debentures and, to the maximum extent permitted by law, each of such Consenting Stakeholders on behalf of its Related Parties.

"Equity Securities" means, collectively, the shares (or any class of shares), common stock, capital stock, treasury stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests, and options, warrants, rights, or other securities or agreements to acquire, purchase, or subscribe for, or which are convertible into the shares (or any class of shares) of, common stock, capital stock, treasury stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests (in each case whether or not arising under or in connection with any employment agreement or whether or not vested).
“MT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch HoldCo (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MyTheresa Designation” means, collectively, all designations by any Company Party or any of their Related Parties prior to the Third Supplemental Effective Date of any of the MT Entities as “unrestricted” subsidiaries under the Indenture, the Extended Term Loan Credit Agreement, or the ABL Credit Agreement, and all acts or omissions taken by any Company Party or any of its Related Parties in structuring, implementing, or effectuating the foregoing designations.

“MyTheresa Distribution” means, collectively, all distributions or dividends by any Company Party (including but not limited to NMG International LLC, a Delaware limited liability company) prior to the Third Supplemental Effective Date to or for the benefit of any other Company Parties of (1) any Equity Securities in the MT Entities, (2) any indebtedness owed by the MT Entities to any Company Party (including but not limited to NMG International LLC), and (3) any and all other Claims or Equity Securities of any Company Party (including but not limited to NMG International LLC) in the MT Entities, and all acts or omissions of any Company Party or any of its Related Parties in structuring, implementing, or effectuating the distributions or dividends described in clauses (1)—(3).

“Related Parties” means, with respect to any Entity, such Entity’s predecessors, successors, assigns, and present and former Affiliates (whether by operation of law or otherwise) and Subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders, officers, directors, managers principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity.

“Releasing Party” means collectively (a) each of the Company Releasing Parties and (b) each Consenting Stakeholder Releasing Party.

“Sponsors” means each of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the CPP Investment Board USRE Inc., on behalf of itself and each of its Affiliates that directly or indirectly hold equity interests in the Company Parties.

(3) Section 1111. Other Documents. Each Holder, by its acceptance of the Notes, consents and agrees to, and therefore the Trustee shall execute the following documents on the Third Supplemental Effective Date: (a) that certain subordination agreement, dated as
of the date hereof (as the same may be amended from time to time in accordance with its terms, the “Extended Term Loan PropCo Subordination Agreement”), by and among the Collateral Agent, the representative for the New Second Lien Notes, the representative for the New Third Lien Notes, the Trustee, Extended Term Loan PropCo and any other parties party thereto and (b) that certain subordination agreement, dated as of the date hereof (as the same may be amended from time to time in accordance with its terms, the “Notes PropCo Subordination Agreement”, together with the Extended Term Loan PropCo Subordination Agreement, the “Subordination Agreements”), by and among the Collateral Agent, the representative for the New Second Lien Notes, the representative for the New Third Lien Notes, the Trustee, Notes PropCo and any other parties party thereto. The Company, Parent Guarantor and the Holders, by their acceptance of the Notes, and therefore the Trustee (on behalf of the Holders), hereby acknowledge that that certain Amended and Restated Term Loan Guarantee and Collateral Agreement (as amended, supplemented or otherwise modified from time to time, the “Guarantee and Collateral Agreement”), dated as of the date hereof, among the Company, the affiliates of the Company party thereto, and Credit Suisse AG, Cayman Islands Branch, as Collateral Agent (the “Collateral Agent”) has been executed by Credit Suisse AG, Cayman Islands Branch, as agent for the “Secured Parties” thereunder, that the Holders constitute “Secured Parties” thereunder, and that such Guarantee and Collateral Agreement and the other Security Documents (as defined in the Credit Agreement (as defined in the Guarantee and Collateral Agreement) are, or, as applicable, will be effective to grant the liens securing the Securities provided for herein and with the priority provided for herein and therein and subject to (a) that certain ABL/Term Loan/Notes Intercreditor Agreement, dated as of the date hereof (the “ABL/Term Loan/Notes Intercreditor Agreement”), by and among the Collateral Agent, Deutsche Bank AG New York Branch, as administrative agent and collateral agent under the ABL Credit Agreement, the collateral agent for the New Second Lien Notes, the collateral agent for the New Third Lien Notes and any other parties party thereto and (b) that certain Junior Lien Intercreditor Agreement, dated as of the date hereof (the “Junior Lien Intercreditor Agreement”), by and among the Collateral Agent, the collateral agent for the New Second Lien Notes, the collateral agent for the New Third Lien Notes and any other parties party thereto. For the avoidance of doubt, nothing in the Junior Lien Intercreditor Agreement, the ABL/Term Loan/Notes Intercreditor Agreement, or the Guarantee and Collateral Agreement (other than the provisions therein providing for the payment and lien priorities contemplated herein on the date hereof and any other provisions expressly consented to by the Trustee hereafter at the direction of the Holders) shall prejudice or limit any rights or interests of any Holder or the Trustee provided for under this Indenture or the Securities.

SECTION 2.04 Additional Exhibits. The Indenture is hereby amended to insert (1) Exhibit A attached as Annex 1 to this Third Supplemental Indenture, (2) Exhibit B attached as Annex 2 to this Third Supplemental Indenture and (3) Exhibit C attached as Annex 3 to this Third Supplemental Indenture.

SECTION 2.05 Waiver of Defaults and Events of Default. Pursuant to Section 513 of the Indenture, the Majority Holder hereby waives, and the Trustee is hereby directed to waive,
ARTICLE THREE

SECTION 3.01 The Guarantee. Each PropCo Guarantor hereby irrevocably and unconditionally guarantees (subject to the proviso to the definition of “Notes PropCo”) (together, the “PropCo Guarantee”), as primary obligor and not merely as surety, the 2028 Debentures and obligations of the Company under the Indenture and the 2028 Debentures, and guarantees to each Holder of a 2028 Debenture authenticated and delivered by the Trustee, and to the Trustee for itself and on behalf of such Holder, that: (1) the principal of (and premium, if any) and interest on the 2028 Debentures shall be paid in full when due, whether at Stated Maturity, by acceleration or otherwise (including the amount that would become due but for the operation of the automatic stay under Section 362(a) of Title 11 of the United States Bankruptcy Code of 1978, as amended (the “Bankruptcy Law”)) together with interest on the overdue principal, if any, and interest on any overdue interest, to the extent lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder shall be paid in full or performed, all in accordance with the terms hereof and thereof; and (2) in case of any extension of time of payment or renewal of any 2028 Debentures or of any such other obligations, the same shall be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise. For the avoidance of doubt, the priority of payment relating to the PropCo Guarantees between the Securities and other lenders and/or noteholders is set forth in the Subordination Agreements and herein.

(a) Each PropCo Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the 2028 Debentures or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of such PropCo Guarantor.

(b) Each PropCo Guarantor hereby waives (to the extent permitted by law) the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company or any other Person, protest, notice and all demands whatsoever and covenants that the PropCo Guarantee shall not be discharged as to any 2028 Debenture except by complete performance of the obligations contained in such 2028 Debenture, the Indenture and the PropCo Guarantee. Each PropCo Guarantor acknowledges that the PropCo Guarantee is a guarantee of payment, performance and compliance when due and not of collection. Each PropCo Guarantor hereby agrees that, in the event of a default in payment of principal (or premium, if any) or interest on such 2028 Debenture, whether at its Stated Maturity, by acceleration, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such 2028 Debenture, subject to the terms and conditions set forth in the Indenture, directly against such PropCo Guarantor to enforce the PropCo Guarantee without first proceeding against the Company.
Each PropCo Guarantor agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the Maturity of the 2028 Debentures, to collect interest on the 2028 Debentures, or to enforce or exercise any other right or remedy with respect to the 2028 Debentures, such PropCo Guarantor shall pay to the Trustee for the account of the Holder, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee or any of the Holders.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company or a PropCo Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or a PropCo Guarantor, any amount paid by any of them to the Trustee or such Holder, the PropCo Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each PropCo Guarantor further agrees that, as between such PropCo Guarantor, on one hand, and the Holders and the Trustee on the other hand, (1) subject to the provisions of the PropCo Guarantee, the Maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five of the Base Indenture for the purposes of the PropCo Guarantee notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any acceleration of such obligation as provided in Article Five of the Base Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by such PropCo Guarantor for the purpose of the PropCo Guarantee.

(d) The PropCo Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company’s assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the 2028 Debentures are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the 2028 Debentures, whether as a “voidable preference”, “fraudulent transfer” or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the 2028 Debentures shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

SECTION 3.02 Severability. In case any provision of the PropCo Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby to the extent permitted by applicable law.

SECTION 3.03 Subrogation. Each PropCo Guarantor shall be subrogated to all rights of Holders against the Company in respect of any amounts paid by such PropCo Guarantor pursuant to the provisions of Section 3.01 of this Third Supplemental Indenture; provided, however, that, if a default or Event of Default has occurred and is continuing, the PropCo Guarantors shall not be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Company under the Indenture or the 2028 Debentures shall have been paid in full.
SECTION 3.04 **Reinstatement.** Each PropCo Guarantor hereby agrees that the PropCo Guarantee provided for in Section 3.01 of this Third Supplemental Indenture shall continue to be effective or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any obligations or interest thereon is rescinded or must otherwise be restored by a Holder to the Company upon the bankruptcy or insolvency of the Company or the PropCo Guarantors.

SECTION 3.05 **Release.** The PropCo Guarantee shall automatically and unconditionally be released and discharged, and no further action by the PropCo Guarantors, the Company or the Trustee is required for the release of the PropCo Guarantee, upon exercise by the Company of its defeasance of the Notes under Section 403(a) or (b) the Base Indenture or if the Company’s obligations under this Indenture are discharged in accordance with Section 401 of the Base Indenture.

SECTION 3.06 **PropCo Guarantees.** The 2028 Debentures and obligations of the Company under the Indenture and the 2028 Debentures shall at all times be subject to an unsecured guarantee of each of the PropCo Guarantors, subject to the proviso set forth in the definition of “Notes PropCo” and the terms of the Extended Term Loan PropCo Subordination Agreement and, if applicable, the Notes Propco Subordination Agreement. The unsecured guarantee provided by Extended Term Loan PropCo to the 2028 Debentures shall be a second priority guarantee that shall be junior in contractual right of payment only to the guarantee provided by Extended Term Loan PropCo to the Extended Term Loans and senior in contractual right of payment to the guarantee provided by Extended Term Loan PropCo to the New Second Lien Notes (and any other Second Lien Obligations (as defined in the Junior Lien Intercreditor Agreement) and the New Third Lien Notes (and any other Third Lien Obligations (as defined in the Junior Lien Intercreditor Agreement). Subject to the proviso set forth in the definition of “Notes PropCo”, the unsecured guarantee provided by Notes PropCo to the 2028 Debentures shall be pari passu with the third priority guarantee of the Extended Term Loans; provided, that, if there is a Call Right Cap Recovery, then solely after giving effect thereto, the 2028 Debentures will be guaranteed by a second priority guarantee that shall be junior in contractual right of payment to the guarantee provided by Notes PropCo to the Extended Term Loans and senior in contractual right of payment to the guarantee provided by Notes PropCo to the New Second Lien Notes (and any other Second Lien Obligations) and the New Third Lien Notes (and any other Third Lien Obligations), except that following the Discharge of the First Lien Obligations, the unsecured guarantee provided by Notes PropCo to the 2028 Debentures shall have the priority as set forth in Section 2.1(a)(z)(i) of the Notes PropCo Subordination Agreement. For the avoidance of doubt, nothing in this Section 3.06 shall in any way limit or remove any obligation to grant any Liens required pursuant to Section 1006 of the Indenture.

ARTICLE FOUR

SECTION 4.01 **Definitions.** Section 101 of the Indenture is hereby amended to add in the appropriate alphabetical order the following new definitions:

“ABL Credit Agreement” means that certain Revolving Credit Agreement, dated as of October 25, 2013, as amended, restated, amended and restated, supplemented or otherwise modified, or replaced from time to time, including on the date hereof, among Parent Guarantor and certain Company Parties, as co-borrowers, each of the guarantors party thereto, Deutsche Bank
AG New York Branch as administrative and collateral agent, and the lenders party thereto from time to time.

“Call Right Cap Recovery” has the meaning given thereto in the Junior Lien Intercreditor Agreement (as defined in the Third Supplemental Indenture to the Indenture, dated as of June 7, 2019, between the Company and the Trustee).

“Causes of Action” means any action, Claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, and license of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the date hereof, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law. For the avoidance of doubt, “Cause of Action” includes: (a) any right of setoff, counterclaim, or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (b) any Claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal or non-U.S. law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any Claim pursuant to section 362 or chapter 5 of the title 11 of the United States Code or similar local, state, or federal U.S. or non-U.S. law; (d) any Claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the title 11 of the United States Code; (e) any state or foreign law pertaining to actual or constructive fraudulent transfer, fraudulent conveyance, or similar Claim; and (f) any “lender liability” or equitable subordination claims or defenses.

“Claim” means any (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

“Company Party” means Neiman Marcus Group, Inc., a Delaware corporation (“NMG”), and each of its Subsidiaries that has executed and delivered, or in the future, executes and delivers, counterpart signature pages to the Transaction Support Agreement.

“Definitive Documents” means all of the definitive documents implementing the Recapitalization Transactions, including without limitation, (i) the material documents governing the New Second Lien Notes (including the indenture governing the New Second Lien Notes), (ii) the material documents governing the Third Lien Notes (including the indentures governing the Third Lien Notes), (iii) the material documents governing the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock (including the applicable Certificates of Designation and material organizational documents) and (iv) the Extended Term Loan Credit Agreement, and (v) all other material customary documents delivered in connection with
transactions of this type (including, without limitation, any and all material documents necessary to implement the Recapitalization Transactions).

“Entity” means any person, individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Body or any agency or political subdivision of any Governmental Body, or any other entity, whether acting in an individual, fiduciary, or other capacity.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Exchange Offer and Consent Solicitation” means the Exchange Offer and Consent Solicitation, commencing as of April 29, 2019 relating to the 8.000% Senior Cash Pay Notes due 2021 (the “Cash Pay Notes”) and the 8.750%/9.500% Senior PIK Toggle Notes due 2021 (together with the Cash Pay Notes, the “Notes”), issued by the Issuers.

“Exchange Offers” means the offers to exchange the Third Lien Notes for the Company’s Notes in connection with the Exchange Offer and Consent Solicitation.

“Extended Term Loans” means the “Extended Terms Loans” and the “Non-Participating Term Loan Exchange Indebtedness”, each as defined in and governed by the Extended Term Loan Credit Agreement (and any refinancing, extension, renewal, replacement, amendment, or modification thereof).

“Extended Term Loan Credit Agreement” means the Term Loan Credit Agreement, dated as of October 25, 2013, as amended, restated, amended and restated, supplemented or otherwise modified, or replaced from time to time, including on the date hereof, by and among the Issuers, Credit Suisse AG, as administrative agent and collateral agent (“Term Loan Agent”), and the Lenders party thereto.

“Extended Term Loan PropCo” means NMG Term Loan PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Company formed solely to hold Real Property interests consisting of the Real Property assets set forth on (i) Exhibit B and (ii) Exhibit C solely to the extent any such Real Property assets are Non-Mortgageable Leases.

“Governmental Body” means any U.S. or non-U.S. federal, state, municipal, or other government, or other department, commission, board, bureau, agency, public authority, or instrumentality thereof, or any other U.S. or non-U.S. court or arbitrator.

“Issuers” means collectively the Parent Guarantor, the Company, Mariposa Borrower, Inc., a Delaware corporation, and The NMG Subsidiary LLC, a Delaware limited liability company.

“MYT Holdco” means MYT Holding Co., a Delaware corporation, together with its successors.
“MYT Holdco Series A Preferred Stock” means the Cumulative Series A Preferred Stock of MYT Holdco under the certificate of designation governing the MYT Holdco Series A Preferred Stock.

“MYT Holdco Series B Preferred Stock” means the Cumulative Series B Preferred Stock of MYT Holdco under the certificate of designation governing the MYT Holdco Series B Preferred Stock.


“New Third Lien Notes” means collectively the newly issued 8.000% Third Lien Senior Secured Notes due 2024 (the “New 8.000% Third Lien Notes”) and the newly issued 8.750% Third Lien Senior Secured Notes due 2024 of the Issuers.

“Non-Mortgageable Leases” means all leasehold Real Property interests subject to provisions restricting the mortgaging, assignment or other creation of a security interest in or of any such lease, agreement or other instrument governing such leasehold interest or in respect of which a mortgage, assignment or creation of a security interest therein or thereof could reasonably be expected (as determined in good faith by a Responsible Officer of the Parent Guarantor and the Term Loan Agent) to be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation, revocation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such lease, agreement or other instrument governing such leasehold interest, provided that the Company shall provide written notice to the Trustee no later than two Business Days after any such determination by a Responsible Officer of the Parent Guarantor and the Term Loan Agent. For the avoidance of doubt, if the Company or Parent Guarantor determines that any of the leasehold Real Property interests otherwise subject to the restrictions described above can be mortgaged in accordance with the lease or other contracts governing such properties (or obtains any requisite consent to such mortgage, it being understood that the Company and Parent Guarantor shall have no obligation to seek any such consent), then such leasehold shall no longer constitute a Non-Mortgageable Leases.

“Notes PropCo” means NMG Notes PropCo LLC, a Delaware limited liability company that is a Subsidiary of the Parent Guarantor formed solely to hold the Real Property interests consisting of Notes PropCo Assets to the extent any such Notes PropCo Assets are Non-Mortgageable Leases; provided, however, that in the event no Notes PropCo Assets are contributed to or held by Notes PropCo as of the post-closing deadline (subject to any applicable extensions) to put in place mortgages over (or so contribute) the Notes PropCo Assets set forth in the Extended Term Loan Credit Agreement, Notes PropCo shall be permitted to be liquidated or dissolved after the date hereof without the consent of the Noteholders or Trustee.

“Notes PropCo Assets” means owned properties and leases (whether operating leases, ground leases, or otherwise) set forth on Exhibit A.

“Notes PropCo Equity Interests” means the Equity Interests of Notes PropCo.

“Parent Entities” means any direct or indirect parent of the Company.
“PropCo Guarantors” means Extended Term Loan PropCo and Notes PropCo.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by Issuer or any Restricted Subsidiary, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“Recapitalization Transactions” means the consensual recapitalization of certain of the Company Parties’ outstanding indebtedness and equity interests consisting of the entry into the Extended Term Loan Credit Agreement, the consummation of the Exchange Offers, the issuance of the New Second Lien Notes and the Third Lien Notes and the issuance of the MYT Holdco Series A Preferred Stock and the MYT Holdco Series B Preferred Stock on terms and conditions consistent with the Transaction Support Agreement.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “significant subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the Commission.

“Similar Business” means any business engaged or proposed to be engaged in by the Company and its Restricted Subsidiaries on the Third Supplemental Effective Date and any business or other activities that are similar, ancillary, complementary, incidental or related to, or an extension, development or expansion of, the businesses in which the Company and its Restricted Subsidiaries is engaged on the Third Supplemental Effective Date.

“Term Loan Agent” has the meaning given such term in the definition of Extended Term Loan Credit Agreement.

“Third Supplemental Effective Date” mean June 7, 2019.

“Transaction Support Agreement” means that certain transaction support agreement, dated as of March 25, 2019 by and among Neiman Marcus Group, Inc. and each of its Subsidiaries signed thereunder, the sponsors (as defined therein), certain lenders under the Extended Term Loan Credit Agreement signed thereunder and certain holders of the notes signed thereunder.

ARTICLE FIVE
MISCELLANEOUS

SECTION 5.01 Effect of this Third Supplemental Indenture. This Third Supplemental Indenture supplements the Original Indenture and shall be a part, and subject to all the terms, thereof. The Original Indenture, as supplemented and amended by this Third Supplemental Indenture, is in all respects ratified and confirmed, and the Original Indenture and this Third Supplemental Indenture shall be read, taken and construed as one and the same instrument. All provisions included in this Third Supplemental Indenture supersede any conflicting provisions included in the Original Indenture unless not permitted by law.

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SECTION 5.02 Governing Law. This Third Supplemental Indenture will be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of laws principles thereof that would result in the application of law of another jurisdiction.

SECTION 5.03 Waiver of Jury Trial. THE COMPANY, THE GUARANTORS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 5.04 Severability. In case any provision in this Third Supplemental Indenture or the 2028 Debentures is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby to the extent permitted by applicable law.

SECTION 5.05 Successors. All agreements of the Company and the Guarantors in this Third Supplemental Indenture, the Indenture and the 2028 Debenture will bind their respective successors. All agreements of the Trustee in this Third Supplemental Indenture and the 2028 Debentures will bind its respective successors.

SECTION 5.06 Trust Indenture Act Controls. No modification of any provisions of the Indenture effected by this Third Supplemental Indenture is intended to eliminate or limit any provision of the Indenture that is required to be included therein by the Trust Indenture Act of 1939, as amended, as in force as of the effectiveness of this Third Supplemental Indenture.

SECTION 5.07 The Trustee. The Trustee makes no representations as to the validity or sufficiency of this Third Supplemental Indenture; the recitals and statements herein are deemed to be those of the Company and not of the Trustee.

SECTION 5.08 Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a “pdf” or “tif”) will be effective as delivery of a manually executed counterpart thereof.

SECTION 5.09 Effect of Headings. The section headings herein are for convenience only and will not affect the construction hereof.
IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

THE NEIMAN MARCUS GROUP LLC

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

NEIMAN MARCUS GROUP LTD LLC

By: /s/ Tracy M. Preston  
Name: Tracy M. Preston  
Title: Senior Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee

By: /s/ Haley A. Harris  
Name: Haley A. Harris  
Title: Trust Officer

[Signature Page to Third Supplemental Indenture (Senior Debentures)]
NMG TERM LOAN PROPCO LLC
NMG NOTES PROPCO LLC

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Vice President and Secretary

[Signature Page to Third Supplemental Indenture (Senior Debentures)]
<table>
<thead>
<tr>
<th>Locations</th>
<th>Address</th>
<th>Owner or Lessee Entity</th>
<th>Nature of Property Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tysons Galleria, VA</td>
<td>2255 International Drive, McLean, Virginia 22102</td>
<td>TNMG LLC (successor in interest to Nancy Holdings LLC)(1)</td>
<td>Owned</td>
</tr>
<tr>
<td>(Topanga Plaza) Canoga Park, CA</td>
<td>6550 Topanga Canyon Boulevard, Woodland Hills, California 91303</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
</tr>
<tr>
<td>Walnut Creek, CA(2)</td>
<td>1275 Broadway Plaza, Walnut Creek, California 94596</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
</tr>
<tr>
<td>Fort Lauderdale, FL</td>
<td>2442 East Sunrise Boulevard, Fort Lauderdale, Florida 33304</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
</tr>
<tr>
<td>Troy, MI</td>
<td>2705 West Big Beaver Road, Troy, Michigan 48084</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
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<tr>
<td>Charlotte, NC(3)</td>
<td>4400 Sharon Road, Charlotte, North Carolina 28211</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
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<tr>
<td>Austin, TX(4)</td>
<td>3400 Palm Way, Austin, Texas 78758</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
</tr>
<tr>
<td>Coral Gables, FL</td>
<td>390 San Lorenzo Avenue, Coral Gables, Florida 33146</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
</tr>
</tbody>
</table>

(1) To be merged with and into TNMG LLC with TNMG LLC surviving such merger substantially concurrently with the consummation of the Recapitalization Transactions on the date hereof.

(2) Mortgageability permitted with prior notice to landlord.

(3) Mortgageability subject to discussion with landlord given that no mortgage or financing document shall be in an amount exceeding the documented cost of the leasehold improvements made by tenant to the premises.

(4) Mortgageability subject to discussion with landlord given that no mortgage or financing document shall be in an amount exceeding the documented cost of the leasehold improvements made by tenant to the premises.
<table>
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<tr>
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<th>Owner or Lessee Entity</th>
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<tbody>
<tr>
<td>Atlanta, GA</td>
<td>3393 Peachtree Road Northeast, Atlanta, Georgia 30326</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>St. Louis, MO</td>
<td>100 Plaza Frontenac Street, St. Louis, Missouri 63131</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
</tr>
<tr>
<td>Northbrook, IL</td>
<td>5000 Northbrook Court, Northbrook, Illinois 60062</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
</tr>
<tr>
<td>Las Vegas, NV</td>
<td>3200 Las Vegas Boulevard South, Las Vegas, Nevada 89109</td>
<td>NM Nevada Trust</td>
<td>Leased (Operating Lease)</td>
</tr>
<tr>
<td>San Diego, CA</td>
<td>7027 Friars Road, San Diego, CA 92108</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>Oakbrook, IL</td>
<td>6 Oakbrook Center, Oak Brook, Illinois 60523</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>Bergdorf Goodman Women’s (New York, NY)</td>
<td>754 Fifth Avenue, New York, New York 10019</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>Hudson Yards, NY</td>
<td>20 Hudson Yards, New York, New York 10001</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
</tr>
<tr>
<td>East Coast DC (Pittston, PA)</td>
<td>450 Centerpoint Blvd., Pittston, Pennsylvania 18640</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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## Existing Mortgaged Properties

<table>
<thead>
<tr>
<th>Locations</th>
<th>Address</th>
<th>Owner or Lessee Entity</th>
<th>Nature of Property Interest</th>
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<tbody>
<tr>
<td>Beverly Hills, CA</td>
<td>9700 Wilshire Boulevard, Beverly Hills, California 90212</td>
<td>The Neiman Marcus Group LLC (&quot;TNMG LLC&quot;)</td>
<td>Owned and Leased</td>
</tr>
<tr>
<td>San Francisco, CA</td>
<td>150 Stockton Street, San Francisco, California 94108</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
<tr>
<td>Orlando, FL</td>
<td>4170 Conroy Road, Orlando, Florida 32839</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
<tr>
<td>Natick, MA</td>
<td>310 Speen Street, Natick, Massachusetts 01760</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
<tr>
<td>Dallas, TX (Downtown)</td>
<td>1609 Commerce Street, Dallas, Texas 75201</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
<tr>
<td></td>
<td>1618 Main Street, Dallas, Texas 75201</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
<tr>
<td>Plano, TX</td>
<td>2201 Dallas Parkway, Plano, Texas 75093</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
<tr>
<td>Irving, TX</td>
<td>5950 Colwell Blvd, Irving, Texas 75039 (mailing: 111 Customer Way, Irving, Texas 75039)</td>
<td>TNMG LLC</td>
<td>Owned</td>
</tr>
</tbody>
</table>

## New Term Loan Priority Assets

<table>
<thead>
<tr>
<th>Locations</th>
<th>Address</th>
<th>Owner or Lessee Entity</th>
<th>Nature of Property Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Antonio, TX</td>
<td>15900 La Cantera Parkway, Building 14, San Antonio, Texas 78256</td>
<td>TNMG LLC (successor in interest to Nancy Holdings LLC)(6)</td>
<td>Owned</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>5300 Wisconsin Avenue Northwest, Washington D.C. 20015</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>Tampa, FL</td>
<td>2223 North West Shore Boulevard, Tampa, Florida 33607</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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</tbody>
</table>

(5) Currently mortgaged to (i) Credit Suisse AG, Cayman Islands Branch, on behalf of the Lenders (as defined in the Existing Credit Agreement (as defined in the Extended Term Loan Credit Agreement)) and the Holders and (ii) Deutsche Bank AG New York Branch, on behalf of the Lenders (as defined in the (ABL Credit Agreement (as defined in the Existing Credit Agreement))

(6) To be merged with and into TNMG LLC with TNMG LLC surviving such merger substantially concurrently with the consummation of the Recapitalization Transactions on the date hereof.
<table>
<thead>
<tr>
<th>Locations</th>
<th>Address</th>
<th>Owner or Lessee Entity</th>
<th>Nature of Property Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Longview, TX</td>
<td>2301 Neiman Marcus Parkway, Longview Texas 75602</td>
<td>TNMG LLC (successor in interest to Nancy Holdings LLC)(7)</td>
<td>Owned</td>
</tr>
<tr>
<td>Dallas, TX (Downtown)</td>
<td>1622 Main Street Dallas, Texas 75201</td>
<td>TNMG LLC</td>
<td>Leased</td>
</tr>
<tr>
<td></td>
<td>1612 - 1616 Main Street, Dallas, Texas 75201</td>
<td></td>
<td>Ground Lease as to 1622 Main Street and 1600 Commerce Street</td>
</tr>
<tr>
<td></td>
<td>1607 Commerce Street, Dallas, Texas 75201</td>
<td></td>
<td>Operating Lease as to: 1612-116 Main Street; 1603-1605 Commerce Street; and 1607 Commerce Street</td>
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<tr>
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<td>1603 - 1605 Commerce Street, Dallas, Texas 75201</td>
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<td>1600 Commerce Street, Dallas, Texas 75201(8)</td>
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<td>Dallas, TX (NorthPark)(9)</td>
<td>400 NorthPark Center (a/k/a 8687 North Central Expressway), Dallas, Texas 75225</td>
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<td>Houston, TX</td>
<td>2600 Post Oak Boulevard, Houston, Texas 77056</td>
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<td>Bal Harbour, FL</td>
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<td>Fashion Island, CA (Newport Beach)</td>
<td>601 Newport Center Drive, Newport Beach, California 92660</td>
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<tr>
<td>(Westchester) White Plains, NY</td>
<td>2 East Maple Avenue, White Plains, New York 10601</td>
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<tr>
<td>Chicago, IL(10)</td>
<td>737 North Michigan Avenue, Chicago, Illinois 60611</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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</table>

(7) To be merged with and into TNMG LLC with TNMG LLC surviving such merger substantially concurrently with the consummation of the Recapitalization Transactions on the date hereof.

(8) Mortgageability of 1600 Commerce Street premises subject to landlord consent.

(9) Mortgageability subject to landlord consent.

(10) Mortgageability subject to obtaining confirmation from the landlord that the “no lien” language only applies to liens on fee interest.
<table>
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<th>Owner or Lessee Entity</th>
<th>Nature of Property Interest</th>
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<tbody>
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<td>Boston, MA</td>
<td>5 Copley Place, Boston, Massachusetts 02116</td>
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<td>Palo Alto, CA</td>
<td>400 Stanford Shopping Center, Palo Alto, California 94304</td>
<td>TNMG LLC</td>
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<tr>
<td>Short Hills, NJ</td>
<td>1200 Morris Turnpike, Short Hills, New Jersey 07078</td>
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<td>Denver, CO</td>
<td>3030 East First Avenue, Denver, Colorado 80206</td>
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<td>Leased (Ground Lease)</td>
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<tr>
<td>Scottsdale, AZ</td>
<td>6900 East Camelback Road, Scottsdale, Arizona 85251</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>King of Prussia, PA</td>
<td>170 N. Gulph Road, King of Prussia, Pennsylvania 19406</td>
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<tr>
<td>Ala Moana, HI (Honolulu)</td>
<td>1450 Ala Moana Boulevard, Honolulu, Hawaii 96814</td>
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<tr>
<td>Palm Beach, FL(11)</td>
<td>151 Worth Avenue, Palm Beach, Florida 33480</td>
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<tr>
<td>Paramus, NJ</td>
<td>503 Garden State Plaza Boulevard, Paramus, New Jersey 07652</td>
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<td>Leased (Ground Lease)</td>
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<tr>
<td>Boca Raton, FL(12)</td>
<td>5860 Glades Road, Boca Raton, Florida 33431</td>
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<tr>
<td>Bergdorf Goodman Men's (New York, NY)(13)</td>
<td>745 Fifth Avenue, New York, New York 10151</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>Clearfork, TX (Fort Worth)(14)</td>
<td>5200 Monahans Avenue, Fort Worth, Texas 76107</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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<tr>
<td>Bellevue, WA</td>
<td>1111 Northeast 8th Street, Bellevue, Washington 98004</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
</tr>
<tr>
<td>Roosevelt Field, NY (Garden City)</td>
<td>620 Old Country Road, Garden City, New York 11530</td>
<td>TNMG LLC</td>
<td>Leased (Ground Lease)</td>
</tr>
</tbody>
</table>

(11) Mortgageability subject to discussion with landlord given that the principal sum must not exceed the cost of constructing tenant’s improvements.

(12) Mortgageability subject to discussion with landlord given that no mortgage or financing documents shall be in an amount exceeding the documented cost of the leasehold improvements made by tenant to the premises.

(13) Mortgageability subject to discussion with landlord given that the amount of indebtedness cannot exceed the lesser of $50MM or 10% of the aggregate net worth of the tenant and any guarantors of the lease.

(14) Mortgageability permitted with prior notice to landlord.
<table>
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<tr>
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<th>Nature of Property Interest</th>
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</thead>
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<tr>
<td>Pinnacle Park DC (Dallas, TX)</td>
<td>4121 Pinnacle Point Drive, Dallas, Texas 75211</td>
<td>TNMG LLC</td>
<td>Leased (Operating Lease)</td>
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(15) Mortgageability subject to landlord consent.
NEIMAN MARCUS GROUP ANNOUNCES

SETTLEMENT OF OFFERS TO EXCHANGE AND CONSENT SOLICITATIONS AND RELATED TRANSACTIONS

DALLAS — June 10, 2019 — Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Company”) announced the final settlement of its previously announced exchange offers and related consent solicitations (the “Exchange Offers”) to eligible holders of its previously existing unsecured 8.000% Senior Cash Pay Notes due 2021 (the “Cash Pay Notes”) and unsecured 8.750%/9.500% Senior PIK Toggle Notes due 2021 (the “PIK Toggle Notes” and, together with the Cash Pay Notes, the “Existing Notes”).

On June 7, 2019 (the “Settlement Date”), the Company accepted tenders and consents from holders of $879,320,000 principal amount of the Cash Pay Notes and $599,163,048 principal amount of the PIK Toggle Notes for aggregate consideration consisting of $730,534,000 principal amount of New 8.000% Third Lien Notes due 2024 (the “New 8.000% Third Lien Notes”), $497,849,150 principal amount of New 8.750% Third Lien Notes due 2024 (the “New 8.750% Third Lien Notes”) and, together with the New 8.000% Third Lien Notes, the “New Third Lien Notes”) and 250,000,000 shares of Series A Preferred Stock of MYT Holding Co., par value $0.001 per share (the “Series A Preferred Stock”), with an initial liquidation preference of $1.00 per share. MYT Holding Co., is a newly-formed U.S. holding company ("MYT Holding Co.") that indirectly holds NMG Germany GmbH, which holds and conducts the operations of MyTheresa. Following the settlement of the Exchange Offers, approximately $137.3 million aggregate principal amount of the Existing Notes remain outstanding.

As previously announced, the Company had been soliciting consents from holders of the Existing Notes upon the terms and subject to the conditions set forth in the Confidential Offering Memorandum and Consent Solicitation Statement, dated April 29, 2019 (as supplemented from time to time, the “Offering Memorandum”), and related Letter of Transmittal to certain proposed amendments to the indentures governing the Existing Notes (the “Existing Indentures”) to remove substantially all of the restrictive covenants contained therein and effect certain other changes. The Company received consents sufficient to approve the proposed amendments to the Existing Indentures and, together with the parties thereto, entered into supplemental indentures containing such proposed amendments, which became operative as of the Settlement Date.

Issuance of New Second Lien Notes

The Exchange Offers were effected pursuant to the terms of a previously announced transaction support agreement (the “TSA”) among the Company, certain of its affiliates and subsidiaries and holders of its Existing Notes and term loans. As contemplated by the TSA, concurrently with the consummation of the Exchange Offers, the Company completed a previously announced unregistered offering of $550.0 million in aggregate principal amount of 14.000% Second Lien Notes due 2024 (the “Second Lien Notes” and, together with the New Third Lien Notes, the “New Notes”). The Second Lien Notes bear interest at an annual rate of 8.000% payable in cash plus an annual rate of 6.000% payable by increasing the principal amount of the outstanding Second Lien Notes. The Company used the net proceeds from the Second Lien Notes offering to (i) prepay $526.9 million of the extended term loans under the Company’s Amended Term Loan Facility (as defined below) and (ii) pay a portion of the fees and expenses related to the Second Lien Notes offering, the amendment and extension of the Company’s existing senior secured term loan credit facility (the “Existing Term Loan Facility”) described below and the Exchange Offers.

Amendment and Extension of the Company’s Credit Facilities

In addition, as contemplated by the TSA, the Company amended the credit agreement governing its Existing Term Loan Facility (as amended, the “Amended Term Loan Facility”), converting the existing term loans outstanding thereunder (the “Existing Term Loans”) into extended term loans with an extended maturity date of October 25, 2023 (the “Extended Term Loans”). In connection with the Amended Term Loan Facility, approximately $2,775.4 million aggregate principal amount of Existing Term Loans were converted into Extended Term Loans by consenting term lenders, representing approximately 99.5% of the total outstanding principal amount of Existing Term Loans. After giving effect to the partial prepayment described above,
approximately $2,248.5 million of Extended Term Loans and approximately $12.7 million of Existing Term Loans remain outstanding under the Amended Term Loan Facility.

In connection with the foregoing, the Company also entered into an amendment to the credit agreement governing the Company’s asset-based revolving credit facility, which expanded the collateral package securing the Company’s and the other guarantors’ obligations thereunder.

Amendment of the 2028 Debentures Indenture

Concurrently with the consummation of the foregoing transactions, The Neiman Marcus Group LLC and the holders of a majority of the outstanding principal amount of the 2028 Debentures, together with the successor trustee thereto, executed a supplemental indenture to the indenture governing the 2028 Debentures (the “2028 Debentures Indenture”) to, among other things, amend the reporting covenant in the 2028 Debentures Indenture to substantially replicate the reporting requirements previously set forth in the indentures governing the Existing Notes. As a result of the amendment to the reporting covenant, the Company expects to cease filing periodic reports with the U.S. Securities and Exchange Commission.

No Solicitation, No Registration

The New Notes and related guarantees and the Existing Notes will not be registered under the Securities Act of 1933, as amended (the “Securities Act”), or the securities laws of any state and may not be offered or sold in the United States absent registration or an exemption from the registration requirements of the Securities Act and applicable state securities laws. This press release is for informational purposes only. This press release does not constitute an offer to sell or the solicitation of an offer to buy any security, nor shall there be any sale of any security of the Company, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

About Neiman Marcus Group

Neiman Marcus Group is a luxury, multi-branded, omni-channel fashion retailer conducting integrated store and online operations under the Neiman Marcus, Bergdorf Goodman, Neiman Marcus Last Call, Horchow, and mytheresa brand names. For more information, visit http://www.neimanmarcushgroup.com.

Contact:

John Walls
Director, Brand Public Relations
Neiman Marcus Group
john_walls@neimanmarcushgroup.com
O: (214) 573-6642

* * *

Forward Looking Statements

The Company has included statements in this press release that constitute “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act. As a general matter, forward-looking statements are those focused on future or anticipated events or trends, expectations and beliefs. Such statements are intended to be identified by using words such as “believe,” “expect,” “intend,” “estimate,” “anticipate,” “will,” “project,” “plan” and similar expressions in connection with any discussion of future operating or financial performance. Any forward-looking statements are and will be based upon the Company’s then-current expectations, estimates and assumptions regarding future events and are applicable only as of the dates of such statements. Readers are cautioned not to put undue reliance on such forward-looking statements. Such forward-looking statements are not guarantees of future performance and involve risks and uncertainties, and actual results may differ materially from those projected in this press release for reasons, among
others, including those factors described in the “Risk Factors” and “Management's Discussion and Analysis of Financial Condition and Results of Operations” sections and elsewhere in the Company’s Annual Report on Form 10-K and those factors described in the “Risk Factors” section and elsewhere in the Company’s Quarterly Report on Form 10-Q, both filed with the Securities and Exchange Commission. The Company undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.
GUARANTEE AND COLLATERAL AGREEMENT,

dated as of June 7, 2019,

among

MYT PARENT CO.,

each Grantor party hereto

and

ANKURA TRUST COMPANY, LLC,

as Trustee and as Collateral Agent
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GUARANTEE AND COLLATERAL AGREEMENT dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), among MYT PARENT CO., each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “Grantor” and, collectively, the “Grantors”) and ANKURA TRUST COMPANY, LLC, as Trustee (in such capacity, the “Trustee”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “Collateral Agent”).

RECITALS

(1) Reference is made to that certain Indenture, dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time and the Trustee, governing the 14.00% Second Lien Notes due 2024 (the “Notes”) of the Issuers.

(2) The Grantors will derive substantial benefits from the issuance and sale of such notes pursuant to the Indenture and in consideration thereof has agreed to guarantee the obligations of the Issuers under the Indenture.

AGREEMENT

Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Indenture.

(a) Unless otherwise defined herein, terms defined in the Indenture and used herein have the meanings assigned to them in the Indenture, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, As-Extracted Collateral, Authenticate, Certificated Security, Chattel Paper, Commodity Account, Commodity Contract, Commodity Intermediary, Deposit Account, Documents, Electronic Chattel Paper, Entitlement Order, Equipment, Farm Products, Financial Asset, Fixtures, Goods, Health-Care-Insurance Receivable, Instruments, Inventory, Letter of Credit Rights, Manufactured Homes, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) The rules of construction specified in Section 1.3 of the Indenture also apply, mutatis mutandis, to this Agreement.
SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Agreement” has the meaning assigned to such term in the introductory paragraph hereto.

“Article 9 Collateral” has the meaning assigned to such term in Section 4.01(1).

“Collateral” means the collective reference to Article 9 Collateral and Pledged Collateral.

“Collateral Agent” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company Parties” means, collectively, Neiman Marcus Group, Inc. and each of its Subsidiaries that has executed and delivered the Transaction Support Agreement.

“Consignment Inventory” means any Inventory held by a Grantor on a consignment basis, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Grantors and their Subsidiaries prepared in accordance with GAAP).

“Consignment Proceeds” means any proceeds from the sale of any Consignment Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Consignment Inventory and that the applicable Grantor identifies such proceeds as such through a method of tracing.

“Control” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“Control Agreement” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license).

“Copyrights” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

(1) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;
all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;

all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“DDA” means any checking or other demand deposit account maintained by the Grantors.

“Event of Default” means an “Event of Default” as defined in the Indenture

“Excluded Accounts” means any DDA, Securities Account, Commodity Account or any other Deposit Account of any Grantor (and all Cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have a daily balance in the aggregate with each other account described in this clause (1), in excess of $1.0 million; (2) the balance of which is swept at the end of each Business Day into a Deposit Account, Securities Account or Commodity Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account, Securities Account or Commodity Account is swept into another Deposit Account, Securities Account or Commodity Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account or (4) to the extent that it is cash collateral for letters of credit.

“Excluded Assets” means all of the following, whether now owned or hereafter acquired:

1. all Excluded Equity Interests;
2. all leasehold Real Property interests that do not constitute the Grantor’s interests in full line stores, Bergdorf Goodman store real properties or warehouse or distributions centers;
3. all fee simple Real Property interests acquired after the Issue Date with a fair market value (as determined by an Officer of the Issuer reasonably and in good faith and the Collateral Agent of, less than or equal to $2.5 million on a per property basis;
4. [reserved];
5. [reserved];
6. any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;

7. any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;

8. any Excluded Account;

9. vehicles and any other assets subject to certificates of title;

10. any Letter Of Credit Rights to the extent not perfected as Supporting Obligations by the filing of a UCC financing statement on the primary Collateral;

11. any Grantor’s right, title or interest in any lease, license, contract or agreement to which such Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto, such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity);

12. assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained), after giving effect to the relevant anti-assignment provisions of the Uniform Commercial Code;

13. any Commercial Tort Claim with an asserted or nominal value not in excess of $5.0 million;

14. any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by the Issuer and the Extended Term Loan Agent (in its capacity as collateral agent);

15. (a) any assets and proceeds thereof subject to a Lien permitted under clause (3) of the definition of “Permitted Liens” to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent or (b) any assets subject to a Lien permitted by clause (7) of the definition of “Permitted Liens” so long as the
documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent;

16. [reserved];

17. [reserved];

18. any Consignment Inventory and any Consignment Proceeds; or

19. any Leased-Department Inventory and any Leased-Department Proceeds.

In the event any asset described above (x) is an asset described in clauses (1) through (7) or clauses (9) through (14) above and is pledged for the benefit of creditors under any Obligations (other than the Second Lien Notes Obligations), or (y) is an asset described in clause (8) or clauses (16) through (19) above and is pledged for the benefit of any Obligation listed in the Required Collateral Lien Priority table (other than the Second Lien Notes Obligations), in each case of clause (x) and (y), such asset shall cease to be an Excluded Asset; provided, however, in the case of clause (x), any such asset pledged for the benefit of a third-party creditor under any Obligations (other than an Obligation listed in the Required Collateral Lien Priority) may be pledged on a first-priority basis to such third-party creditor, followed by subordinated Liens in favor of the Second Lien Notes Obligations otherwise in accordance with the Required Collateral Lien Priority, but reducing the priority of each Lien described in such Required Collateral Lien Priority by a lesser Lien priority and giving effect to the first-priority Liens of such third-party creditor on such subject asset).

“Excluded Equity Interests” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

1. interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of a pledge to secure the Second Lien Notes Obligations);

2. Equity Interests in not-for-profit subsidiaries;

3. to the extent applicable law requires that a Subsidiary of such Grantor issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by Persons other than such Grantor, such qualifying shares, nominee shares or similar shares held by Persons other than such Grantor, as applicable; or

4. any Equity Interests (including, without limitation, Equity Interests in captive insurance subsidiaries) if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Govermental Authority
which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); provided that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect.

An Officer of the Issuer or MYT Parent Co. shall re-evaluate whether the Material Adverse Consequences still apply to any Excluded Foreign Equity Interests pursuant to clause (5) above no less than quarterly. Excluded Foreign Equity Interests shall no longer be Excluded Foreign Equity Interests under clause (5) above upon the earlier to occur of (A) the tenth Business Day after an Officer determines that the Material Adverse Consequences no longer apply to the Excluded Foreign Equity Interests and (B) the date a Lien on such Excluded Foreign Equity Interests is granted to secure any other Obligations of the Issuers or the Guarantors.

“Federal Securities Laws” has the meaning assigned to such term in Section 5.03.

“German GAAP” means generally accepted accounting principles as in effect from time to time in the Federal Republic of Germany.

“Grantor” and “Grantors” have the meanings assigned to such terms in the introductory paragraph to this Agreement.

“Guaranteed Obligations” has the meaning assigned to such term in Section 2.01.

“Guarantor” means the Grantors party hereto.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another Person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates own at least 10% of the outstanding Equity Interests of such Person or entity (measured by voting power, economic value or number).

“Indenture” has the meaning assigned to such term in the recitals to this Agreement.

“Intellectual Property” means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

“Intellectual Property Collateral” has the meaning assigned to such term in Section 4.02(8).

“Intellectual Property Security Agreement” means a Trademark Security Agreement in substantially the form of Exhibit II hereto, a Patent Security Agreement in substantially the form of Exhibit III hereto, or a Copyright Security Agreement in substantially the form of Exhibit IV hereto.
“**IP Agreements**” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including the agreements set forth on Schedule II hereto.

“**Leased-Department Inventory**” means any Inventory relating to a leased department within one of the Grantors’ retail stores, which Inventory is not owned by a Grantor (and would not be reflected on a consolidated balance sheet of the Grantors and their Subsidiaries prepared in accordance with GAAP).

“**Leased-Department Proceeds**” means any proceeds from the sale of any Leased-Department Inventory, solely to the extent that such proceeds are identifiable proceeds from the sale of Leased-Department Inventory and that the Grantor identifies such proceeds as such through a method of tracing.

“**Limited Guarantee**” means the guarantee provided under Section 2.01 by each MYT Guarantor Entity.

“**Material Adverse Effect**” means a material adverse effect on:

(1) the business, financial condition or results of operations, in each case, of the Note Parties and their Restricted Subsidiaries (taken as a whole);

(2) the ability of the Note Parties (taken as a whole) to perform their payment obligations under the Notes Documents; or

(3) the rights and remedies of the Trustee and the Holders (taken as a whole) under the Notes Documents.

“**MYT Account**” means a segregated account of MYT Parent for the benefit of the trustee and collateral agent on behalf of the holders of the Notes, pledged to secure the Second Lien Notes Obligations.

“**MYT Alternate Security**” means any security that is acceptable in the sole discretion of holders of at least 66-2/3% of the aggregate principal amount of the outstanding Notes.

“**MYT Asset Sale**” means any direct or indirect sale, disposition, monetization or other transfer of any assets or property of the MYT Entities (whether directly or indirectly or synthetically, including through derivative transactions) to an Independent Third Party.

Notwithstanding the preceding, none of the following items will be deemed to be an MYT Asset Sale:

(1) a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used,
useful or economically practicable to maintain in the conduct of the business of the MYT Entities (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

(2) dispositions of assets or property with an aggregate Fair Market Value in any calendar year of less than $5.0 million;

(3) any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Subsidiary of the MYT Holdco to the MYT Holdco or by the MYT Holdco or a Subsidiary of the MYT Holdco to another Subsidiary of MYT Holdco;

(4) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business, liquidation of inventory in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

(5) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(6) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the MYT Entities, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes; and

(7) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events.

“MYT Deposit Event” means (i) the irrevocable deposit of net cash proceeds of MYT Secondary Sales or distributions in the MYT Account in an aggregate amount that is not less than (x) $200.0 million less (y) the aggregate amount of Qualified LCs that have been provided and (ii) the provision of such Qualified LCs.

“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) New MYT Dutch Holdco and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Group” means MYT Holdco and its Subsidiaries, including the MYT Operating Entities.

“MYT Holdco” means MYT Holding Co., a direct Wholly Owned Subsidiary of MYT Parent Co., a newly formed Delaware corporation, together with its successors.
“MYT Operating Entities” means NMG Germany GmbH (or any successor parent operating entity of MYT Holdco) and its operating Subsidiaries, including mytheresa.com GmbH, mytheresa.com Service GmbH and Theresa Warenvertrieb GmbH.

“MYT Parent” means MYT Parent Co., a Delaware corporation, together with its successors. For the avoidance of doubt, MYT Parent shall not be a Grantor or Guarantor.

“MYT RCF Revenue Cap” means, as of any time, 12.5% of the consolidated revenues as reported in the monthly financial reports of the MYT Operating Entities during the immediately preceding twelve months for which such monthly financial reports are available.

“MYT Secondary Sale” means (i) the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in MYT Holdco) of equity interests of MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party, other than a primary sale of equity interests for cash whose net cash proceeds are contributed to or retained by the MYT Entities or (ii) any MYT Asset Sale other than a Qualified MYT Asset Sale.

“New MYT Dutch HoldCo” means a newly formed Dutch B.V., wholly-owned subsidiary of MYT Intermediate Holding Co. and direct parent of NMG Germany GmbH as a result of the MYT Reorganization.

“NM Group” means Neiman Marcus Group LTD LLC.

“Note Party” means each Issuer, each Subsidiary Guarantor and each Guarantor.

“Patent License” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement.

“Patents” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

1. all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;

2. all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;

3. all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“Pledged Collateral” has the meaning assigned to such term in Section 3.01(5).

“Pledged Debt Securities” has the meaning assigned to such term in Section 3.01.

“Pledged Securities” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Pledged Stock” has the meaning assigned to such term in Section 3.01.

“Projected Purchase Order” means an advance order (which may not be made more than nine months in advance of the earlier of (x) the date of delivery and (y) the date of payment) for inventory made in the ordinary course of business of the MYT Operating Entities.

“Projected RCF Amount” means an amount equal to the MYT RCF Revenue Cap, calculated as of the date of any Projected Purchase Order.

“Qualified LC” means one or more letters of credit issued by a reputable bank or trust company that is organized under the laws of the United States of America or any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act)) supporting the guarantee of the Notes by the MYT Guarantor Entities, in an aggregate amount equal to the difference between (x) $200.0 million and (y) the amount of net cash proceeds of MYT Secondary Sales that has been irrevocably deposited in the MYT Account.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities; provided that (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.

“Required Consent” means any approval, consent or waiver obtained by MYT Holdco with respect to Article V of the certificate of designation designating the Series A Preferred Stock from holders of a majority of the aggregate number of shares of Series A Preferred Stock outstanding in accordance with such certificate of designation.
"Second Lien Notes Collateral Agreement" means that Second Lien Notes Collateral Agreement, dated as of June 7, 2019, among the grantors party thereto, the Collateral Agent and the Trustee.

"Secured Obligations" means the “Note Obligations” as defined in the Indenture.

"Secured Parties" means the “Secured Parties” as defined in the Second Lien Notes Collateral Agreement.

"Security Interest" has the meaning assigned to such term in Section 4.01(1).

"Series A Preferred Stock" means any shares of Cumulative Series A Preferred Stock of MYT Holdco, $0.001 par value per share.

"Sponsors" means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any portfolio company of any of the foregoing.

"Termination Date" means the date on which the principal of and interest on the Notes, all fees and all other expenses or amounts payable under the Notes Documents have been paid in full (other than in respect of contingent indemnification and expense reimbursement claims not then due).

"Trademark License" means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license).

"Trademarks" means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

(1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allegiance Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;

(2) all goodwill associated therewith or symbolized thereby;
(3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

"Trust Account" means any accounts or trusts used solely to hold Trust Funds.

"Trust Funds" means cash, cash equivalents or other assets comprised of:

(1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Grantor’s employees;

(2) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer’s share thereof)); and

(3) any other funds which a Grantor holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary.

"Trustee" has the meaning assigned to such term in the introductory paragraph to this Agreement.

"Uniform Commercial Code" or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

ARTICLE II

GUARANTEE

SECTION 2.01. Guarantee. Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, to the Trustee and the Collateral Agent for the benefit of the Secured Parties as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Secured Obligations (such guaranteed obligations of the Guarantors, the “Guaranteed Obligations”). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Guaranteed Obligations. Each Guarantor waives presentment to, demand of payment from and protest to the Issuer or any other Note Party of any of the Guaranteed Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.
SECTION 2.02. Guarantee of Payment. Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Guaranteed Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other Secured Party in favor of any Note Party or any other person.

SECTION 2.03. No Limitations, Etc.

(1) Except for termination of a Guarantor’s obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise (other than defense of payment or performance). Without limiting the generality of the foregoing, except for termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:

(a) the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Notes Document or otherwise;

(b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Notes Document or any other agreement, including with respect to any other Guarantor under this Agreement;

(c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Guaranteed Obligations;

(d) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations;

(e) any illegality, lack of validity or enforceability of any Guaranteed Obligation;

(f) any change in the corporate existence, structure or ownership of any Note Party, or any insolvency, bankruptcy or reorganization of any Note Party;

(g) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Issuer, the Collateral Agent, any other Secured Party or any other person, whether in connection herewith, the other Notes Documents or any unrelated transactions; provided that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;
(h) any action permitted or authorized hereunder; or

(i) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Issuer or any Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the Guaranteed Obligations).

(2) Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Guaranteed Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Guaranteed Obligations, all without affecting the obligations of any Guarantor hereunder.

(3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof, each Guarantor waives any defense based on or arising out of any defense of any other Guarantor or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Guarantor, other than the payment in full in cash or immediately available funds of all the Guaranteed Obligations. The Collateral Agent and the other Secured Parties may exercise any right or remedy available to them against any other Guarantor pursuant to this Agreement or any other Guarantor pursuant to the other Notes Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto all Guaranteed Obligations have been terminated and paid in full (other than contingent indemnity or expense reimbursement obligations that are not yet due and payable and for which no claim has been made). To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Guarantor or any other Note Party, as the case may be, or any security.

SECTION 2.04. Reinstatement. Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated if, at any time, payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of any Issuer or any other Note Party or otherwise.

SECTION 2.05. Agreement To Pay; Contribution; Subrogation.

(1) In furtherance of the foregoing and not in limitation of any other right that the Trustee or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Guarantor or any Note Party to pay any Guaranteed Obligation when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will
forthwith pay, or cause to be paid, to the Trustee for distribution to the applicable Secured Parties in cash the amount of such unpaid Guaranteed Obligation.

(2) Subject to the foregoing clause (1), to the extent that any Guarantor, under this Agreement or the Indenture as a joint and several obligor, repays any of the Guaranteed Obligations owed by any Note Party under the Indenture (an “Accommodation Payment”), then the Guarantor making such Accommodation Payment will be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; provided that such rights of contribution and indemnification will be subordinated to the discharge of Guaranteed Obligations. As of any date of determination, the “Allocable Amount” of each Guarantor will be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Indenture without:

(a) rendering such Guarantor “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act (“UFTA”) or Section 2 of the Uniform Fraudulent Conveyance Act (“UFCA”);

(b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA; or

(c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA.

Upon payment by any Guarantor of any sums to the Trustee as provided above, all rights of such Guarantor against the Issuer, any other Note Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise will in all respects be subject to Article VI.

SECTION 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Issuer and each other Note Party, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that neither the Trustee, the Collateral Agent nor any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 2.07. Maximum Liability. Each Guarantor and, by its acceptance of this guarantee, the Trustee, the Collateral Agent and each other Secured Party hereby confirms that it is the intention of all such persons that this guarantee and the Guaranteed Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S.
Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this guarantee and the Guaranteed Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of the Guarantors under this guarantee at any time are limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor under this guarantee not constituting a fraudulent transfer or conveyance. Notwithstanding anything herein to the contrary, the Guaranteed Obligations of the Guarantors under this guarantee shall not exceed $200,000,000 (the “Guarantee Cap”).

SECTION 2.08. Luxembourg Provisions. Notwithstanding any provision to the contrary in this Agreement, the payment obligation of any MYT Entities incorporated under the laws of Luxembourg (a “Luxembourg Obligor”) for the obligations of any other entity or company (a “Surety Obligation”) which is not its direct or indirect Subsidiary shall be limited at any time, with no double counting, to an aggregate amount not exceeding the higher of:

(a) ninety-five (95) per cent of the Luxembourg Obligor’s own funds (capitaux propres) (as referred to in Schedule 1 of the Luxembourg Regulation dated 18 December 2015 regulating the form and content of balance sheets and profit and loss accounts (the “Regulation”) and implementing article 34 of the Luxembourg law dated 19 December 2002 concerning the trade and companies register and the accounting and annual accounts of undertakings, as amended (the “2002 Law”)) and subordinated debt (dette subordonnée), as at the date of this Guarantee and Collateral Agreement; and (b) ninety-five (95) per cent of the Luxembourg Obligor’s own funds (capitaux propres) (as referred to in Schedule 1 of the Regulation implementing among others article 34 of the 2002 Law) and subordinated debt (dette subordonnée), as at the date of any payment under this Guarantee and Collateral Agreement made with respect to a Surety Obligation. The above limitation shall not apply to any amounts borrowed under the Notes and made available, in any form whatsoever, to the Luxembourg Obligor or to any of its (current or future) direct or indirect Subsidiaries. For the avoidance of doubt, any amounts received under the Notes and made available, in any form whatsoever, to the Luxembourg Obligor or to any of its (current or future) direct or indirect Subsidiaries shall form part of, and be covered by, the guarantee under this Article II.

ARTICLE III
PLEDGE OF SECURITIES

SECTION 3.01. Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

(1) the Equity Interests (a) directly owned by such Grantor as of the Issue Date and (b) obtained by such Grantor after the Issue Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the
Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Stock”;

(2) the promissory notes and any instruments evidencing Indebtedness (a) owned by such Grantor as of the Issue Date and (b) issued to such Grantor after the Issue Date, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “Pledged Debt Securities”);

in each case, including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Debt Securities (except to the extent constituting an Excluded Asset or otherwise excluded from the Collateral pursuant to this Agreement), but excluding (i) Indebtedness owed by another Grantor or Note Party, (ii) intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Issuers and their respective Subsidiaries or the Grantors and their respective Subsidiaries or (iii) to the extent the pledge of such promissory note or instrument would violate any applicable law;

(3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);

(4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and

(5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.01, collectively, the “Pledged Collateral”).

Notwithstanding anything to the contrary in this Agreement or any other Notes Document, none of the Pledged Stock, Pledged Debt Securities or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Indenture.

SECTION 3.02. Delivery of the Pledged Collateral.

(1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.
Each Grantor will use its commercially reasonable efforts to cause any Indebtedness for borrowed money having an aggregate principal amount in excess of $5.0 million owed to such Grantor by any Person to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof; provided that the foregoing requirement will not apply to intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Issuers and their respective Subsidiaries or the Grantors and their respective Subsidiaries. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon an Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement will be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor. Each delivery of Pledged Securities will be accompanied by a schedule describing the securities, which schedule will be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided that failure to attach any such schedule hereto will not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered will supplement any prior schedules so delivered.

Notwithstanding anything to the contrary in this Agreement or any other Notes Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

SECTION 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants and covenants to and with the Collateral Agent, for the benefit of the Secured Parties that:

Schedule I correctly sets forth, as of the Issue Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments evidencing Indebtedness required to be pledged pursuant to the terms of the Indenture on the Issue Date;

the Pledged Stock and Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of a Grantor or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock
and other than with respect to Pledged Stock consisting of membership interests of limited liability companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt Securities (solely with respect to Pledged Debt Securities issued by a Person that is not a Subsidiary of a Grantor or an Affiliate of any such Subsidiary, to the best of each Grantor’s knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

(3) except for the security interests granted hereunder, each Grantor:

(a) is and, subject to any transfers made in compliance with the Indenture or this Agreement, as applicable, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;

(b) holds the same free and clear of all Liens, other than Permitted Liens;

(c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Indenture or this Agreement, as applicable, and other than Permitted Liens; and

(d) subject to the rights of such Grantor under the Notes Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all persons;

(4) other than as set forth in the Indenture or this Agreement or the schedules thereto or hereto, and except for restrictions and limitations imposed by the Notes Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Indenture or this Agreement, as applicable, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Issue Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(6) other than as set forth in any Notes Document or the perfection certificate delivered in connection with the issuance of the Notes or the schedules thereto, no consent or
approval of any Governmental Authority, any securities exchange or any other Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect, other than such consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect); 

(7) as of the Issue Date, this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof; 

(8) as of the Issue Date, none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction; and 

(9) the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary whose Equity Interests are, or are required to be, Collateral hereunder in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Grantor shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby to maintain the security interest of the Collateral Agent therein as a valid, perfected, first priority security interest. 

SECTION 3.04. Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. 

SECTION 3.05. Voting Rights; Dividends and Interest, Etc.. 

(1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder: 

(a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Indenture and the other Notes Documents; provided that, except as permitted under the Indenture or this Agreement, as applicable, such rights and powers will
not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Indenture or any other Notes Document or the ability of the Secured Parties to exercise the same;

(b) the Collateral Agent will, at the cost and expense of the requesting Grantor, promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and

(c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Indenture, the other Notes Documents and applicable laws; provided that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent).

(2) Upon the occurrence and during the continuance of an Event of Default and after at least one (1) Business Day’s prior written notice by the Collateral Agent to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent, which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; provided, however, that even after the occurrence and during the continuance of an Event of Default and such one (1) Business Day’s prior written notice, any Grantor may continue to receive dividends and
distributions solely to the extent permitted under subclause (b)(vi)(A), subclause (b)(vi)(C) and subclause (b)(vi)(E) of Section 3.4 of the Indenture.

(3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (3) will be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and will be applied in accordance with the provisions of Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.

(4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that the Collateral Agent will have the right from time to time following and during the continuance of an Event of Default and such one (1) Business Day’s prior written notice to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

ARTICLE IV
SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

SECTION 4.01. Security Interest.

(1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor and MYT Parent (solely with respect to the MYT Account) hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest (the “Security Interest”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and
properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Article 9 Collateral"):

(a) all Accounts;
(b) all Chattel Paper;
(c) all cash and Deposit Accounts;
(d) all Documents;
(e) all Equipment;
(f) all General Intangibles;
(g) all Instruments;
(h) all Inventory;
(i) all Investment Property;
(j) all Letter of Credit Rights;
(k) all Intellectual Property;
(l) all Commercial Tort Claims, including those described on Schedule IV hereto;
(m) each of the following:
   (i) Securities Accounts;
   (ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;
   (iii) all cash held in any Securities Account or Deposit Account; and
   (iv) all other Money in the possession of the Collateral Agent;
   (v) all books and Records pertaining to the Article 9 Collateral; and
   (vi) all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Notes Document, (i) the Article 9 Collateral will not include, this Agreement will not constitute a grant of a security interest in and the security interest granted hereunder will not attach to, any Excluded Asset and (ii) the Article 9 Collateral will not include, this Agreement will not constitute a grant of a
security interest in and the security interest granted hereunder will not attach to, any asset of MYT Parent except the MYT Account.

(2) Each Grantor hereby irrevocably agrees to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:

(a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;

(b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and

(c) a description of collateral that describes such property in any other manner as is necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide stamped copies of such filings to the Collateral Agent promptly following such filings.

(3) The Grantor will also file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Grantor.

(4) Notwithstanding anything to the contrary in this Agreement or any other Notes Document, no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor, except as provided in Section 7.16.

(5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

(6) Notwithstanding anything to the contrary in any Notes Document, no Grantor will be required:

(a) to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):

   (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;

(iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of $5.0 million; provided that such delivery shall not be required with respect to:

(A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;
(B) checks received in the ordinary course of business;
(C) notes and debt securities issued in connection with the extension of trade creditor by a grantor of a security interest; and
(D) instruments, notes and debt securities issued by a Grantor;

(iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral;

(b) entering into or causing to be entered into Control Agreements or similar agreements with respect to the MYT Account; or

c except as set forth in Section 7.16, to take any actions outside the United States to create or perfect any security interests in any Collateral (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction except as contemplated by Section 7.16).

SECTION 4.02. Representations and Warranties. Each Grantor represents and warrants to the Collateral Agent and the Secured Parties that:

(1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Indenture.

(2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Grantor for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Issue Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.
Each Grantor represents and warrants that a fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Issue Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Issue Date for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.

The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral other than Permitted Liens.

The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Issue Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.

None of the Grantors holds any Commercial Tort Claim individually in excess of $5.0 million as of the Issue Date except as indicated on Schedule IV.

The names of the obligors, amounts owing, due dates and other information with respect to each Grantor’s Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Collateral Agent by such Grantor from time to time.

As to itself and its Article 9 Collateral consisting of Intellectual Property (the "Intellectual Property Collateral"), to each Grantor’s knowledge, as of the Issue Date:
(a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, registered Trademarks and registered Copyrights owned by such Grantor as of the date hereof (including all such registered with the United States Patent and Trademark Office or United States Copyright Office);

(b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;

(c) Such Grantor has made or performed in the ordinary course of Grantor’s business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(d) With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

SECTION 4.03. Covenants.

(1) Each Grantor agrees to furnish to the Collateral Agent five Business Days prior written notice of any change in any MYT Guarantor Entity’s:

(a) corporate or organization name;

(b) organizational structure;
location (determined as provided in Uniform Commercial Code Section 9-307); or

organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number.

The MYT Guarantor Entities will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such MYT Guarantor Entity.

(2) Subject to the rights of such Grantor under the Notes Documents to dispose of Collateral and except as would otherwise be permitted by the Indenture or this Agreement, as applicable, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent, for the benefit of the Secured Parties, in the Article 9 Collateral and the priority thereof against any Lien that is not a Permitted Lien.

(3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as may from time to time be reasonably necessary to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.

(4) If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of $5.0 million is or becomes evidenced by any promissory note or other instrument, such note or instrument will be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties.

(5) After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.

(6) After the occurrence of an Event of Default and during the continuance thereof, none of the Grantors will, without the Collateral Agent’s prior written consent, acting at the direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes, grant any extension of the time of payment of any Accounts included.
in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with prudent business practices or as otherwise permitted under the Indenture or this Agreement, as applicable.

(7) At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Indenture or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Notes Documents.

(8) Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.

(9) Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor’s true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

(10) In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Indenture or to pay any premium in whole or part relating thereto, the Collateral Agent may, after the occurrence and during the continuation of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys’ fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

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If MYT Parent or MYT Holdco receives any distributions on account of the equity of MYT Holdco or proceeds from a MYT Secondary Sale, MYT Parent or MYT Holdco shall promptly pay or distribute such proceeds, until the earliest to occur of (i) a MYT Deposit Event, (ii) the provision of MYT Alternate Security or (iii) the satisfaction and discharge in full of the Second Lien Notes Obligations, into the MYT Account, up to an amount equal to $200.0 million (and, as a condition to the consummation of any MYT Secondary Sale, the applicable equityholder(s) shall cause the purchaser(s) to fund such proceeds directly or indirectly to MYT Holdco for deposit into the MYT Account); provided, that, upon the earlier to occur of (i) the satisfaction and discharge in full of the Second Lien Notes Obligations and (ii) provision of MYT Alternate Security, any amounts in the MYT Account shall be released to MYT Parent or MYT Holdco and the MYT Account shall cease to be Collateral hereunder.

Not later than 45 days after the Issue Date, MYT Parent shall open the MYT Account and enter into a Control Agreement with respect to the MYT Account. No funds or other amounts shall be deposited into the MYT Account at any time except as explicitly provided herein. No MYT Secondary Sale or other transaction or event that would result in a requirement to deposit funds into the MYT Account may occur until a Control Agreement is entered into with respect to the MYT Account.

Unless MYT Alternate Security has been provided or a MYT Deposit Event has occurred, no sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in MYT Holdco) of equity interests in MYT Holdco shall be made by MYT Parent or MYT Holdco for any consideration other than cash or Cash Equivalents.

Each MYT Guarantor Entity that is not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia shall comply with Section 3.14 of the Indenture as if each reference therein to a Foreign Guarantor were a reference to such MYT Guarantor Entity and each reference therein to a Guarantee were a reference to a Limited Guarantee.

No MYT Guarantor Entity shall take or knowingly or negligently omit to take, any action which action or omission might reasonably or would (in the good faith determination of the Issuer), have the result of materially impairing the value of the security interests taken as a whole (including the lien priority with respect thereto) with respect to the Collateral for the benefit of the Collateral Agent and the Secured Parties (including materially impairing the lien priority of the Notes with respect thereto) (it being understood that any release described under Section 7.15 and the incurrence of Liens permitted under Section 4.06(6) shall not be deemed to so materially impair the security interests with respect to the Collateral).

Each MYT Guarantor shall comply with Section 3.16 of the Indenture as if such MYT Guarantor were a Subsidiary Guarantor.
SECTION 4.04. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, for the benefit of the Secured Parties, the Collateral Agent’s security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor’s own expense, to take the following actions with respect to the following Article 9 Collateral:

(1) Instruments and Tangible Chattel Paper. If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of $5.0 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by instruments of transfer or assignment duly executed in blank.

(2) Investment Property.

(a) Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by instruments of transfer or assignment duly executed in blank. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall pursuant to an agreement, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent as to such security, without further consent of any Grantor or such nominee or (b) cause the issuer to register the Collateral Agent as the registered owner of such security.

(b) Within 5 Business Days of the Closing Date, the Grantors, with respect to each promissory note evidencing a Pledged Debt Security described on Schedule I to this Agreement, shall deliver to the Collateral Agent such promissory note, together with a note power endorsed in blank.

(c) Within 5 Business Days of the MYT Reorganization, the Grantors shall deliver a restated version of each promissory note described in Section 4.04(2)(b) above that correctly identifies each obligor and obligee with respect thereto, together with a note power endorsed in blank.

(3) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim with an asserted or nominal value in excess of $5.0 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement.

SECTION 4.05. Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by the Indenture or this Agreement, as applicable:
Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor’s business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.

Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor’s business:

(a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;

(b) maintain the quality of products and services offered under such Trademark;

(c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and

(d) not knowingly use or knowingly permit its licensees’ use of such Trademark in violation of any third-party rights.

Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.

Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor’s business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, regarding such Grantor’s ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.

Each Grantor, either itself or through any agent, employee, licensee or designee, will execute and deliver any and all agreements, instruments, documents and papers (and substantially equivalent agreements, documents and papers as are executed and delivered with respect to any Credit Agreement) reasonably necessary to evidence the Collateral Agent’s security interest in each Patent, Trademark, or Copyright listed in a list of new Patents, Trademarks or Copyrights which shall be furnished to the Collateral Agent at the same time as the annual financial statements provided pursuant to Section 3.2(a) of the Indenture.

Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United
States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor’s business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor’s reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

SECTION 4.06. **Restrictive Covenants.** Until the earliest to occur of (i) a MYT Deposit Event, (ii) the provision of MYT Alternate Security or (iii) the Termination Date:

(1) **Limitation on Restricted Payments.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise):

(a) declare or pay any dividend or make any payment or distribution on account of the MYT Guarantor Entities’ or any of their Subsidiaries’ Equity Interests (other than a dividend or other payment or distribution payable to the MYT Guarantor Entities or their Subsidiaries; including any payment made in connection with any merger, consolidation, liquidation or dissolution involving any of the MYT Guarantor Entities (other than dividends or distributions by MYT Holdco payable solely in common Equity Interests of MYT Holdco); or purchase, redeem, defease or otherwise acquire or retire for value any of the MYT Guarantor Entities’ or any of their Subsidiaries’ equity interests including any purchase, redemption, defeasance or acquisition for value made, in connection with any merger, consolidation, liquidation or dissolution involving any of the MYT Guarantor Entities or their Subsidiaries.

Nothing contained in this Section 4.06(1) shall prohibit (x) the Affiliate Transactions permitted under Section 4.06(7) and (y) the MYT Reorganization permitted under Section 4.06(4).

(2) **Limitation on Incurrence of Indebtedness.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), Incur any Indebtedness (including Acquired Indebtedness) for borrowed money or any guarantee or other credit support for Indebtedness for borrowed money; provided, however, that the foregoing limitation will not apply to the following:
the Incurrence by MYT Operating Entities of revolving (not term) indebtedness under the existing revolving credit facility of one or more of the MYT Operating Entities (as amended or refinanced from time to time, collectively, the "MYT RCF") and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof), which shall be provided by one or more commercial banks to finance ordinary course working capital needs or capital expenditures and the Permitted Investments described in Section 4.06(8)(a), provided the aggregate principal amount of the Indebtedness under the MYT RCF shall not exceed the greater of (x) 40.0 million Euros and (y) the MYT RCF Revenue Cap; and further provided that, the MYT Operating Entities may from time to time borrow under the MYT RCF to fund purchases of inventory pursuant to a Projected Purchase Order up to an amount so that the amount of the Indebtedness outstanding under the MYT RCF at any time does not exceed the Projected RCF Amount under the MYT RCF, notwithstanding that such borrowings would cause the amount outstanding under the MYT RCF to exceed the MYT RCF Revenue Cap, so long as (1) the MYT RCF permits such borrowings and (2) the Projected RCF Amount at the time of such Projected Purchase Order exceeded 40.0 million Euros; and 

intercompany Indebtedness of MYT Holdco and its Subsidiaries existing on the Issue Date; provided that to the extent any such Indebtedness is owed by an MYT Guarantor Entity to another Person that is not an MYT Guarantor Entity, such Indebtedness shall be unsecured and shall be subordinated in right of payment to the guarantee by such MYT Guarantor Entity of the Secured Obligations set forth in Section 2.01; and 

Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the MYT Operating Entities and their Subsidiaries under or pursuant to any "synthetic lease" transactions to on-balance sheet Indebtedness of the MYT Operating Entities and their Subsidiaries, not to exceed $2.0 million; provided that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness.

Limitation on Issuances of Equity Interests. MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), to (a) authorize, issue or increase the authorized amount of equity of any member of the MYT Group other than MYT Holdco (other than issuances of such equity to members of the MYT Group) or (b) amend or reclassify any equity of MYT Holdco into any of the foregoing equity described in clause (a).
4. **Limitation on Reorganizations.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), take any action, including forming a Subsidiary, recapitalization or reorganization, that results in any Person existing between MYT Holdco and NMG Germany GmbH (other than entities that are wholly owned Subsidiaries of MYT Holdco). Notwithstanding the foregoing, MYT Holdco shall be permitted to reorganize the ownership structure of MYT Holdco and its Subsidiaries to eliminate Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. on or prior to September 30, 2019 (the “MYT Reorganization”); provided that all equity pledges and guarantees by the MYT Guarantor Entities shall remain or be assumed by operation of law or otherwise in connection with such restructuring and without the creation of any additional tax liabilities at the time of the restructuring to the Holders.

5. **Limitation on Liquidations.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), liquidate, dissolve or wind-up, or voluntarily petition for bankruptcy or fail to defend involuntary acts of bankruptcy, subject (in the case of any entities organized under the laws of Germany) to duties under applicable German law. Notwithstanding the foregoing, MYT Holdco and its Subsidiaries shall be permitted to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), liquidate, dissolve or wind-up, or voluntarily petition for bankruptcy or fail to defend involuntary acts of bankruptcy Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. in connection with the MYT Reorganization.

6. **Limitation on Liens.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) create, Incurred or suffer to exist any Lien on any asset or property of any of the MYT Guarantor Entities or any of their Subsidiaries to secure Indebtedness for borrowed money or on any guarantee thereof, except:

   a. Liens on the assets of the borrowers and guarantors under the MYT RCF, securing their obligations under the MYT RCF;
   
   b. Liens existing or Incurred on the Issue Date and any refinancing or replacements thereof; provided that such refinancings or replacements of such original Liens shall not extend to any assets other than the assets subject to the original Lien (and proceeds and products thereof and improvements thereon);
   
   c. Liens on vehicles, equipment or personal property of the MYT Operating Entities and their Subsidiaries granted in the ordinary course of business;
   
   d. Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods; and
Liens on the collateral securing Indebtedness permitted to be incurred as secured Indebtedness pursuant to Section 4.06(2).

Limitation on Transactions with Affiliates. MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan (including intercompany loans), advance or guarantee with, or for the benefit of, Neiman Marcus Group, Inc. or any Affiliates of Neiman Marcus Group, Inc., or any other Affiliates of MYT Holdco (other than the members of the MYT Group) and the MYT Group (each of the foregoing, an “Affiliate Transaction”), except for any reasonable, customary and arm’s length payments to or arrangements relating to the allocation of shared expenses (if any) between MYT Holdco, the MYT Group and Neiman Marcus Group, Inc. and their respective Affiliates (other than the members of the MYT Group).

Limitation on Investments. MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) make any Investment in any Person after the Issue Date, other than (collectively, “Permitted Investments”):

(a) Investments made using common equity or the cash proceeds (net of offering expenses, discounts and commissions) of common equity of MYT Holdco (it being understood that an amount of cash proceeds of such common equity may be used to temporarily reduce the outstanding amount under the MYT RCF, and such amount may be borrowed under the MYT RCF to fund such Investments);

(b) Investments in members of MYT Group and its wholly-owned Subsidiaries;

(c) Investments by the MYT Operating Entities and their Subsidiaries in accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received by the MYT Operating Entities and their Subsidiaries in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(d) intercompany loans among the Subsidiaries of MYT Holdco;

(e) guarantees of operating leases or of other obligations that do not constitute Indebtedness, in each case, entered into by the MYT Operating Entities and their Subsidiaries in the ordinary course of business;

(f) purchases or acquisitions by the MYT Operating Entities and their Subsidiaries of inventory, supplies, materials and equipment or purchases or acquisitions of
contract rights or intellectual property in each case in the ordinary course of business;

(g) Investments arising out of the receipt of non-cash consideration in connection with any Qualified MYT Asset Sales;

(h) non-cash Investments made in order to complete the MYT Reorganization; and

(i) Investments not to exceed $10.0 million after the Issue Date.

MYT Holdco shall not, and shall not permit any member of the MYT Group to, directly or indirectly, use any Permitted Investments (or proceeds thereof) (i) to provide assets to an entity that Incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to refinance any Indebtedness of MYT Holdco or any member of the MYT Group or (ii) to make the payments restricted by Section 4.06(1).

(9) **Limitation on Business Activities.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) engage in any business or business activity other than that currently conducted by the MYT Group and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto. Notwithstanding the foregoing, the MYT Group will not acquire any securities or other interests in the Neiman Marcus Group, Inc. or its Affiliates (other than members of the MYT Group).

(10) **Non-Circumvention.** MYT Holdco shall not by any voluntary action directly or indirectly through any subsidiary, including amending its governing documents or through any reorganization, reclassification, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other similar voluntary action, avoid the observance or performance of any of covenants set forth under this Section 4.06. The business of the MYT Group shall be conducted, directly or indirectly, through MYT Holdco.

(11) **Assumption of Obligations.** In the event of any sale, conveyance, exchange or transfer of all or substantially all of MYT Holdco’s property or assets or the consolidation, merger or amalgamation of MYT Holdco with or into any other entity or the consolidation, merger or amalgamation of any other entity with or into MYT Holdco, the successor or acquiring Person (if other than MYT Holdco) shall expressly assume the due and punctual observance and performance of each and every covenant and condition of this Agreement to be performed and observed by MYT Holdco and all of the obligations and liabilities under this Agreement, mutatis mutandis.

(12) **Information Rights.**

(a) MYT Holdco shall deliver to the Trustee:
(i) by the earlier of (A) ninety (90) days after the end of each fiscal year of NM Group (or such longer period as may be provided by the SEC if NM Group were then subject to SEC reporting requirements as a non-accelerated filer) and (B) the date NM Group discloses to holders of its secured notes earnings information with respect to the corresponding fiscal year, the audited annual financial statements of the MYT Operating Entities for the most recently ended fiscal year of the MYT Operating Entities (which currently ends prior to the corresponding fiscal year of NM Group), prepared in accordance with German GAAP, together with a qualitative or quantitative explanation of the material applicable differences between German GAAP and GAAP;

(ii) by the earlier of (A) forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of NM Group (or such longer period as may be provided by the SEC if NM Group were then subject to SEC reporting requirements as a non-accelerated filer) and (B) the date NM Group discloses to holders of its secured notes earnings information with respect to the corresponding fiscal quarter, unaudited quarterly financial statements of the MYT Operating Entities for the fiscal quarter most recently ended of the MYT Operating Entities (which currently ends prior to the corresponding fiscal quarter of NM Group) and, commencing with the MYT Operating Entities’ “fiscal quarter ending in March 2020, the corresponding fiscal quarter of the prior fiscal year, prepared in accordance with German GAAP, together with a qualitative or quantitative explanation of the material applicable differences between German GAAP and GAAP;

(iii) with each set of consolidated financial statements referred to in clauses (i) and (ii) of this Section 4.06(12)(a) above, a narrative discussion of the key financial information of the MYT Operating Entities consistent with those customarily provided with earnings press releases; and

(iv) within the time period specified for filing current reports on Form 8-K by the SEC as if such items were reportable on a Form 8-K, notice of any (a) issuances of equity interests (including any debt security that is convertible into, or exchangeable for, capital stock of MYT Holdco) by MYT Holdco that are junior to the Series A Preferred Stock, (b) issuances of Indebtedness other than in the ordinary course of business pursuant to the exceptions set forth in Section 4.06(2) above and (c) Permitted Investments.

(b) Notwithstanding the foregoing, the obligations in this Section 4.06(12) may be satisfied with respect to financial information of the MYT Operating Entities by furnishing the applicable financial statements of MYT Holdco or any Subsidiary thereof that is the direct or indirect parent of NMG Germany GmbH; provided that such information is accompanied by consolidating information that explains in reasonable detail the material differences between the information relating to such parent, on the one hand, and the information relating to the MYT Operating Entities on a stand-alone basis, on the other hand; and provided further that such direct or indirect parent of NMG Germany GmbH shall not conduct, transact or
otherwise engage in any business or operations other than relating to its direct or indirect ownership of all of the Equity Interests in, and management of, NMG Germany GmbH.

(c) MYT Holdco shall promptly furnish any information reasonably requested by Holders or beneficial holders of at least 5% of the outstanding Notes to confirm that MYT Holdco and its subsidiaries are in compliance with the covenants set forth under this Section 4.06.

(d) Documents required to be delivered pursuant to this Section 4.06(12) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which (i) such documents become available on the SEC’s Electronic Data Gathering Analysis and Retrieval (“EDGAR”) website or (y) NMG Germany GmbH (or any direct or indirect parent of NMG Germany GmbH) posts such documents, or provides a link thereto on its website; or (ii) such documents are posted on NMG Germany GmbH’s behalf on IntraLinks/IntraAgency or another similar non-public, password protected datasite.

(e) Any Person seeking access to such datasite will be required to represent to and agree with the MYT Operating Entities and any such parent (and by accepting such financial information, such Person will be deemed to have so represented and agreed with the MYT Operating Entities and such parent) to the good faith satisfaction of the MYT Operating Entities or such parent that:

(i) it is a holder of a Note or a bona fide prospective investor in the Notes;

(ii) if it is a prospective purchaser of the Notes, it is (a) a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act), (b) a “non U.S. Person” (as defined in Regulation S under the Securities Act) or (c) an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating, monitoring or disposing of an investment in the Notes; and

(vi) it will not use such information in any manner intended to compete with the business of the MYT Operating Entities.
ARTICLE V

REMEDIES

SECTION 5.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law, to take any of or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker’s board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to Persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors ten Business Days’ written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent’s intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker’s board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels.
parcels in the Collateral Agent’s own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 5.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Without limiting any other rights of the Collateral Agent granted pursuant to this Agreement, each Grantor hereby grants to the Collateral Agent, and the representatives and independent contractors of the Collateral Agent, a royalty free, non-exclusive, irrevocable license (such license to be effective upon the occurrence and during the continuance of any Event of Default), to use, apply, and affix any Trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent’s enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

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SECTION 5.02. Application of Proceeds.

(1) The Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the following order of priority:

(a) first, to all amounts owing to the Collateral Agent or the Trustee pursuant to any of the Notes Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in the Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Notes Documents;

(b) second, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to the Trustee, the Collateral Agent or any other Agent pursuant to any of the Notes Documents in its capacity as such;

(c) third, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the Guaranteed Obligations constituting Secured Obligations with each Secured Party receiving an amount equal to its outstanding Secured Obligations or, if the proceeds are insufficient to pay in full all such Secured Obligations, its pro rata share of the amount remaining to be distributed; and

(d) fourth, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Grantor, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

(2) If any payment to any Secured Party pursuant to this Section 5.02 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other Secured Parties, with each Secured Party whose Secured Obligations have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Secured Obligations of such Secured Party and the denominator of which is the unpaid Secured Obligations of all Secured Parties entitled to such distribution.

(3) All payments required to be made hereunder shall be made to the Trustee for the account of such Secured Parties or as the Trustee may otherwise direct in accordance with the Notes Documents.

(4) The Notes Obligations with respect to the Limited Guarantees shall be marshaled against (i) first, the MYT Account or the assets subject to the MYT Alternate Security (if any), (ii) second, the other Collateral and (iii) third, the other assets of the MYT Guarantor Entities.

(5) Subject to the other limitations (if any) set forth herein and in the other Notes Documents, it is understood that the Note Parties will remain liable (as and to the extent set forth in herein except to the extent that any of the foregoing are found by a final and non-
appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s gross negligence or willful misconduct) to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations of the Note Parties.

(6) It is understood and agreed by each Note Party that the Collateral Agent will have no liability for any determinations made by it in this Section 5.02 except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Collateral Agent’s own gross negligence, bad faith or willful misconduct. Each Note Party also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.

SECTION 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.
ARTICLE VI

INDEMNITY, SUBROGATION AND SUBORDINATION

SECTION 6.01. Contribution and Subrogation. Subject to Sections 2.07, 2.08 and 6.02, each Guarantor (a “Contributing Guarantor”) agrees that, in the event a payment shall be made by any other Guarantor hereunder (the “Claiming Guarantor”), the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as applicable, in each case multiplied by a fraction of which the numerator shall be the net assets (as determined in accordance with GAAP) of such Contributing Guarantor at the time of such payment and the denominator will be the aggregate net assets (as determined in accordance with GAAP) of all the Guarantors at such time (or, in the case of any Guarantor becoming a party hereeto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor).

SECTION 6.02. Subordination.

(1) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Section 6.01 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or otherwise will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations until such time as this Agreement has been terminated in accordance with Section 7.15(1). No failure on the part of the Issuer or any Guarantor to make the payments required by Section 6.01 (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of the Issuer with respect to the Secured Obligations or any Guarantor with respect to its obligations hereunder, and the Issuer shall remain liable for the full amount of the Secured Obligations and each Guarantor shall remain liable for the full amount of its obligations hereunder.

(2) The Guarantors hereby agree that all Indebtedness and other monetary obligations owed by it to any other Guarantor or any Subsidiary will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 13.1 of the Indenture. All communications and notices hereunder to any Grantor will be given to it in care of the Issuer, with such notice to be given as provided in Section 13.1 of the Indenture.

SECTION 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:
any lack of validity or enforceability of the Indenture, any other Notes Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;

(2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any other Notes Document or any other agreement or instrument;

(3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or

(4) subject only to termination or release of a Guarantor’s obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

SECTION 7.03. **Limitation By Law.** All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

SECTION 7.04. **Binding Effect; Several Agreement.** This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Indenture. This Agreement will be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

SECTION 7.05. **Successors and Assigns.** Section 7.05 of the Second Lien Notes Collateral Agreement, dated as of the date hereof, among the grantors party thereto, the Collateral Agent and the Trustee shall apply to this Agreement *mutatis mutandis*, and any removal, resignation or replacement of the Collateral Agent thereunder shall be effective hereunder. Notwithstanding any provision of this Agreement to the contrary, all and every obligations of a Luxembourg Obligor under this Agreement shall automatically and without the need for any further formality or authorization pass and be transferred to all and every successors and assignees into which such Luxembourg Obligor would be merged or otherwise dissolved.
For the avoidance of doubt, upon the occurrence of the MYT Reorganization, all covenants, promises and agreements by or on behalf of any Grantor that is not a surviving entity in the MYT Reorganization that are contained in this Agreement shall bind and inure to the benefit of the surviving entities of the MYT Reorganization.

SECTION 7.06. Collateral Agent’s Fees and Expenses; Indemnification. The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 7.6 of the Indenture and the provisions of Section 7.6 of the Indenture shall be incorporated by reference herein and apply to each Grantor mutatis mutandis.

SECTION 7.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent’s name or in the name of such Grantor, to:

1. receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;
2. demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
3. ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
4. sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;
5. send verifications of Accounts to any Account Debtor;
6. commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;
7. settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;
8. notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and
9. use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;
provided that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 7.08.  APPLICABLE LAW.  THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 7.09.  Waivers; Amendment.

(1) No failure or delay by the Collateral Agent or any Holder in exercising any right, power or remedy hereunder or under any other Notes Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Holders hereunder and under the other Notes Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Grantor therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.

(2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Article IX of the Indenture.

SECTION 7.10.  WAIVER OF JURY TRIAL.  EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (1) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (2)
ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG
OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

SECTION 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or
unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected
or impaired thereby.

SECTION 7.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of
which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart
to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

SECTION 7.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not
part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.


(1) Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New
York State court or federal court of the United States of America sitting in New York County, and any appellate court from any thereof, in any action
or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby
irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York
State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding
shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this
Agreement will affect any right that the Trustee, the Collateral Agent or any Holder may otherwise have to bring any action or proceeding relating to
this Agreement against any Grantor, or its properties, in the courts of any jurisdiction.

(2) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection
which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New
York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 7.15. Termination or Release.

(1) This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall
terminate upon the occurrence of the Termination Date.
(2) A Grantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Indenture or this Agreement, as applicable, as a result of which such Grantor ceases to be a Guarantor.

(3) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Indenture or this Agreement, as applicable, to any person that is not a Grantor, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Article IX of the Indenture, the security interest in such Collateral shall be automatically released.

(4) The guarantees granted herein and the security interests in the Collateral granted herein (except with respect to the MYT Account, in the case of subclause (ii) of this clause (4)) shall be automatically released upon the earlier to occur of (i) the provision of MYT Alternate Security or (ii) the occurrence of a MYT Deposit Event. For the avoidance of doubt, upon the occurrence of the MYT Reorganization, all covenants, promises and agreements by or on behalf of any Grantor that is not a surviving entity in the MYT Reorganization that are contained in this Agreement shall bind and inure to the benefit of the surviving entities of the MYT Reorganization. For the avoidance of doubt, upon the earlier to occur of (i) the provision of MYT Alternate Security or (ii) the occurrence of a MYT Deposit Event, the Equity Interests of NMG German GmbH shall be automatically released.

(5) Notwithstanding anything to the contrary contained herein or in any other Notes Document, this Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate upon the receipt of the Collateral Agent and/or Trustee of proceeds or other payments pursuant to the terms of this Agreement in an aggregate amount equal to the Guarantee Cap.

(6) In connection with any termination or release pursuant to paragraph (1) through (5) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor such of the Pledged Collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; provided that the Collateral Agent will not be required to take any action under this Section 7.15(6) unless such Grantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of an Officer of the Issuer certifying that the transaction giving rise to such termination or release is permitted by the Indenture or this Agreement, as applicable, and was or is consummated in compliance with the Notes Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.
SECTION 7.16. Additional Subsidiaries. The MYT Guarantor Entities shall not create or acquire any new direct or indirect Subsidiary unless (i) such new Subsidiary is a direct or indirect Subsidiary of NMG Germany GmbH or (ii) such new Subsidiary provides a Limited Guarantee and pledges its assets pursuant hereto and becomes a MYT Guarantor Entity by executing a joinder hereto in the form of Exhibit I within 20 Business Days days of (x) the date of its acquisition or formation for entities formed after the Issue Date and (y) the Issue Date with respect to New MYT Dutch HoldCo. The MYT Guarantor Entities shall not (i) dissolve or liquidate, (ii) merge with consolidate with another Person or (iii) transfer all or substantially all of their assets to another Person, provided that, on or before September 30, 2019, the MYT Reorganization shall be permitted; provided that all equity pledges and guarantees by the MYT Guarantor Entities shall remain or be assumed by operation of law or otherwise in connection with such restructuring and without the creation of any additional tax liabilities at the time of the restructuring to the holders of the MYT Holdco Preferred Stock or to the holders of Notes and Third Lien Notes. If (x) any Person that is required to become a MYT Guarantor Entity pursuant to the immediately preceding sentence is not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia (or any MYT Guarantor entity is redomiciled such that it ceases to be organized in any such jurisdiction), then within 60 days after the date of (a) its acquisition or formation (or redomiciliation) for entities formed after the Issue Date and (b) with respect to New MYT Dutch HoldCo, the earlier of (1) the date that the MYT Reorganization is consummated and (2) September 30, 2019, each holder of Equity Interests issued by such Person shall execute and deliver to the Collateral Agent a pledge agreement under the law of the jurisdiction of such Person’s organization creating a security interest in such Equity Interests in favor of the Collateral Agent for the benefit of the holders of the Secured Obligations and take all steps reasonably required to perfect such security interest and render such security interest fully enforceable under such law and (y) if Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. are still in existence after September 30, 2019, then by October 1, 2019 each holder of Equity Interests issued by either such Person shall execute and deliver to the Collateral Agent a pledge agreement under the law of the jurisdiction of such Person’s organization creating a security interest in such Equity Interests in favor of the Collateral Agent for the benefit of the holders of the Secured Obligations and take all steps reasonably required to perfect such security interest and render such security interest fully enforceable under such law. Upon execution and delivery by the Collateral Agent and any Person required to become a MYT Guarantor Entity pursuant to this Section 7.16 (including New MYT Dutch HoldCo) of a supplement in the form of Exhibit I hereto, such Person will become a Grantor and/or a Guarantor hereunder with the same force and effect as if originally named as a Grantor and/or a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

SECTION 7.17. Rights of the Collateral Agent: No Duties. The permissive rights of the Collateral Agent enumerated herein (i) are granted for its benefit and (ii) shall not be constituted as duties or obligations. The duties of the Collateral Agent are solely as set forth in the Indenture and no implied duties or obligations will be read into this Agreement against the Collateral Agent. In the acceptance, execution, delivery and performance of this Agreement, the Collateral Agent shall have the benefit of all exculpatory provisions, indemnities, protections, benefits, rights and immunities granted to it in the Indenture, as though fully set forth herein.
SECTION 7.18.   Recitals. Neither the Trustee nor the Collateral Agent will be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Agreement or for or in respect of the recitals contained herein, all of which recitals are made solely by each of the Grantors.
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MYT PARENT CO.

By:  /s/ Tracy M. Preston

Name:  Tracy M. Preston

Title:  Vice President and Secretary

[Signature Page to MYT Guarantee and Collateral Agreement]
GRANTORS:

MYT HOLDING CO.
By: /s/ Tracy M. Preston  
  Name: Tracy M. Preston  
  Title: Vice President and Secretary

MYT INTERMEDIATE HOLDING CO.
By: /s/ Tracy M. Preston  
  Name: Tracy M. Preston  
  Title: Vice President and Secretary

MARIPOSA LUXEMBOURG I S. À R.L.
By: /s/ Tracy M. Preston  
  Name: Tracy M. Preston  
  Title: Manager A

MARIPOSA LUXEMBOURG II S. À R.L.
By: /s/ Tracy M. Preston  
  Name: Tracy M. Preston  
  Title: Manager A

[Signature Page to MYT Guarantee and Collateral Agreement]
ANKURA TRUST COMPANY, LLC, as Trustee and Collateral Agent

By: /s/ Lisa J. Price

Name: Lisa J. Price

Title: Managing Director

[Signature Page to MYT Guarantee and Collateral Agreement]
SUPPLEMENT NO. dated as of (this “Supplement”), to the Guarantee and Collateral Agreement dated as of [ ], 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Guarantee and Collateral Agreement”), among each of the Grantors and Guarantors party thereto, and Ankura Trust Company, LLC, as Trustee (in such capacity, the “Trustee”) and as Collateral Agent for the Secured Parties (as defined therein) (in such capacity, the “Collateral Agent”).

(1) Reference is made to that certain (i) Indenture dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Indenture”), among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the “Issuer”), MARIPOSA BORROWER, INC., a Delaware corporation (the “Corporate Co-Issuer”), THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (the “LLC Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time, the Trustee and the Collateral Agent, pursuant to which the Issuer has agreed to issue and sell such notes from time to time upon the terms and subject to the conditions set forth therein and (ii) Second Lien Notes Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Second Lien Notes Collateral Agreement”), among, inter alios, the Issuers, the Trustee and the Collateral Agent.

(2) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indenture and the Guarantee and Collateral Agreement referred to therein.

(3) The Grantors and Guarantors have entered into the Guarantee and Collateral Agreement in order to induce the Holders to purchase the Notes under the Indenture. Section 7.16 of the Guarantee and Collateral Agreement provides that certain additional entities may become Grantors and Guarantors under the Guarantee and Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Indenture to become a Grantor and Guarantor under the Guarantee and Collateral Agreement.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 7.16 of the Guarantee and Collateral Agreement, the New Subsidiary by its signature below becomes a Guarantor and a Grantor under the Guarantee and Collateral Agreement with the same force and effect as if originally named therein as a Guarantor and a Grantor, and the New Subsidiary hereby (1) agrees to all the terms and provisions of the Guarantee and Collateral Agreement applicable to it as a Guarantor and a

Exhibit I-1
Grantor thereunder and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 3.03 and Section 4.02 thereof are true and correct, in all material respects, on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Guarantee and Collateral Agreement), does hereby create and grant to the Collateral Agent, for the benefit of the applicable Secured Parties, a security interest in and Lien on all the New Subsidiary’s right, title and interest in and to the Collateral (as defined in and to the extent required by the Guarantee and Collateral Agreement) of the New Subsidiary. Each reference to a “Guarantor” or a “Grantor” in the Guarantee and Collateral Agreement shall be deemed to include the New Subsidiary. The Guarantee and Collateral Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors’ rights generally; (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (3) implied covenants of good faith and fair dealing.

SECTION 3. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Collateral Agent receives a counterpart (whether by electronic transmission or otherwise) of this Supplement that bears the signature of the New Subsidiary.

SECTION 4. The New Subsidiary hereby represents and warrants as of the date hereof that:

1. set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof;
2. set forth on Schedule II attached hereto is a true and correct schedule of all of the material Patents, Trademarks and Copyrights of the New Subsidiary as of the date hereof;
3. set forth on Schedule III attached hereto is a true and correct schedule of all Commercial Tort Claims of the New Subsidiary individually in excess of $5.0 million as of the date hereof; and
4. set forth on Schedule IV attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Guarantee and Collateral Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS

Exhibit I-2
SECTION 7. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, in the Guarantee and Collateral Agreement will not in any way be affected or impaired thereby. The parties will endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder will be in writing and given as provided in Section 7.01 of the Guarantee and Collateral Agreement.

SECTION 9. The New Subsidiary agrees to reimburse the Trustee and the Collateral Agent for their reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Trustee and the Collateral Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Agents have duly executed this Supplement to the Guarantee and Collateral Agreement as of the day and year first above written.

[Name of New Subsidiary]

By:

Name:
Title:

Exhibit I-3
### Pledged Securities of the New Subsidiary

#### EQUITY INTERESTS

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#### DEBT SECURITIES

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<th>Principal Amount</th>
<th>Date of Note</th>
<th>Maturity Date</th>
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Schedule I-1
PATENTS, TRADEMARKS AND COPYRIGHTS

Schedule II-1
COMMERCIAL TORT CLAIMS

Schedule III-1
LEGAL NAME, JURISDICTION OF FORMATION
AND LOCATION OF CHIEF EXECUTIVE OFFICE

Schedule IV-1
FORM OF TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT is dated as of [ ], by [ ] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Ankura Trust Company, LLC, in its capacity as collateral agent under the Security Agreement referred to below (in such capacity, the “Collateral Agent”).

WITNESSETH:

Whereas, the Grantors are party to that certain Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Trademark Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor's right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Trademark Collateral”):

(a) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use”
application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule I:

(b) all goodwill associated therewith or symbolized thereby;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Trademark Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. Each Grantor authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

SECTION 5. Counterparts. This Trademark Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Trademark Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[          ],
as Grantor

By: 
Name: 
Title: 
Acknowledged and Accepted:

ANKURA TRUST COMPANY, LLC,
as Collateral Agent

By:  
Name:  
Title:  
SCHEDULE I

to

TRADEMARK SECURITY AGREEMENT

TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS
FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT is dated as of [ ] by [·] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Ankura Trust Company, LLC, in its capacity as collateral agent under the Security Agreement referred to below (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Patent Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor's right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Patent Collateral”):

(a) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule I;

(b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;
all claims for, and rights to sue for, past or future infringements of any of the foregoing; and

(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Patent Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Patent and Trademark Office. The Grantor authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

SECTION 5. Counterparts. This Patent Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Patent Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[                     ],
as Grantor

By: ____________________________
Name: __________________________
Title: __________________________
Acknowledged and Accepted:

ANKURA TRUST COMPANY, LLC,
as Collateral Agent

By:  
Name:  
Title:  
SCHEDULE I

to

PATENT SECURITY AGREEMENT

PATENTS AND PATENT APPLICATIONS
FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT is dated as of [], by [-] (each, individually, a “Grantor” and, collectively, the “Grantors”), in favor of Ankura Trust Company, LLC, in its capacity as collateral agent under the Security Agreement referred to below (in such capacity, the “Collateral Agent”).

WITNESSETH:

WHEREAS, the Grantors are party to that certain Guarantee and Collateral Agreement dated as of June 7, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) in favor of the Collateral Agent, pursuant to which the Grantors are required to execute and deliver this Copyright Security Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors hereby agree with the Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Security Agreement and used herein have the meanings given to them in the Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As security for the payment or performance when due (whether at stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor's right, title, and interest in or to any and all of the following Intellectual Property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Copyright Collateral”):

(a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise;

(b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule 1;

(c) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
(d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

SECTION 3. Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent pursuant to the Security Agreement and the Grantors hereby acknowledge and affirm that the rights and remedies of the Collateral Agent with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall control.

SECTION 4. Recordation. This Copyright Security Agreement has been executed and delivered by the Grantors for the purpose of recording the grant of security interest herein with the United States Copyright Office. Each Grantor authorizes and requests that the United States Copyright Office record this Copyright Security Agreement.

SECTION 5. Counterparts. This Copyright Security Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Copyright Security Agreement by signing and delivering one or more counterparts.


[Signature page follows]
IN WITNESS WHEREOF, each Grantor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

[       ],
as Grantor

By: ____________________________
Name: __________________________
Title: __________________________
Acknowledged and Accepted:

ANKURA TRUST COMPANY, LLC,
as Collateral Agent

By: ________________________________
Name: ______________________________
Title: ______________________________
SCHEDULE I

to
COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS
## PLEDGED STOCK

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<th>Issuer</th>
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## DEBT SECURITIES

1. Loan A ($105,000,000 initial amount) and Loan B ($45,000,000 initial amount) owed, in each case by NMG Germany GmbH to Mariposa Luxembourg II S.à r.l.

2. Note, dated as of December 18, 2014, in an initial principal amount of $105,000,000, owed by Mariposa Luxembourg II S.à r.l. to MYT Intermediate Holding Co. (as assignee).

3. Note, effective as of January 15, 2015, in an initial principal amount of $1,726,027, owed by Mariposa Luxembourg II S.à r.l. to MYT Intermediate Holding Co. (as assignee).
INTELLECTUAL PROPERTY

U.S. COPYRIGHTS

None.
U.S. PATENTS

None.

FOREIGN PATENTS

None.
None.
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<td>Delaware</td>
<td>1618 Main Street, Dallas, Texas 75201</td>
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<td>Delaware</td>
<td>1618 Main Street, Dallas, Texas 75201</td>
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</tbody>
</table>
None.
EXECUTION VERSION

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

MYT HOLDING CO.

MYT Holding Co., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), does hereby certify as follows:

(1) The Corporation’s original certificate of incorporation was filed with the Secretary of State of the State of Delaware on April 15, 2019 (the “Certificate of Incorporation”).

(2) This Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation (the “Board of Directors”) in accordance with Sections 141, 242 and 245 of the General Corporation Law of the State of Delaware (the “General Corporation Law”).

(3) The required holders of the Corporation’s issued and outstanding capital stock approved and adopted this Amended and Restated Certificate of Incorporation in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

(4) This Amended and Restated Certificate of Incorporation restates and integrates and amends the original Certificate of Incorporation, as heretofore amended and supplemented.

(5) References made herein and in the By-Laws of the Corporation to the certificate of incorporation are to this Amended and Restated Certificate of Incorporation.

(6) The Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is MYT Holding Co.

SECOND: The address of the registered office of the Corporation in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

FOURTH: The Corporation is authorized to issue two classes of stock, designated as “Common Stock,” par value $0.001 per share, and “Preferred Stock,” par value $0.001 per share. The total number of shares of Common Stock that the Corporation is authorized to issue is one hundred million (100,000,000) shares. The total number of shares of Preferred Stock that the
Corporation is authorized to issue is nine hundred million (900,000,000). Each class of shares shall have the rights, preferences and limitations set forth below.

A. Each share of Common Stock shall be entitled to one vote on all matters to be voted on by the stockholders of the Corporation. Subject to the rights of any holders of Preferred Stock and Section B of Article FOURTH below, the holders of Common Stock shall share ratably, on a per share basis, in all dividends. Subject to the rights of any holders of Preferred Stock and Section B of Article FOURTH below, the holders of Common Stock shall share ratably, on a per share basis, in all distributions to the holders of Common Stock upon the occurrence of voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

B. (1) Dividends and other distributions, whether payable in cash, securities or other property of the Corporation, may be declared by the board of directors of the Corporation (the “Board”) from time to time out of assets or funds of the Corporation legally available therefor.

(2) Until the earliest to occur of (i) a MYT Deposit Event, (ii) the provision of MYT Alternate Security or (iii) the satisfaction and discharge in full of the Second Lien Notes Obligations, (a) no dividends or distributions (including upon a liquidation or dissolution of the Corporation) may be declared or paid on any shares of Common Stock or Preferred Stock, and (b) the Corporation may not redeem, repurchase or otherwise retire or acquire for value (including upon a liquidation or dissolution of the Corporation) any shares of Common Stock or Preferred Stock.

(3) Until there are no longer any shares of Series A Preferred Stock outstanding, (a) no dividends or distributions (including upon a liquidation or dissolution of the Corporation) may be declared and paid on any shares of Common Stock or Series B Preferred Stock, and (b) the Corporation may not redeem, repurchase or otherwise retire or acquire for value (including upon a liquidation or dissolution of the Corporation) any shares of Common Stock or Series B Preferred Stock.

(4) Until the satisfaction and discharge in full of the Third Lien Notes, the Corporation may not issue any shares of Preferred Stock other than the shares of Series A Preferred Stock and the shares of Series B Preferred Stock issued on the Issue Date.

“Company Party” mean Neiman Marcus Group, Inc., a Delaware corporation, and each of its subsidiaries that has executed and delivered, or in the future, executes and delivers, counterpart signature pages to the Second Lien Notes Indenture and the Third Lien Notes Indenture.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates own at least 10% of the outstanding equity interests of such person or entity (measured by voting power, economic value or number).

“Issue Date” means the date the shares of the Series A Preferred Stock and the shares of the Series B Preferred Stock are first issued to the holders thereof.
“MYT Account” means a segregated account of MYT Parent for the benefit of the trustee and collateral agent on behalf of the holders of the Second Lien Notes, pledged to secure the Second Lien Notes.

“MYT Alternate Security” means any security that is acceptable in the sole discretion of holders of at least 66-2/3% of the aggregate principal amount of the outstanding Second Lien Notes.

“MYT Asset Sale” shall have the meaning set forth in the Second Lien Notes Indenture as of the Issue Date.

“MYT Deposit Event” means (i) the irrevocable deposit of net cash proceeds of MYT Secondary Sales or distributions pursuant to Article FOURTH in the MYT Account in an aggregate amount that is not less than (x) $200.0 million less (y) the aggregate amount of Qualified LCs that have been provided from time to time and (ii) the provision of such Qualified LCs.

“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) MYT Netherlands Parent B.V. (Netherlands) and (viii) the subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Parent” means MYT Parent Co., the direct parent of the Corporation, together with its successors.

“MYT Secondary Sale” means (i) the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving MYT Parent or any other entity that directly or indirectly owns equity interests in the Corporation) of equity interests of the Corporation by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party, other than a primary sale of equity interests for cash whose net cash proceeds are contributed to or retained by the MYT Entities or (ii) any MYT Asset Sale other than a Qualified MYT Asset Sale.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities. Notwithstanding the foregoing, (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.

“Qualified LC” means one or more letters of credit issued by a reputable bank or trust company that is organized under the laws of the United States of America or any state thereof or any foreign country recognized by the United States of America having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company’s long-term debt, is rated A (or such similar equivalent rating or higher by at least one
nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) supporting the guarantee of the Second Lien Notes by the guarantors thereof, in an aggregate amount equal to the difference between (x) $200.0 million and (y) the amount of net cash proceeds of MYT Secondary Sales that has been irrevocably deposited in the MYT Account.

“Second Lien Notes” means the 14.00% Senior Cash Pay/PIK Second Lien Notes due 2024 of Neiman Marcus Group LTD LLC, Mariposa Borrower, Inc., The Neiman Marcus Group LLC and The NMG Subsidiary LLC.

“Second Lien Notes Indenture” means the indenture governing the Second Lien Notes.

“Second Lien Notes Obligations” means the indebtedness and related obligations under the Second Lien Notes and the other indebtedness documents related to the Second Lien Notes.

“Series A Preferred Stock” means shares of Preferred Stock designated as “Series A.”

“Series B Preferred Stock” means shares of Preferred Stock designated as “Series B.”

“Third Lien Notes” means, collectively, (x) the 8.000% Third Lien Senior Secured Notes due 2024 of Neiman Marcus Group LTD LLC and (y) the 8.750% Third Lien Senior Secured Notes due 2024 of Neiman Marcus Group LTD LLC.

“Third Lien Notes Indenture” means the indentures governing the Third Lien Notes.

C. The Board is authorized at any time, and from time to time, subject to the limitations prescribed by law and any rights of holders of Preferred Stock, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board.

(2) Subject to any rights of holders of Preferred Stock, the Board shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation (the "By-Laws").
The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws. Unless and except to the extent that the By-Laws shall so require, the election of directors of the Corporation need not be by written ballot.

No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article FIFTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the General Corporation Law, this Amended and Restated Certificate of Incorporation, all certificates of designation designating a series of Preferred Stock and any by-Laws adopted by the stockholders; provided, however, that no by-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such by-Laws had not been adopted.

SIXTH: The Corporation shall indemnify and hold harmless its directors to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives. The right to indemnification conferred by this Article SIXTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to officers, employees and agents of the Corporation.

The rights to indemnification and to the advancement of expenses conferred in this Article SIXTH shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.
Any repeal or modification of the foregoing provisions of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to the advancement of expenses of a director of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

SEVENTH: In recognition and anticipation that (i) certain of the Covered Persons (as defined below) may serve as directors or officers of the Corporation, (ii) each Sponsor (as defined below) and its Affiliated Companies engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (iii) the Corporation and its Affiliated Companies may engage in material business transactions with the Sponsors and their Affiliated Companies, and that the Corporation is expected to benefit therefrom, the provisions of this Article SEVENTH are set forth to regulate and define the conduct of certain affairs of the Corporation as they may involve the Covered Persons, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith.

The Corporation and its Affiliated Companies renounce, to the fullest extent permitted by law, any interest or expectancy of the Corporation and its Affiliated Companies in, or in being offered an opportunity to participate in, any Excluded Opportunity (as defined below). As a result of such renunciation, (a) all Excluded Opportunities shall belong to the Sponsors and their Affiliated Companies, (b) no Covered Person shall have any duty to present any Excluded Opportunity to the Corporation or its Affiliated Companies, (c) the Covered Persons shall have the right to hold and exploit all Excluded Opportunities for their own account and benefit, or to direct, sell, assign or transfer any Excluded Opportunity to any other person or entity and (d) the Covered Persons cannot be, and shall not be, liable to the Corporation, its stockholders or its Affiliated Companies for breach of any fiduciary duty to the Corporation, its stockholders or its Affiliated Companies by reason of the fact that any Covered Person does not present any Excluded Opportunity to the Corporation or its Affiliated Companies or pursues, acquires or exploits any Excluded Opportunity for itself or directs, sells, assigns or transfers any Excluded Opportunity to any other person or entity.

Any person or entity purchasing or otherwise acquiring any interest in any shares of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article SEVENTH.

To the extent that any provision of this Article SEVENTH is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Article SEVENTH.

“Affiliated Company” means (a) in respect of each Sponsor, (i) any entity that controls, is controlled by or is under common control with such Sponsor (other than Neiman Marcus Group, Inc. and any company that is controlled by Neiman Marcus Group, Inc.) and (ii) any investment fund managed by such Sponsor or any person or entity that controls, is controlled by or is under common control with such Sponsor and (b) in respect of the Corporation, any company controlled by the Corporation.

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“Covered Persons” means (a) each Sponsor, its Affiliated Companies and any partner, member, director, officer, stockholder, employee or agent of such Sponsor or any of its Affiliated Companies, and (b) any person serving as a director, officer, employee or agent of the Corporation at the request of a Sponsor or any of its Affiliated Companies.

“Excluded Opportunity” means any matter, transaction or interest or potential matter, transaction or interest (including without limitation those that might be the same as or similar to the business or activities of the Corporation or any of its Affiliated Companies) that is presented to, or acquired, created or developed by, or that otherwise comes into the possession of, any Covered Person unless such matter, transaction or interest is offered in writing to a Covered Person expressly and solely in such Covered Person’s capacity as a director or officer of the Corporation.

“Sponsor” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective affiliates and funds or partnerships managed or advised by any of them or any of their respective affiliates, but not including any portfolio company of any of the foregoing.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the General Corporation Law) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the By-Laws.

NINTH: The Corporation reserves the right, from time to time, to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in any manner now or hereafter provided by law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation in this Amended and Restated Certificate of Incorporation or any amendment thereof are granted subject to this reservation. Notwithstanding the foregoing, Section B of Article FOURTH shall not be amended, waived, altered, changed or repealed in any manner that adversely affects (i) a holder of shares of the Series A Preferred Stock without the consent of such holder, (ii) the holders of the Second Lien Notes without the consent of the trustee to the Second Lien Notes Indenture(1) and (iii) with respect to Section B(4) of Article FOURTH, the holders of the Third Lien Notes without the consent of the trustee to the Third Lien Notes Indenture(2).

* * *

(1) NTD: Indenture to include language providing trustee with the ability to provide such consent after receiving consent from 51% of the holders.
(2) NTD: Indenture to include language providing trustee with the ability to provide such consent after receiving consent from 51% of the holders.
IN WITNESS WHEREOF, the Corporation has adopted this Amended and Restated Certificate of Incorporation on this 4th day of June, 2019.

/s/ Tracy M. Preston
Tracy M. Preston
Authorized Signatory

[Signature Page to Amended and Restated Certificate of Incorporation of MYT Holding Co.]
CERTIFICATE OF DESIGNATION

OF

CUMULATIVE SERIES A PREFERRED STOCK

OF

MYT HOLDING CO.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the “DGCL”), MYT Holding Co., a corporation duly organized and validly existing under the DGCL (the “Company”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

The Board of Directors of the Company adopted resolutions on May 30, 2019 providing for the creation of a new series of 250,000,000 shares of preferred stock, par value $0.001 per share, of the Company designated as Series A Preferred Stock (as defined below):

WHEREAS, the Certificate of Incorporation of the Company (as amended, restated, supplemented or otherwise modified from time to time, the “Certificate of Incorporation”) authorizes the issuance of Preferred Stock, $0.001 par value per share, of the Company, and expressly authorizes the Board of Directors of the Company, subject to limitations prescribed by Law, to provide, out of the unissued shares of Preferred Stock, for Series A Preferred Stock, $0.001 par value per share (the “Series A Preferred Stock”), and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series; and

WHEREAS, it is the desire of the Board of Directors of the Company to establish and fix the number of shares to be included in a new series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Company does hereby provide authority for the Company to issue 250,000,000 shares of Series A Preferred Stock and does hereby in this Certificate of Designation (this “Certificate of Designation”) to be filed with the Secretary of State of the State of Delaware in accordance with Section 103 of the DGCL establish and fix and herein state and express the designations, rights, preferences, powers, restrictions and limitations of such shares of Series A Preferred Stock (the “Series A Preferred Shares”) as follows:

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ARTICLE I
DEFINITIONS, CALCULATIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

As used in this Certificate of Designation, the following capitalized terms will have the following meanings:

“Acquired Indebtedness” means, with respect to any specified Person:

(a) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Subsidiary of such specified Person, whether or not such Indebtedness is Incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Subsidiary of such specified Person; and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person, (b) in the case of any limited liability company, the managing member or board of managers of such Person, (c) in the case of any partnership, the board of directors, board of managers or managing member of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing or, in each case, any duly authorized committee of such body.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“Capital Stock” means:

(a) in the case of a corporation or company, corporate stock or shares in the capital of such corporation or company;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited and however described); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Lease Obligation” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and

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[snip]
accounted for as finance or capital leases on a balance sheet of such Person under GAAP or German GAAP, as applicable, and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP or German GAAP, as applicable.

“Change of Control” means the occurrence of any of the following events:

(a) prior to, on or after an initial public offering of the Company or its successor entity, any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more of the Permitted Holders, acquires beneficial ownership of Equity Interests of the Company representing more than 50% of the aggregate voting power for the election of directors of the Company (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested); or

(b) prior to, on or after an initial public offering of the Company or its successor entity, the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Permitted Holders.


“Compounded Liquidation Preference” means, with respect to the Series A Preferred Shares at any date, the sum of (i) the Stated Value thereof, plus (ii) all accumulated and unpaid Dividends (whether declared or undeclared) as of the most recent Semi-Annual Date prior to such date (or, solely with respect to dividends accruing as a result of the 2.00% per annum increase in the Dividend Rate pursuant to Section 8.02, as of the most recent Quarter End Date prior to such date).

“Disqualified Institution” means:

(a) any Person that is a competitor of the Company and identified by the Company in writing to the Transfer Agent and made available to the Holders on or prior to the Issue Date; and

(ii) all Affiliates of such competitors described in the foregoing clause (i) that are reasonably identifiable as such (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (b) below) or any portfolio companies managed by such entities or their Affiliates); or

(b) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Company in writing to the Transfer Agent and made available to the Holders on or prior to the Issue Date.

The Transfer Agent will not have any responsibility or obligation to determine whether any Holder or potential Holder is a Disqualified Institution and the Transfer Agent will have no liability with respect to any assignment made to a Disqualified Institution.

“Dividend” means the distributions to be made by the Company in respect of the Series A Preferred Shares in accordance with Section 2.01(a).
“Dividend Rate” means 10% per annum, as such rate may be increased upon the occurrence and during the continuance of a Trigger Event pursuant to Section 8.02.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.


“GAAP” means, generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies); provided that the Company may at any time elect by written notice to the Transfer Agent to fix GAAP as in effect on the date specified in such notice and, upon any such notice, references herein to GAAP will thereafter be construed to mean for all purposes of this Certificate of Designation (other than for financial reporting purposes) for periods beginning on and after the date specified in such notice, GAAP as in effect on the date specified in such notice.

“German GAAP” means generally accepted accounting principles as in effect from time to time in the Federal Republic of Germany.

“Governmental Entity” means any U.S. or foreign, federal, state, provincial, municipal, local or similar government or any agency, authority, board, body, bureau, commission, court, department, entity, official, political subdivision, tribunal or other instrumentality of any such government and will include any regulatory or trade body or organization and any arbitrator or arbitral body.

“Hedge Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company and its Subsidiaries will be a Hedge Agreement.

“Holder” means, as of the relevant date, any Person that is the holder of record of at least one Series A Preferred Share as of such date.

“Holder Majority” means the consent of Holders who between them hold a majority of the aggregate number of Series A Preferred Shares held by all of the Holders (excluding from the numerator and the denominator any Series A Preferred Shares held by MYT Parent, the Company, any of their Subsidiaries or any of their Affiliates).

“Incur” means, with respect to any Indebtedness, Capital Stock or Lien, to issue, assume, guarantee, incur or otherwise become liable for, or subject to, such Indebtedness, Capital Stock or Lien, as applicable; provided that any Indebtedness, Capital Stock or Lien of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Person at the time it becomes a Subsidiary.

“Indebtedness” means, with respect to any Person, without duplication:
(a) all obligations of such Person for borrowed money;
(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
(c) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
(d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP or German GAAP, as applicable;
(e) all Capitalized Lease Obligations of such Person;
(f) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
(g) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
(h) the principal component of all obligations of such Person in respect of bankers’ acceptances;
(i) all Guarantees by such Person of Indebtedness described in clauses (a) through (h) above; and
(j) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Redeemable Stock (excluding accrued dividends that have not increased the liquidation preference of such Redeemable Stock);

provided, that Indebtedness will not include:

(i) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
(ii) prepaid or deferred revenue arising in the ordinary course of business;
(iii) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
(iv) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP or German GAAP, as applicable.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another Person or entity in which the Company Parties and/or any of the Sponsors and/or
their respective affiliates own at least 10% of the outstanding Equity Interests of such Person or entity (measured by voting power, economic value or number).

"Investment" with respect to any Person means any purchase of equity, loan, extension of credit, guarantee, advance, capital contribution or other acquisition for consideration of Indebtedness, Equity Interests or other securities.

"Issue Date" means the date the Series A Preferred Shares are first issued to the holders thereof.

"Junior Stock" means Equity Interests of the Company, which, by their terms, rank junior to the Series A Preferred Shares on payment of dividends or upon liquidation, dissolution, or winding up, including the Common Stock of the Company and the Series B Preferred Stock.

"Law" means any applicable U.S. or foreign, federal, state, provincial, municipal or local law (including common law), statute, ordinance, rule, regulation, code, policy, directive, standard, license, treaty, judgment, order, injunction, decree or agency requirement of or undertaking to or agreement with any Governmental Entity.

"Lien" means, with respect to any asset (i) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (ii) 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; provided that in no event will an operating lease or an agreement to sell be deemed to constitute a Lien.

"Limited Guarantee" means a limited guarantee of the obligations under the New Second Lien Notes by each MYT Guarantor Entity on a senior basis.

"Liquidation Event" means any liquidation, dissolution or winding up of the Company, either voluntary or involuntary.

"Liquidation Preference" means, with respect to the Series A Preferred Shares at any date, the sum of (i) the Stated Value thereof, plus (ii) all accumulated and unpaid Dividends (whether declared or undeclared, and including all such dividends that have compounded pursuant to Section 2.01(a)) thereon through, but not including, such date.

"Management Group" means, the group consisting of:

(a) the directors, executive officers and other management personnel of Neiman Marcus Group, Inc. and its Subsidiaries on the date hereof;

(b) persons who became directors, officers or management personnel of Neiman Marcus Group Inc. or any direct or indirect parent of Neiman Marcus Group Inc., as applicable, and its Subsidiaries following the date hereof (other than in connection with a transaction that would otherwise be a Change of Control if such persons were not included in the definition of "Permitted Holders");

(c) family members of, or trusts, partnerships or limited liability companies for the benefit of, any of the foregoing; and

(d) the heirs, executors, successors and legal representatives of each of the foregoing.

"Maturity Date" means the tenth anniversary of the Issue Date.
“MYT Asset Sale” means any direct or indirect sale, disposition, monetization or other transfer of any assets or property of the MYT Entities (whether directly or indirectly or synthetically, including through derivative transactions) to an Independent Third Party. Notwithstanding the foregoing, upon the effectiveness of the Second Lien Notes Indenture, “MYT Asset Sale” shall have the meaning set forth therein.

“MYT Group” means the Company and its Subsidiaries, including the MYT Operating Entities.

“MYT Guarantor Entities” means, collectively, and together with their respective successors, MYT Parent, the Company, MYT Intermediate Holding Co., Mariposa Luxembourg I S. à r.l., Mariposa Luxembourg II S. à r.l. and, once formed, MYT Netherlands Parent B.V.

“MYT Operating Entities” means NMG Germany GmbH (or any successor parent operating entity of the Company) and any operating Subsidiaries of the Company, including mytheresa.com GmbH, mytheresa.com Service GmbH and Theresa Warenvertrieb GmbH.

“MYT RCF Revenue Cap” means, as of any time, 12.5% of the consolidated revenues as reported in the monthly financial reports of the MYT Operating Entities during the immediately preceding twelve months for which such monthly financial reports are available.

“MYT Parent” means MYT Parent Co.

“MYT Parent Obligations” means the covenants and agreements of MYT Parent in an agreement between the Company and MYT Parent dated as of the date hereof.

“New Second Lien Notes” means up to $550 million in aggregate principal amount of New Second Lien Notes due 2024.

“NM Group” means Neiman Marcus Group LTD LLC.

“Officer” means the Chairman of the Company’s Board of Directors, the Chief Executive Officer, the Chief Financial Officer or the President of the Company or any of its Subsidiaries, as applicable.

“Permitted Holder” means each of:

(a) Neiman Marcus Group, Inc., any direct or indirect parent entity of Neiman Marcus Group, Inc. and their respective Subsidiaries;

(b) the Sponsors;

(c) any member of the Management Group (or any controlled Affiliate thereof of which members of the Management Group hold at least 50% of the aggregate voting power and 50% of the economic value); and

(d) any other holder of a direct or indirect equity interest in Neiman Marcus Group, Inc. that holds such equity interest as of the date hereof; provided that such holders, as a group, do not own, Equity Interests of the Company that represent more than 25% of the aggregate voting power for the election of directors of the Company.

“Permitted Transferee” means any Person other than a Disqualified Institution.
“Person” means any individual, corporation, limited liability company, partnership, (including a limited partnership) joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Preferred Stock” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

“Projected Purchase Order” means an advance order (which may not be made more than nine months in advance of the earlier of (x) the date of delivery and (y) the date of payment) for inventory made in the ordinary course of business of the MYT Operating Entities.

“Projected RCF Amount” means an amount equal to the MYT RCF Revenue Cap, calculated as of the date of any Projected Purchase Order.

“Quarter End Date” means each of March 31, June 30, September 30 and December 31. If any Quarter End Date is not a Business Day, the Quarter End Date will be the Business Day immediately following such Quarter End Date.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities; provided that (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.

“Redeemable Stock” means, with respect to any Person, any equity interests of such Person that, by its terms, in each case, at the option of the holder thereof or upon the happening of any event matures, becomes mandatorily redeemable or becomes redeemable at option of such Person, in whole or in part.

“Redemption Date” means each day on which any or all of the Series A Preferred Shares are redeemed or purchased pursuant to Article III.

“Redemption Price” means, with respect to any Series A Preferred Share at any Redemption Date, an amount per share equal to the Liquidation Preference thereof at such date.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Semi-Annual Date” means April 15 and October 15, of each year, commencing on and including October 15, 2019. If any Semi-Annual Date is not a Business Day, the Semi-Annual Date will be the Business Day immediately following such Semi-Annual Date.

“Series B Preferred Stock” means Series B Preferred Stock of the Company, par value $0.001 per share.

“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and
funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any portfolio company of any of the foregoing.

“Stated Value” means, at any date of determination, and with respect to each outstanding Series A Preferred Share, $1.00, adjusted as appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization, combination or similar event with respect to the Series A Preferred Shares.

“Subsidiary,” means, with respect to any Person:

(a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(b) any partnership, joint venture, limited liability company or similar entity of which:

(i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; or

(ii) such Person is a controlling general partner or otherwise controls such entity.

For the avoidance of doubt, any entity that does not satisfy the provisions of the foregoing clause (a) or (b) shall not be a “Subsidiary” for any purpose under this Certificate of Designation, regardless of whether such entity is consolidated on the Company’s financial statements.

“Third Lien Notes” means collectively (x) newly issued 8.000% secured notes due October 25, 2024 of Neiman Marcus Group LTD LLC and (y) newly issued 8.750% secured notes due October 25, 2024 of Neiman Marcus Group LTD LLC.

“Third Lien Notes Indentures” means each of the indentures governing the Third Lien Notes.

“Transfer”: (a) when used as a noun means any direct or indirect, voluntary or involuntary sale, hypothecation, pledge, assignment (as collateral or otherwise), attachment, encumbrance, or other transfer or disposition of any interest (legal or beneficial) in any security (including the transfer of any Person that owns such security or transfer by reorganization, merger, sale of substantially all assets or by operation of law), and (b) when used as a verb means to, directly or indirectly, voluntarily or involuntarily, sell, hypothecate, pledge, assign (as collateral or otherwise), encumber, or otherwise transfer or dispose of any interest (legal or beneficial) in any security (including the transfer of any Person that owns such security or transfer by reorganization, merger, sale of substantially all assets or by operation of law). Notwithstanding the foregoing, a Transfer of any Person that directly or indirectly owns any Series A Preferred Shares shall not be deemed to be a Transfer of such Series A Preferred Shares unless such Series A Preferred Shares constitute a majority of such Person’s assets (measured by fair market value).

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, a New York limited liability company.
SECTION 1.02. **Rules of Construction.** Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) “or” is not exclusive;

(d) the words “including,” “includes” and similar words shall be deemed to be followed by without limitation;

(e) terms defined in the singular include the plural, and terms defined in the plural include the singular;

(f) “will” shall be interpreted to express a command;

(g) provisions apply to successive events and transactions;

(h) references to any Law (including the Securities Act and the Exchange Act), rule or regulation shall be deemed to include such Law, rule or regulation as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder;

(i) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Certificate of Designation;

(j) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Certificate of Designation as a whole and not any particular Article, Section, clause or other subdivision;

(k) words used herein implying any gender shall apply to both genders;

(l) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”;

(m) the principal amount of any non-interest bearing Indebtedness or other discount security constituting indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Company dated such date prepared in accordance with GAAP or German GAAP, as applicable;

(n) any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity); and
SECTION 1.03. Acts of Holders.

(a) Except as herein otherwise expressly provided, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Certificate of Designation to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by the Holders or such Holder, as applicable, in person. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Company.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by Law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Company deems sufficient.

(c) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Series A Preferred Share shall bind every future Holder of the same Series A Preferred Share and the Holder of every Series A Preferred Share issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Holders or the Company in reliance thereon, whether or not notation of such action is made upon the certificate representing such Series A Preferred Share.

(d) The Company may set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be 10 days prior to the first solicitation of such consent.

SECTION 1.04. Effect of Covenants. For the avoidance of doubt, the covenants set forth in Article V shall only apply at a time when the Series A Preferred Shares remain outstanding and shall cease to apply when all Series A Preferred Shares are no longer outstanding.

ARTICLE II

DIVIDENDS

SECTION 2.01. Dividends.

(a) From and after the date of issuance of each Series A Preferred Share, Holders of the Series A Preferred Shares shall be entitled to receive in respect of each such share, if, as and when declared by the Company’s Board of Directors, from time to time, cumulative dividends accruing on a daily basis at the Dividend Rate on the Compounded Liquidation Preference of such share from time to time, payable in cash and, to the extent not paid, shall compound on each Semi-Annual Date; provided that dividends accruing as a result of the 2.00% per annum increase in the Dividend Rate pursuant to Section 8.02, shall be payable.
in cash, and, to the extent not paid, shall compound on the Compounded Liquidation Preference on each Quarter End Date. Dividends will be calculated on the basis of actual days elapsed over a year of 360 days consisting of twelve 30-day months.

(b) Notwithstanding anything to the contrary contained herein, no Dividend may be declared unless paid to the Holders in cash (it being understood that no Dividends may be declared and paid in securities or otherwise “in kind”).

SECTION 2.02. Ranking. Except with respect to any equal or senior-ranking equity interests that may be issued with the approval of the Holder Majority, the Series A Preferred Shares (inclusive of any and all Dividends thereon) shall rank senior and in priority of payment to all Junior Stock in respect of payment of dividends or upon liquidation, winding up or dissolution of the Company. So long as any Series A Preferred Shares are outstanding, no dividends or distributions on, or purchases or redemptions of, Junior Stock shall be paid, declared or made, except as permitted under this Certificate of Designation.

ARTICLE III

REDEMPTION

SECTION 3.01. Notices to Holders. If the Company elects to redeem the Series A Preferred Shares pursuant to Section 3.07, it shall furnish to each Holder a notice in accordance with Section 3.03.

SECTION 3.02. Selection of Series A Preferred Shares to Be Redeemed. If less than all of the Series A Preferred Shares are to be redeemed at any time, the Series A Preferred Shares of all Holders shall be redeemed on a pro rata basis.

SECTION 3.03. Notice of Redemption. The Company shall deliver electronically, mail or cause to be mailed by first-class mail, postage prepaid, a notice of redemption not more than sixty (60) days (or, in the case of a Mandatory Redemption, thirty (30) days) before the Redemption Date to each Holder to be redeemed.

The notice shall identify the Series A Preferred Shares to be redeemed and shall state:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if the Company is not permitted by Law to redeem all of the Series A Preferred Shares required to be redeemed or if the Series A Preferred Shares are to be redeemed in part only, the number of, or the portion of, the Compounded Liquidation Preference of, the Series A Preferred Shares to be redeemed and that, after the Redemption Date upon surrender of such Series A Preferred Shares, if such shares are certificated, a new certificate for such Series A Preferred Shares in a Compounded Liquidation Preference equal to the unredeemed portion of the original Series A Preferred Shares will be issued in the name of the Holder upon cancellation of the original certificate representing such Series A Preferred Shares or if such shares are uncertificated, a notice of issuance, of uncertificated shares stating the number of unredeemed, or the Compounded Liquidation Preference equal to the unredeemed portion of, the Series A Preferred Shares of such Holder; provided, that if any accumulated and unpaid Dividends in respect of any unredeemed Series A Preferred Shares are not included in the Compounded Liquidation Preference, then such accumulated and unpaid Dividends shall continue to accrue and compound in accordance with Section 2.01(a);
(d) that, if such shares were certificated, the certificate representing the Series A Preferred Shares called for redemption must be surrendered to the Company to collect the Redemption Price;

(e) that, unless the Company defaults in making such redemption payment, the Series A Preferred Shares called for redemption shall cease to be outstanding or accumulate Dividends; and

(f) any condition to such redemption.

Solely in the case of optional redemption in accordance with Section 3.07, such notice of redemption, and the related redemption, may, at the Company’s discretion, be subject to one or more conditions precedent, including completion of one or more corporate transactions. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice of redemption shall describe each such condition, and if applicable, shall state that, in the Company’s discretion, the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded if any or all such conditions shall not have been satisfied by the Redemption Date as stated in such notice, or by the redemption date as so delayed. The Company may provide in such notice that payment of the Redemption Price and performance of the Company’s obligations with respect to such redemption may be performed by another Person; provided that such notice shall not relieve the Company’s obligations under this Certificate of Designation.

SECTION 3.04. Effect of Notice of Redemption. Once notice of redemption is delivered to the Holders in accordance with Section 3.03, subject to satisfaction of any conditions precedent permitted under this Certificate of Designation specified in the applicable notice of redemption, the Redemption Price of the Series A Preferred Shares called for redemption shall become irrevocably due and payable on the Redemption Date. The notice, if delivered electronically, mailed or caused to be mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder actually receives such notice. In any case, failure to deliver such notice or any defect in the notice to the Holders of any Series A Preferred Share shall not affect the validity of the redemption of any other Series A Preferred Share. Subject to Section 3.05, on and after the Redemption Date, Dividends shall cease to accumulate on Series A Preferred Shares or portions of Series A Preferred Shares called for redemption and such Series A Preferred Shares shall cease to be outstanding.

SECTION 3.05. Deposit of Redemption Price.

(a) Prior to 2:00 p.m. (Eastern Time) on the Redemption Date, the Company shall deposit with each Holder money sufficient to pay the Redemption Price of all Series A Preferred Shares of such Holder to be redeemed on that Redemption Date. Each such Holder shall promptly return to the Company any money deposited with the Holders by the Company in excess of the amounts necessary to pay the Redemption Price of all Series A Preferred Shares of such Holder to be redeemed.

(b) If any Series A Preferred Share called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, without prejudice to any other rights that a Holder may have at Law or in equity, Dividends shall continue to accumulate or be paid on the unpaid Compounded Liquidation Preference, from the Redemption Date until the Redemption Price is paid, and on any Dividends accumulated to the Redemption Date not paid on such unpaid Compounded Liquidation Preference, in each case at the Dividend Rate.

SECTION 3.06. Series A Preferred Shares Redeemed in Part. Upon surrender of a Series A Preferred Share certificate (if any) that is redeemed in part, (i) if such shares are certificated, the Company
shall issue a new Series A Preferred Share certificate equal in Compounded Liquidation Preference to the unredeemed portion of the Series A Preferred Shares surrendered and (ii) if such shares are uncertificated, the Company shall deliver a notice of issuance of uncertificated shares stating the Compounded Liquidation Preference of the unredeemed portion of the Series A Preferred Shares surrendered; provided, that in each case of clauses (i) and (ii) if any accumulated and unpaid Dividends in respect of any unredeemed Series A Preferred Shares are not included in the Compounded Liquidation Preference, then such accumulated and unpaid Dividends shall continue to accrue and compound in accordance with Section 2.01(a).

SECTION 3.07. Optional Redemption.

(a) At any time from time to time, the Company may, at its option, on one or more occasions redeem all (or a part, in accordance with Section 3.02) of the outstanding Series A Preferred Shares held by the Holders on a pro rata basis, upon notice as described under Section 3.03 for an amount per share equal to the Redemption Price paid in cash on the Redemption Date set forth in the notice required under Section 3.03.

(b) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06.

SECTION 3.08. Mandatory Redemption.

(a) Upon or immediately prior to the earlier of (i) any Change of Control and (ii) the Maturity Date, the Company shall redeem for cash (any such redemption, a “Mandatory Redemption”) all of the then outstanding Series A Preferred Shares at a price per share equal to the Redemption Price as of the Redemption Date.

(b) Any redemption pursuant to this Section 3.08 shall be made pursuant to the provisions of Sections 3.03 through 3.05, as applicable.

SECTION 3.09. No Conversion. The Series A Preferred Shares shall not be convertible into any other securities of the Company.

ARTICLE IV

VOTING

SECTION 4.01. No Voting Rights. Except as may otherwise be required by non-waivable provision of the DGCL, the Series A Preferred Shares shall not have any voting powers, preferences or relative participating, optional or other special rights or voting powers, or qualifications, limitations or restrictions thereof. Without limiting the foregoing, the Holders shall have no voting rights, except as otherwise required by non-waivable provision of the DGCL. In all cases where the Holders have the right to vote separately as a class, such Holder shall be entitled to one vote for each such share held by them respectively.
Nothing contained in this Section 4.01 will be deemed to restrict or limit a Holder’s rights under Article V or Article XI.

ARTICLE V

COVENANTS

SECTION 5.01. Limitation on Restricted Payments. The Company shall not, and shall not permit any of its Subsidiaries, to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) without the approval of the Holder Majority:

(a) declare or pay any dividend or make any payment or distribution on account of the MYT Guarantor Entities’ or any of their Subsidiaries’ Equity Interests (other than a dividend or other payment or distribution payable to the MYT Guarantor Entities or their Subsidiaries), including any payment made in connection with any merger, consolidation, liquidation or dissolution involving any of the MYT Guarantor Entities (other than dividends or distributions by the Company payable solely in common equity interests of the Company); or

(b) purchase, redeem, defease or otherwise acquire or retire for value any of the MYT Guarantor Entities’ or any of their Subsidiaries’ equity interests including any purchase, redemption, defeasance or acquisition for value made, in connection with any merger, consolidation, liquidation or dissolution involving any of the MYT Guarantor Entities or their Subsidiaries;

(all such payments and other actions set forth in clauses (a) and (b) above being collectively referred to as “Restricted Payments”). Nothing contained in this Section 5.01 shall prohibit (i) the MYT Reorganization (as defined below), (ii) the making of any payments in accordance with Company’s rights and obligation under Article II and Article III and (iii) the Exempted Payments.

SECTION 5.02. Limitation on Incurrence of Indebtedness. The Company shall not, and shall not permit any of its Subsidiaries, to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) without the approval of the Holder Majority, Incur any Indebtedness (including Acquired Indebtedness) for borrowed money or any guarantee or other credit support for Indebtedness for borrowed money; provided, however, that the foregoing limitation will not apply to the following:

(a) the Incurrence by MYT Operating Entities of Indebtedness under revolving (not term) indebtedness under the existing revolving credit facility of one or more MYT Operating Entities (as amended or refinanced from time to time, collectively, the “MYT RCF”) and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof), which shall be provided by one or more commercial banks to finance ordinary course working capital needs or capital expenditures and the Permitted Investments described in Section 5.08(a), provided the aggregate principal amount of the Indebtedness under the MYT RCF shall not exceed the greater of (x) 40.0 million Euros and (y) the MYT RCF Revenue Cap; and further provided that, the MYT Operating Entities may from time to time borrow under the MYT RCF to fund purchases of inventory pursuant to a Projected Purchase Order up to an amount so that the amount of the Indebtedness outstanding under the MYT RCF at any time does not exceed the Projected RCF Amount under the MYT RCF, notwithstanding that such borrowings would cause the amount outstanding under the MYT RCF to exceed the MYT RCF Revenue Cap, so long as (1) the MYT RCF permits such borrowings and (2) the Projected RCF Amount at the time of such Projected Purchase Order exceeded 40.0 million Euros;
(b) intercompany Indebtedness of the Company and its Subsidiaries existing on the Issue Date; provided that to the extent any such Indebtedness is owed by an MYT Guarantor Entity to another Person that is not an MYT Guarantor Entity, such Indebtedness shall be unsecured and shall be subordinated in right of payment to the Limited Guarantee; and

(c) Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the MYT Operating Entities and their Subsidiaries under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the MYT Operating Entities and their Subsidiaries, not to exceed $2.0 million; provided that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness.

SECTION 5.03. Limitation on Issuance of Equity Interests. The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), without the approval of the Holder Majority, to (a) authorize, issue or increase the authorized amount of Equity Interests of the Company that rank senior to or pari passu with the Series A Preferred Shares as to priority in distributions or liquidation preference, (b) authorize, issue or increase the authorized amount of equity of any member of the MYT Group other than the Company (other than issuances of such equity to members of the MYT Group) or (c) amend or reclassify any equity of the Company into any of the foregoing equity described in clauses (a) and (b).

SECTION 5.04. Limitation on Reorganizations. The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), without the approval of the Holder Majority, take any action, including forming a subsidiary, recapitalization or reorganization, that results in any Person existing between the Company and NMG Germany GmbH (other than entities that are wholly owned Subsidiaries of the Company). Notwithstanding the foregoing, the Company shall be permitted to reorganize the ownership structure of the Company and its Subsidiaries to eliminate Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. on or prior to September 30, 2019 (the “MYT Reorganization”); provided that all equity pledges and guarantees by the MYT Guarantor Entities shall remain or be assumed by operation of law or otherwise in connection with such restructuring and without the creation of any additional tax liabilities at the time of the restructuring to the Holders or the holders of the Second Lien Notes and the Third Lien Notes.

SECTION 5.05. Limitation on Liquidations. The Company shall not, and shall not permit any of its Subsidiaries to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), without the approval of the Holder Majority, liquidate, dissolve or wind-up, or voluntarily petition for bankruptcy or fail to defend involuntary acts of bankruptcy, subject (in the case of any entities organized under the laws of Germany) to duties under applicable German law. Notwithstanding the foregoing, the Company shall not, and shall not permit its Subsidiaries, to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), liquidate, dissolve or wind-up, or voluntarily petition for bankruptcy or fail to defend involuntary acts of bankruptcy Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. in connection with the MYT Reorganization.

SECTION 5.06. Limitation on Liens. The Company shall not, and shall not permit any of its Subsidiaries, to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) without the approval of the Holder Majority, create, Incur or suffer to exist any Lien on any
asset or property of any of the MYT Guarantor Entities or any of their Subsidiaries to secure Indebtedness for borrowed money or any guarantee thereof, except:

(a) Liens on the assets of the borrowers and guarantors under the MYT RCF, securing their obligations under the MYT RCF;

(b) Liens existing or Incurred on the Issue Date and any refinancing or replacements thereof; provided that such refinancings or replacements of such original Liens shall not extend to any assets other than the assets subject to the original Lien (and proceeds and products thereof and improvements thereon);

(c) Liens on vehicles, equipment or personal property of the MYT Operating Entities granted in the ordinary course of business;

(d) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods; and

(e) Liens on the collateral securing Indebtedness permitted to be Incurred as secured Indebtedness pursuant to Section 5.02.

SECTION 5.07. Limitation on Transactions with Affiliates. The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) without the approval of the Holder Majority, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan (including intercompany loans), advance or guarantee with, or for the benefit of Neiman Marcus Group, Inc. or any Affiliates of Neiman Marcus Group, Inc. or any other Affiliates of the Company (other than the members of the MYT Group) and MYT Group (each of the foregoing, an “Affiliate Transaction”), except for any reasonable, customary and arm’s length payments to or arrangements relating to the allocation of shared expenses (if any) between the Company, the MYT Group and Neiman Marcus Group, Inc. and their respective Affiliates (other than the members of the MYT Group) (the “Exempted Payments”).

SECTION 5.08. Limitation on Investments. The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), without the approval of the Holder Majority, make any Investment in any Person after the Issue Date, other than (clauses (a) through (i), collectively, “Permitted Investments”):

(a) Investments made using common equity or the cash proceeds (net of offering expenses, discounts and commissions) of common equity of the Company (it being understood that an amount of cash proceeds of such common equity may be used to temporarily reduce the outstanding amount under the MYT RCF, and such amount may be borrowed under the MYT RCF to fund such Investments);

(b) Investments in members of the MYT Group and its wholly-owned Subsidiaries;

(c) Investments by the MYT Operating Entities and their Subsidiaries in accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received by the MYT Operating Entities and their Subsidiaries in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the
bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(d) intercompany loans among the Subsidiaries of the Company;

(e) guarantees of operating leases or of other obligations that do not constitute Indebtedness, in each case, entered into by the MYT Operating Entities or their Subsidiaries in the ordinary course of business;

(f) purchases or acquisitions by the MYT Operating Entities and their Subsidiaries of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(g) Investments arising out of the receipt of non-cash consideration in connection with any Qualified MYT Asset Sales;

(h) non-cash Investments made in order to complete the MYT Reorganization; and

(i) Investments not to exceed $10.0 million after the Issue Date.

(j) The Company shall not, and shall not permit any member of the MYT Group to, without the approval of the Holder Majority, directly or indirectly use any Permitted Investments (or proceeds thereof) (i) to provide assets to an entity that Incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to refinance any Indebtedness of the Company or any member of the MYT Group or (ii) to make the payments restricted by Section 5.01.

SECTION 5.09. Limitation on Business Activities. The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), without the approval of the Holder Majority, engage in any business or business activity other than that currently conducted by the MYT Group and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto. Notwithstanding the foregoing, the MYT Group will not acquire any securities or other interests in the Neiman Marcus Group, Inc. or its Affiliates (other than members of the MYT Group).

SECTION 5.10. Limitation on Amendment of Distribution and Redemption. The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), without the approval of the Holder Majority, amend, alter or repeal any of the provisions set forth in the pledge agreement by MYT Parent of the common equity of the Company relating to the items set forth in Article II or Article III.

SECTION 5.11. Non-Circumvention. The Company shall not by any voluntary action directly or indirectly through any Subsidiary, including amending its governing documents or through any reorganization, reclassification, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other similar voluntary action, avoid the observance or performance of any of covenants set forth under Article V. The business of the MYT Group shall be conducted, directly or indirectly, through the Company.

SECTION 5.12. Assumption of Obligations. In the event of any sale, conveyance, exchange or Transfer of all or substantially all of the Company’s property or assets or the consolidation, merger or amalgamation of the Company with or into any other entity or the consolidation, merger or amalgamation of any other entity with or into the Company, the successor or acquiring Person (if other than the Company)
SECTION 5.13. Information Rights.

(a) As long as any Series A Preferred Shares remain outstanding, the Company shall deliver to each Holder:

(i) by the earlier of (A) ninety (90) days after the end of each fiscal year of NM Group (or such longer period as may be provided by the SEC if NM Group were then subject to SEC reporting requirements as a non-accelerated filer) and (B) the date NM Group discloses to holders of its secured notes earnings information with respect to the corresponding fiscal year, the audited annual financial statements of the MYT Operating Entities for the most recently ended fiscal year of the MYT Operating Entities (which currently ends prior to the corresponding fiscal year of NM Group) prepared in accordance with German GAAP, together with a qualitative or quantitative explanation of the material applicable differences between German GAAP and GAAP;

(ii) by the earlier of (A) forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of NM Group (or such longer period as may be provided by the SEC if NM Group were then subject to SEC reporting requirements as a non-accelerated filer) and (B) the date NM Group discloses to holders of its secured notes earnings information with respect to the corresponding fiscal quarter, unaudited quarterly financial statements of the MYT Operating Entities for the fiscal quarter most recently ended of the MYT Operating Entities (which currently ends prior to the corresponding fiscal quarter of NM Group) and, commencing with the MYT Operating Entities’ fiscal quarter ending in March 2020, the corresponding fiscal quarter of the prior fiscal year, prepared in accordance with German GAAP, together with a qualitative or quantitative explanation of the material applicable differences between German GAAP and GAAP;

(iii) with each set of consolidated financial statements referred to in Section 5.13(a)(i) and (ii) above, a narrative discussion of the key financial information of the MYT Operating Entities consistent with those customarily provided with earnings press release; and

(iv) within the time period specified for filing current reports on Form 8-K by the SEC as if such items were reportable on a Form 8-K, notice of any (a) issuances of Equity Interests (including any debt security that is convertible into, or exchangeable for, Capital Stock of the Company) by the Company that are junior to the Series A Preferred Shares, (b) issuances of Indebtedness other than in the ordinary course of business pursuant to Section 5.02(a), (b) and (c) and (c) Permitted Investments.

(b) Notwithstanding the foregoing, the obligations in this Section 5.13 may be satisfied with respect to financial information of the MYT Operating Entities by furnishing the applicable financial statements of the Company or any Subsidiary thereof that is the direct or indirect parent of NMG Germany GmbH; provided that such information is accompanied by consolidating information that explains in reasonable detail the material differences between the information relating to such parent, on the one hand, and the information relating to the MYT Operating Entities on a stand-alone basis, on the other hand; and provided further that such direct or indirect parent of NMG Germany GmbH shall not conduct, transact or otherwise engage in any business or operations other than relating to its direct or indirect ownership of all of the Equity Interests in, and management of, NMG Germany GmbH.
The Company shall promptly furnish any information reasonably requested by Holders of at least 5% of the Series A Preferred Shares to confirm that the Company and its Subsidiaries are in compliance with the covenants set forth under Article V.

Documents required to be delivered pursuant to this Section 5.13 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which (i) such documents become available on the SEC's Electronic Data Gathering Analysis and Retrieval ("EDGAR") website or (y) NMG Germany GmbH (or any direct or indirect parent of NMG Germany GmbH) posts such documents, or provides a link thereto on its website; or (ii) such documents are posted on NMG Germany GmbH’s behalf on IntraLinks/IntraAgency or another similar non-public, password protected datasite.

Each Holder shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents. Any Person seeking access to such datasite will be required to represent to and agree with the MYT Operating Entities and any such parent (and by accepting such financial information, such Person will be deemed to have so represented and agreed with the MYT Operating Entities and such parent) to the good faith satisfaction of the MYT Operating Entities or such parent that:

(i) it is a Holder or a bona fide prospective investor in the Series A Preferred Shares that qualifies as a Permitted Transferee;

(ii) if it is a prospective purchaser of the Series A Preferred Shares, it is (a) a “qualified institutional buyer” (as defined in Rule 144A of the Securities Act), (b) a “non U.S. Person” (as defined in Regulation S under the Securities Act) or (c) an institutional “accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the information confidential;

(v) it will use such information only in connection with evaluating, monitoring or disposing of an investment in the Series A Preferred Shares; and

(vi) it (a) will not use such information in any manner intended to compete with the business of the MYT Operating Entities and (b) is not a Disqualified Institution.

ARTICLE VI

TAX

SECTION 6.01.

(a) The Company and the Holders agree that the Series A Preferred Shares are intended to constitute (x) equity for U.S. federal income (and applicable state and local) tax purposes, and (y) preferred stock described in Section 1504(a)(4) of the Code.

(b) The Company and the Holders agree that:
any increase to the Liquidation Preference as a result of undeclared Dividends is not intended to be treated as a distribution pursuant to Section 301 or Section 305 of the Code or otherwise treated as a distribution that is subject to U.S. federal tax withholding, and

(ii) upon (x) any complete redemption of the Series A Preferred Shares and (y) any other redemption of Series A Preferred Shares that are, in the case a redemption described in this clause (y), held or beneficially owned by a Holder that does not own (including indirectly) an amount of any other class of Capital Stock of the Company that would cause such redemption to be subject to U.S. federal tax withholding by virtue of not being treated as a sale or exchange pursuant Section 302(b) of the Code, the Liquidation Preference is intended to be treated in its entirety as a payment in exchange for the Series A Preferred Shares that is not subject to U.S. federal tax withholding, and not as a distribution pursuant to Section 301 or Section 305 of the Code or otherwise (and in any other case, for the avoidance of doubt, the covenant in Section 6.01(d) shall continue to apply).

(c) The Company and the Holders shall prepare all U.S. federal income and U.S. federal income withholding tax returns and tax filings consistent with the foregoing clauses unless otherwise required by a final determination by an applicable taxing authority or a change in applicable Law or administrative guidance. If the Company (or any other withholding agent, but solely in the event that the Company is not the withholding agent but has determined that such withholding is required) is required to deduct or withhold any U.S. federal withholding taxes from (i) the Liquidation Preference as a result of a change in applicable Law or administrative guidance or (ii) from any current Dividends that are declared by the Board of Directors of the Company and paid in cash, the Liquidation Preference or such cash Dividend, as applicable, shall be increased as necessary so that after such deduction or withholding has been made (including such U.S. federal withholding deductions and withholdings applicable to such increase in the Liquidation Preference or Dividend, as applicable) each direct or indirect Holder receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(d) The Company will otherwise use its commercially reasonable efforts to cooperate with Holders to minimize U.S. federal tax withholding related to the Series A Preferred Shares (including in the case of any partial redemption of the Series A Preferred Shares, in determining whether a Holder owns (including indirectly) an amount of any other Capital Stock of the Company described in clause (b)(ii)(y), above).

ARTICLE VII
TRANSFERS

SECTION 7.01. Transfers.

(a) Subject to this Section 7.01, a Holder can Transfer any Series A Preferred Shares to a Permitted Transferee at any time.

(b) Notwithstanding the foregoing, a Holder may not, directly or indirectly, Transfer any Series A Preferred Shares:

(i) except as permitted under the Securities Act and other applicable federal and state securities and blue sky laws, and then, if requested by the Company, only upon delivery to the Company of a written opinion of counsel in form and substance reasonably satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act. In addition to (and without limiting in any respect) the foregoing, such Series A Preferred Shares shall

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only be Transferable to (x) “qualified institutional buyers” within the meaning of Rule 144A promulgated under the Securities Act, (y) “non U.S. Persons” within the meaning of Regulation S promulgated under the Securities Act and (z) “accredited investors” within the meaning of Rule 501(a) (1), (3) and (7) of Regulation D promulgated under the Securities Act;

(ii) if such Transfer would reasonably be expected to require registration or qualification of such Series A Preferred Shares pursuant to the Securities Act or any applicable federal or state securities or blue sky laws, or require the Company to file reports pursuant to the Exchange Act or any applicable federal or state securities or blue sky laws;

(iii) if such Transfer would cause the Company or any Subsidiary of the Company to be required to register as an investment company under the Investment Company Act of 1940, as amended;

(iv) if such Transfer would cause the Company or any Subsidiary of the Company to be subject to regulation under the Investment Advisers Act of 1940;

(v) if such Transfer would cause the assets of the Company or any Subsidiary of the Company to be deemed “Plan Assets” as defined under the Employee Retirement Income Security Act of 1974 or its accompanying regulations or result in any “prohibited transaction” thereunder involving the Company or any Subsidiary of the Company; or

(vi) to a Person that is not a Permitted Transferee.

Any Transfer of Series A Preferred Shares which complies with this Section 7.01 shall be a “Permitted Transfer”. A list of Persons that are not Permitted Transferees may be obtained by contacting Chief Legal Counsel, Neiman Marcus Group, Inc., One Marcus Square, 1618 Main Street, Dallas, Texas, 75201.

(c) Without limiting the generality of the foregoing, if the Board of Directors shall at any time determine that a Transfer or other event has taken place that results in a violation of the transfer restrictions set forth in this Certificate of Designation or a Person intends to acquire or has attempted to acquire ownership of any Series A Preferred Shares in violation of the transfer restrictions set forth in this Certificate of Designation (whether or not such violation is intended), the Board of Directors will take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including refusing to give effect to such Transfer on the books of the Company, or instituting proceedings to enjoin such Transfer or other event. Any attempted Transfer of Series A Preferred Shares that is not permitted under the terms of this Certificate of Designation will be null and void ab initio, and the Company will not in any way give effect to any such impermissible Transfer, irrespective of any action or in-action by the Board of Directors. Nothing contained in this Section 7.01(c) will be deemed to prevent a transferor and transferee from disputing the Board of Director’s determination that the Transfer was in violation of Article VII.

(d) Any Person who acquires or attempts or intends to acquire ownership of Series A Preferred Shares that will or may violate the transfer restrictions set forth in this Certificate of Designation will promptly upon knowledge of such violation or potential violation give written notice to the Company of such event, and shall provide to the Company such other information as the Company may reasonably request in order to determine the effect, if any, of such Transfer on the Company.

(e) If physical certificates representing shares of Series A Preferred Shares are issued, upon the surrender of any certificate representing Series A Preferred Shares, the Company shall, upon the request of the record holder of such certificate, promptly (but in any event within ten (10) Business Days after such
request) execute and deliver (at the Company’s expense) a new certificate or certificates in exchange therefor representing Series A Preferred Shares with an aggregate Stated Value of the Series A Preferred Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such Stated Value of the Series A Preferred Shares as is requested by the holder of the surrendered certificate, and Dividends shall accumulate on the aggregate Stated Value of the Series A Preferred Shares represented by such new certificate from the date to which Dividends have been fully paid on the aggregate Stated Value of the Series A Preferred Shares represented by the surrendered certificate and reasonably agreed to by the Company. The issuance of new certificates will be made without charge to the Holders of the Series A Preferred Shares, and the Company shall pay for any cost incurred by the Company in connection with such issuance; provided that the Company shall not pay for any documentary, stamp and similar issuance or transfer tax in respect of the preparation, execution and delivery of such new certificates pursuant to this Section 7.01. All transfers and exchanges of the Series A Preferred Shares will be made promptly by direct registration on the books and records of the Company and the Company shall take all such other actions as may be required to reflect and facilitate all transfers and exchanges permitted pursuant to this Section 7.01.

(f) If physical certificates representing shares of Series A Preferred Shares are issued, upon receipt of evidence reasonably satisfactory to the Company (it being understood that an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series A Preferred Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is a financial institution or other institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the Series A Preferred Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(g) Unless otherwise agreed to by the Company and the applicable Holder, each certificate representing the Series A Preferred Shares will bear a restrictive legend substantially in the form set forth in Appendix I hereto, which is hereby incorporated in and expressly made a part of this Certificate of Designation, and will be subject to the restrictions set forth therein. In addition, each such certificate may have notations, additional legends or endorsements required by Law, stock exchange rules, and agreements to which the Company and all of the Holders in their capacity as Holders are subject, if any.

(h) Any attempted Transfer of Series A Preferred Shares not permitted under the terms of this Article VII shall be null and void ab initio, and the Company shall not in any way give effect to any such impermissible Transfer.

ARTICLE VIII

TRIGGER EVENTS AND REMEDIES

SECTION 8.01. Trigger Events. A “Trigger Event” wherever used herein, means a breach by the Company of its obligations, covenants or agreements in this Certificate of Designation or by MYT Parent of the MYT Parent Obligations and such breach (other than any payment default), if capable of being cured, continuing for fifteen (15) Business Days (which period shall be extended to forty-five (45) Business Days to the extent the breach is capable of being cured and the Company or MYT Parent, as applicable, is using commercially reasonable efforts to cure such breach) following the earliest of (a) written notice to the Company or MYT Parent, as applicable, by the Holders who hold at least 25.0% of the outstanding Series A Preferred Shares, (b) an Officer of the Company having actual knowledge of the occurrence of
SECTION 8.02. Remedies for Trigger Event. If one or more Trigger Events occur and are continuing the Dividend Rate will increase by 2.00% per annum, until the cure or waiver of all such Trigger Events. The exercise of the remedy contained in this Section 8.02 by the Holders shall not prevent the exercise of any other remedy or remedy by the Holders contained herein.

SECTION 8.03. Waiver of Past Trigger Events. A Holder Majority, by written notice to the Company may on behalf of the Holders of all of the Series A Preferred Shares waive any existing Trigger Event and its consequences hereunder. Upon any such waiver, such Trigger Event shall cease to exist, and any Trigger Event arising therefrom shall be deemed to have been cured for every purpose herein. No such waiver shall extend to any subsequent or other Trigger Event or impair any right consequent on such subsequent or other Trigger Event.

ARTICLE IX

TRANSFER AGENT

SECTION 9.01. Transfer Agent, Registrar and Paying Agent. The duly appointed Transfer Agent, registrar and paying agent for the Series A Preferred Shares shall be American Transfer & Trust Company, LLC. The Company may, in its sole discretion, appoint any other Person to serve as Transfer Agent, registrar or paying agent for the Series A Preferred Shares and thereafter may remove or replace such other Person at any time. Upon any such appointment, removal or replacement, the Company shall send notice thereof by first class mail, postage prepaid, to the Holders.

ARTICLE X

LIQUIDATION, DISSOLUTION AND WINDING UP

SECTION 10.01. Preferential Payments to Holders of Series A Preferred Shares. In the event of any Liquidation Event of the Company, the Holders shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payment shall be made to the holders of Junior Stock by reason of their ownership thereof, an amount per share equal to the Liquidation Preference. If upon any such Liquidation Event, the assets of the Company available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 10.01, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

ARTICLE XI

AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 11.01. Amendment.

(a) Subject to Section 11.01(b) and (c), the Company may amend, modify, supplement, repeal or waive any of the terms of this Certificate of Designation or the preferences, powers or rights of the Holders without the consent of the Holder.
(b) Notwithstanding Section 11.01(a), no amendment, alteration, modification, supplement, repeal or waiver by the Company (whether by merger, consolidation, amendment, recapitalization or otherwise), to the Certificate of Incorporation, the Bylaws of the Company, this Certificate of Designation or the Certificate of Designation of the Series B Preferred Stock that by its terms would adversely affect the Holders in a manner disproportionate to any other holder or group of holders of Equity Interests of the Company shall be effective against the Holders (which shall include, for the avoidance of doubt, any amendment, alteration, modification, supplement, repeal or waiver of any of the provisions set forth in Article V or the definitions related thereto) without the consent of the Holder Majority.

(c) Notwithstanding Section 11.01(a) above, the Company may not (whether by merger, consolidation, amendment, recapitalization or otherwise), amend, alter, modify, supplement, repeal or waive any of the terms of this Certificate of Designation or the preferences, powers or rights of the Holders in a manner adverse to such Holders without the written consent of the applicable Holder to the extent that the same shall:

(i) reduce the Compounded Liquidation Preference, the Liquidation Preference or Redemption Price of any of the Series A Preferred Shares;

(ii) reduce the Dividend Rate of or change the time for accrual of Dividends on any of the Series A Preferred Shares; or

(iii) change the terms or conditions of any Mandatory Redemption.

(d) After an amendment, alteration, modification, supplement, repeal or waiver under this Section 11.01 becomes effective, the Company shall deliver to the Holders affected thereby a notice briefly describing the amendment, alteration, modification, supplement, repeal or waiver. Any failure of the Company to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, alteration, modification, supplement, repeal or waiver.

(e) No failure or delay of any Holder in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Holders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. A waiver of any provision of this Certificate of Designation or any consent to any departure by the Company or any of its Subsidiaries from this Certificate of Designation shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Company or any of its Subsidiaries in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Notices. Any notice or other communication required or permitted to be delivered to any party under this Certificate of Designation will be in writing and delivered by (i) email or (ii) overnight delivery via a national courier service, with respect to any Holder, at the email address or physical address on file with the Company and with a copy (which will not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
with respect to the Company, to the following email address or physical address, as applicable:

MYT Holding Co.
c/o Neiman Marcus Group, Inc.
One Marcus Square
1618 Main Street
Dallas, TX 75201
Attn: Tracy M. Preston
E-mail address: tracy_preston@neimnmarcus.com and

with a copy (which will not constitute notice) to:

Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, CA 90071
Attn: David Nemecek, P.C.; Nisha Kanchanapoomi, P.C.; Philippa Bond, P.C.
E-mail address: david.nemecek@kirkland.com; nisha.kanchanapoomi@kirkland.com;
pippa.bond@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attn: Anup Sathy, P.C.; Spencer Winters
E-mail address: anup.sathy@kirkland.com; spencer.winters@kirkland.com

and

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attn: Matthew Fagen
E-mail address: matthew.fagen@kirkland.com

Notice or other communication pursuant to this Section 12.01 will be deemed given or received when delivered, except that any notice or communication received by email transmission on a non-Business Day or on any Business Day after 5:00 p.m. addressee’s local time or by overnight delivery on a non-Business Day will be deemed to have been given and received at 9:00 a.m. addressee’s local time on the next Business Day.

SECTION 12.02. Severability. Whenever possible, each provision hereof will be interpreted in a manner as to be effective and valid under applicable Law, but if any provision hereof is held to be prohibited by or invalid under applicable Law, then such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof.
SECTION 12.03. **Governing Law.** This Certificate of Designation and all questions relating to the interpretation or enforcement of this Certificate of Designation will be governed by and construed in accordance with the Laws of the State of Delaware without regard to the Laws of the State of Delaware or any other jurisdiction that would call for the application of the substantive Laws of any jurisdiction other than the State of Delaware.

SECTION 12.04. **Rights and Remedies of Holders.**

(a) The various provisions set forth under this Certificate of Designation are for the benefit of the Holders and will be enforceable by them, including by one or more actions for specific performance.

(b) Except as expressly set forth herein, all remedies available under this Certificate of Designation, at law, in equity or otherwise, will be deemed cumulative and not alternative or exclusive of other remedies. The exercise by any Holder of a particular remedy will not preclude the exercise of any other remedy.

(c) No Series A Preferred Share acquired by the Company by reason of redemption, purchase or otherwise shall be held in treasury for reissuance, and the Company shall take all necessary action to cause such Series A Preferred Share to be canceled and retired.
IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be signed by a duly authorized officer this 6th day of June, 2019.

THE COMPANY:

MYT HOLDING CO.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Authorized Signatory
Appendix I

Restrictive Legend to the Series A Preferred Shares Certificate

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN AND ARE NOT EXPECTED TO BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS (I) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A OR (II) AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF SHARES OF SERIES A PREFERRED STOCK OF $250,000,000 FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE AND PROVIDED THAT PRIOR TO SUCH TRANSFER, THE TRANSFER AGENT IS FURNISHED WITH AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUERS THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT), (4) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (IF AVAILABLE AND PROVIDED THAT PRIOR TO SUCH TRANSFER, THE TRANSFER AGENT IS FURNISHED WITH AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUERS THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT), OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, (B) TO PERSONS OR ENTITIES THAT ARE PERMITTED TRANSFEREES, AND (C) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THE LIST OF PERSONS THAT ARE NOT PERMITTED TRANSFEREES MAY BE OBTAINED BY CONTACTING CHIEF LEGAL COUNSEL, NEIMAN MARCUS GROUP, INC., ONE MARCUS SQUARE, 1618 MAIN STREET, DALLAS, TEXAS, 75201.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFERS SET FORTH IN ARTICLE VII OF THE CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE FOR THE STATE OF DELAWARE PURSUANT TO SECTION 202 OF THE DELAWARE GENERAL CORPORATION LAW (THE "CERTIFICATE OF DESIGNATION"). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE CERTIFICATE OF DESIGNATION. A COPY OF THE CERTIFICATE OF DESIGNATION WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER UPON REQUEST.

In the case of the Securities sold pursuant to Regulation S, the shares of Series A Preferred Stock will bear an additional legend substantially to the following effect:
"BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON, NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON, AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT OF 1933, AS AMENDED."
CERTIFICATE OF DESIGNATION
OF
CUMULATIVE SERIES B PREFERRED STOCK
OF
MYT HOLDING CO.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the “DGCL”), MYT Holding Co., a corporation duly organized and validly existing under the DGCL (the “Company”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

The Board of Directors of the Company adopted resolutions on May 30, 2019 providing for the creation of a new series of 250,000,000 shares of preferred stock, par value $0.001 per share, of the Company designated as Series B Preferred Stock (as defined below):

WHEREAS, the Certificate of Incorporation of the Company (as amended, restated, supplemented or otherwise modified from time to time, the “Certificate of Incorporation”) authorizes the issuance of Preferred Stock, $0.001 par value per share, of the Company, and expressly authorizes the Board of Directors of the Company, subject to limitations prescribed by Law, to provide, out of the unissued shares of Preferred Stock, for Series B Preferred Stock, $0.001 par value per share (the “Series B Preferred Stock”), and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series; and

WHEREAS, it is the desire of the Board of Directors of the Company to establish and fix the number of shares to be included in a new series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Company does hereby provide authority for the Company to issue 250,000,000 shares of Series B Preferred Stock and does hereby in this Certificate of Designation (this “Certificate of Designation”), to be filed with the Secretary of State of the State of Delaware in accordance with Section 103 of the DGCL, establish and fix and herein state and express the designations, rights, preferences, powers, restrictions and limitations of such shares of Series B Preferred Stock (the “Series B Preferred Shares”) as follows:

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ARTICLE I

DEFINITIONS, CALCULATIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

As used in this Certificate of Designation, the following capitalized terms will have the following meanings:

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person, (b) in the case of any limited liability company, the managing member or board of managers of such Person, (c) in the case of any partnership, the board of directors, board of managers or managing member of the general partner of such Person and (d) in any other case, the functional equivalent of the foregoing or, in each case, any duly authorized committee of such body.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“Capital Stock” means:

(a) in the case of a corporation or company, corporate stock or shares in the capital of such corporation or company;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited and however described); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Common Stock” means the Common Stock of the Company, par value $0.001 per share.

“Compounded Liquidation Preference” means, with respect to the Series B Preferred Shares at any date, the sum of (i) the Stated Value thereof, plus (ii) all accumulated and unpaid Dividends (whether declared or undeclared) as of the most recent Semi-Annual Date prior to such date.

“Disqualified Institution” means:

(e)

(i) any Person that is a competitor of the Company and identified by the Company in writing to the Transfer Agent and made available to the Holders on or prior to the Issue Date; and

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(ii) all Affiliates of such competitors described in the foregoing clause (i) that are reasonably identifiable as such (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (b) below) or any portfolio companies managed by such entities or their Affiliates); or

(f) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Company in writing to the Transfer Agent and made available to the Holders on or prior to the Issue Date.

The Transfer Agent will not have any responsibility or obligation to determine whether any Holder or potential Holder is a Disqualified Institution and the Transfer Agent will have no liability with respect to any assignment made to a Disqualified Institution.

“Dividend” means the distributions to be made by the Company in respect of the Series B Preferred Shares in accordance with Section 2.01(a).

“Dividend Rate” means 10% per annum.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.


“GAAP” means, generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies); provided that the Company may at any time elect by written notice to the Transfer Agent to fix GAAP as in effect on the date specified in such notice and, upon any such notice, references herein to GAAP will thereafter be construed to mean for all purposes of this Certificate of Designation (other than for financial reporting purposes) for periods beginning on and after the date specified in such notice, GAAP as in effect on the date specified in such notice.

“Governmental Entity” means any U.S. or foreign, federal, state, provincial, municipal, local or similar government or any agency, authority, board, body, bureau, commission, court, department, entity, official, political subdivision, tribunal or other instrumentality of any such government and will include any regulatory or trade body or organization and any arbitrator or arbitral body.

“Holder” means, as of the relevant date, any Person that is the holder of record of at least one Series B Preferred Share as of such date.

“Holder Majority” means the consent of Holders who between them hold a majority of the aggregate number of Series B Preferred Shares held by all of the Holders.

“Issue Date” means the date the Series B Preferred Shares are first issued to the holders thereof.

“Junior Stock” means Equity Interests of the Company, which, by its terms, ranks junior to the Series B Preferred Shares on payment of dividends or upon liquidation, dissolution, or winding up, including the Common Stock of the Company.
“Law” means any applicable U.S. or foreign, federal, state, provincial, municipal or local law (including common law), statute, ordinance, rule, regulation, code, policy, directive, standard, license, treaty, judgment, order, injunction, decree or agency requirement of or undertaking to or agreement with any Governmental Entity.

“Liquidation Event” means any liquidation, dissolution or winding up of the Company, either voluntary or involuntary.

“Liquidation Preference” means, with respect to the Series B Preferred Shares at any date, the sum of (i) the Stated Value thereof, plus (ii) all accumulated and unpaid Dividends (whether declared or undeclared, and including all such dividends that have compounded pursuant to Section 2.01(a)) thereon through, but not including, such date.

“MYT Parent” means MYT Parent Co.

“Officer” means the Chairman of the Company’s Board of Directors, the Chief Executive Officer, the Chief Financial Officer or the President of the Company or any of its Subsidiaries, as applicable.

“Parity Stock” means any class or series of the Company’s Capital Stock, which, by its terms, ranks on a parity with the Series B Preferred Shares on payment of dividends or upon liquidation, dissolution or winding up of the Company.

“Permitted Transferee” means any Person other than a Disqualified Institution.

“Person” means any individual, corporation, limited liability company, partnership, (including a limited partnership) joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Redemption Date” means each day on which any or all of the Series B Preferred Shares are redeemed or purchased pursuant to Article III.

“Redemption Price” means, with respect to any Series B Preferred Share at any Redemption Date, an amount per share equal to the lesser of (a) the Liquidation Preference thereof and (b) the Series A Redemption Price.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Semi-Annual Date” means April 15 and October 15, of each year, commencing on and including October 15, 2019. If any Semi-Annual Date is not a Business Day, the Semi-Annual Date will be the Business Day immediately following such Semi-Annual Date.

“Senior Stock” means (i) the Series A Preferred Stock and (ii) any class or series of the Company’s Capital Stock established after the date hereof by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Series B Preferred Shares on payment of dividend or upon the liquidation, dissolution or winding up.

“Series A Preferred Stock” means Series A Preferred Stock of the Company, par value $0.001 per share.
“Series A Redemption Date” means the date on which the shares of Series A Preferred Stock have been redeemed in full.

“Series A Redemption Price” means the average amount per share paid to redeem the shares of Series A Preferred Stock, determined as of the Series A Redemption Date, less any payments made in respect of such Series A Preferred Shares resulting from an increase on the dividend rate applicable thereto pursuant to Section 8.02 of the Certificate of Designation of Series A Preferred Stock.

“Stated Value” means, at any date of determination, and with respect to each outstanding Series B Preferred Share, $1.00, adjusted as appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization, combination or similar event with respect to the Series B Preferred Shares.

“Subsidiary” means, with respect to any Person:

(a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(b) any partnership, joint venture, limited liability company or similar entity of which:

   (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; or

   (ii) such Person is a controlling general partner or otherwise controls such entity.

For the avoidance of doubt, any entity that does not satisfy the provisions of the foregoing clause (a) or (b) shall not be a “Subsidiary” for any purpose under this Certificate of Designation, regardless of whether such entity is consolidated on the Company’s financial statements.

“Transfer”: (a) when used as a noun means any direct or indirect, voluntary or involuntary sale, hypothecation, pledge, assignment (as collateral or otherwise), attachment, encumbrance, or other transfer or disposition of any interest (legal or beneficial) in any security (including the transfer of any Person that owns such security or transfer by reorganization, merger, sale of substantially all assets or by operation of law), and (b) when used as a verb means to, directly or indirectly, voluntarily or involuntarily, sell, hypothecate, pledge, assign (as collateral or otherwise), encumber, or otherwise transfer or dispose of any interest (legal or beneficial) in any security (including the transfer of any Person that owns such security or transfer by reorganization, merger, sale of substantially all assets or by operation of law). Notwithstanding the foregoing, a Transfer of any Person that directly or indirectly owns any Series B Preferred Shares shall not be deemed to be a Transfer of such Series B Preferred Shares unless such Series B Preferred Shares constitute a majority of such Person’s assets (measured by fair market value).

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, a New York limited liability company.

SECTION 1.02. Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;
an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

“or” is not exclusive;

the words “including,” “includes” and similar words shall be deemed to be followed by without limitation;

terms defined in the singular include the plural, and terms defined in the plural include the singular;

“will” shall be interpreted to express a command;

provisions apply to successive events and transactions;

references to any Law (including the Securities Act and the Exchange Act), rule or regulation shall be deemed to include such Law, rule or regulation as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder;

unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Certificate of Designation;

the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Certificate of Designation as a whole and not any particular Article, Section, clause or other subdivision;

words used herein implying any gender shall apply to both genders;

in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including”;

any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity); and

any reference herein to a Person shall be deemed to include its successors and permitted assigns.

SECTION 1.03. Acts of Holders.

Except as herein otherwise expressly provided, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Certificate of Designation to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor.
signed by the Holders or such Holder, as applicable, in person. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Company.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by Law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Company deems sufficient.

(c) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Series B Preferred Share shall bind every future Holder of the same Series B Preferred Share and the Holder of every Series B Preferred Share issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Holders or the Company in reliance thereon, whether or not notation of such action is made upon the certificate representing such Series B Preferred Share.

(d) The Company may set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be 10 days prior to the first solicitation of such consent.

ARTICLE II

DIVIDENDS

SECTION 2.01. Dividends

(a) From and after the date of issuance of each Series B Preferred Share until the Series A Redemption Date, Holders of the Series B Preferred Shares shall be entitled to receive in respect of each such share, if, as and when declared by the Company’s Board of Directors, from time to time, cumulative dividends accruing on a daily basis at the Dividend Rate on the Compounded Liquidation Preference of such share from time to time, payable in cash and, to the extent not paid, compounded on each Semi-Annual Date. Dividends will be calculated on the basis of actual days elapsed over a year of 360 days consisting of twelve 30-day months.

(b) Notwithstanding anything to the contrary contained herein, (i) no Dividend may be declared or paid in cash until the Series A Redemption Date and, (ii) no Dividend may be declared unless paid to the Holders in cash (it being understood that no Dividends may be declared and paid in securities or otherwise “in kind”).

SECTION 2.02. Ranking. The Series B Preferred Shares (inclusive of any and all Dividends thereon) shall rank (i) senior to the Junior Stock, (ii) on parity with all Parity Stock and (iii) junior to all Senior Stock, in priority of payment and in any liquidation, winding up or dissolution of the Company. So long as any Series B Preferred Shares are outstanding, no dividends or distributions on, or purchases or
redemptions of, Junior Stock shall be paid, declared or made, except as permitted under this Certificate of Designation.

ARTICLE III

REDEMPTION

SECTION 3.01. Notices to Holders. If the Company elects to redeem the Series B Preferred Shares pursuant to Section 3.07, it shall furnish to each Holder a notice in accordance with Section 3.03.

SECTION 3.02. Selection of Series B Preferred Shares to Be Redeemed. If less than all of the Series B Preferred Shares are to be redeemed at any time, the Series B Preferred Shares of all Holders shall be redeemed, on a pro rata basis.

SECTION 3.03. Notice of Redemption. The Company shall deliver electronically, mail or cause to be mailed by first-class mail, postage prepaid, a notice of redemption not more than sixty (60) days before the Redemption Date to each Holder to be redeemed.

The notice shall identify the Series B Preferred Shares to be redeemed and shall state:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if the Company is not permitted by Law to redeem all of the Series B Preferred Shares required to be redeemed or if the Series B Preferred Shares are to be redeemed in part only, the number of, or the portion of the Compounded Liquidation Preference of, the Series B Preferred Shares to be redeemed and that, after the Redemption Date upon surrender of such Series B Preferred Shares, if such shares are certificated, a new certificate for such Series B Preferred Shares in a Compounded Liquidation Preference equal to the unredeemed portion of the original Series B Preferred Shares will be issued in the name of the Holder upon cancellation of the original certificate representing such Series B Preferred Shares or if such shares are uncertificated, a notice of issuance of uncertificated shares stating the number of unredeemed, or the Compounded Liquidation Preference equal to the unredeemed portion of, the Series B Preferred Shares of such Holder;

(d) that, if such shares were certificated, the certificate representing the Series B Preferred Shares called for redemption must be surrendered to the Company to collect the Redemption Price;

(e) that, unless the Company defaults in making such redemption payment, the Series B Preferred Shares called for redemption shall cease to be outstanding or accumulate Dividends; and

(f) any condition to such redemption.

Solely in the case of optional redemption in accordance with Section 3.07, such notice of redemption, and the related redemption, may, at the Company’s discretion, be subject to one or more conditions precedent, including completion of one or more corporate transactions. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice of redemption shall describe each such condition, and if applicable, shall state that, in the Company’s discretion, the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur.
and such notice may be rescinded if any or all such conditions shall not have been satisfied by the Redemption Date as stated in such notice, or by the redemption date as so delayed. The Company may provide in such notice that payment of the Redemption Price and performance of the Company’s obligations with respect to such redemption may be performed by another Person; provided that such notice shall not relieve the Company’s obligations under this Certificate of Designation.

SECTION 3.04. Effect of Notice of Redemption. Once notice of redemption is delivered to the Holders in accordance with Section 3.03, subject to satisfaction of any conditions precedent permitted under this Certificate of Designation specified in the applicable notice of redemption, the Redemption Price of the Series B Preferred Shares called for redemption shall become irrevocably due and payable on the Redemption Date. The notice, if delivered, electronically, mailed or caused to be mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder actually receives such notice. In any case, failure to deliver such notice or any defect in the notice to the Holders of any Series B Preferred Share shall not affect the validity of the redemption of any other Series B Preferred Share. Subject to Section 3.05, on and after the Redemption Date, Dividends shall cease to accumulate on Series B Preferred Shares or portions of Series B Preferred Shares called for redemption and such Series B Preferred Shares shall cease to be outstanding.

SECTION 3.05. Deposit of Redemption Price.

(a) Prior to 2:00 p.m. (Eastern Time) on the Redemption Date, the Company shall deposit with each Holder money sufficient to pay the Redemption Price of all Series B Preferred Shares of such Holder to be redeemed on that Redemption Date. Each such Holder shall promptly return to the Company any money deposited with the Holders by the Company in excess of the amounts necessary to pay the Redemption Price of all Series B Preferred Shares of such Holder to be redeemed.

(b) If any Series B Preferred Share called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, without prejudice to any other rights that a Holder may have at Law or in equity, Dividends shall continue to accumulate or be paid on the unpaid Compounded Liquidation Preference, from the Redemption Date until such Compounded Liquidation Preference is paid, and on any Dividends accumulated to the Redemption Date not paid on such unpaid Compounded Liquidation Preference, in each case at the Dividend Rate.

SECTION 3.06. Series B Preferred Shares Redeemed in Part. Upon surrender of a Series B Preferred Share certificate (if any) that is redeemed in part, (i) if such shares are certificated, the Company shall issue a new Series B Preferred Share certificate equal in Compounded Liquidation Preference to the unredeemed portion of the Series B Preferred Shares surrendered and (ii) if such shares are uncertificated, the Company shall deliver a notice of issuance of uncertificated shares stating the Compounded Liquidation Preference of the unredeemed portion of the Series B Preferred Shares surrendered.

SECTION 3.07. Optional Redemption.

(a) At any time from time to time after the Series A Redemption Date, the Company may, at its option, on one or more occasions redeem all (or a part, in accordance with Section 3.02) of the outstanding Series B Preferred Shares held by the Holders on a pro rata basis, upon notice as described under Section 3.03 for an amount per share equal to the Redemption Price paid in cash on the Redemption Date set forth in the notice required under Section 3.03.

(b) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06.
SECTION 3.08. **No Conversion.** The Series B Preferred Shares shall not be convertible into any other securities of the Company.

ARTICLE IV

VOTING

SECTION 4.01. **No Voting Rights.** Except as may otherwise be required by non-waivable provision of the DGCL, the Series B Preferred Shares shall not have any voting powers, preferences or relative participating, optional or other special rights or voting powers, or qualifications, limitations or restrictions thereof. Without limiting the foregoing, the Holders shall have no voting rights, except as otherwise required by non-waivable provision of the DGCL. In all cases where the Holders have the right to vote separately as a class, such Holder shall be entitled to one vote for each such share held by them respectively.

ARTICLE V

TRANSFER S

SECTION 5.01. **Transfers.**

(a) Subject to this Section 5.01, a Holder can Transfer any Series B Preferred Shares to any Person at any time.

(b) Notwithstanding the foregoing, a Holder may not, directly or indirectly, Transfer any Series B Preferred Shares:

   (i) except as permitted under the Securities Act and other applicable federal and state securities and blue sky laws, and then, if requested by the Company, only upon delivery to the Company of a written opinion of counsel in form and substance reasonably satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act. In addition to (and without limiting in any respect) the foregoing, until the Series A Redemption Date, such Series B Preferred Shares shall only be Transferable to (x) “qualified institutional buyers” within the meaning of Rule 144A promulgated under the Securities Act, (y) “non U.S. Persons” within the meaning of Regulation S promulgated under the Securities Act and (z) “accredited investors” within the meaning of Rule 501(a)(1), (2), (3) and (7) of Regulation D promulgated under the Securities Act;

   (ii) if such Transfer would reasonably be expected to require registration or qualification of such Series B Preferred Shares pursuant to the Securities Act or any applicable federal or state securities or blue sky laws, or require the Company to file reports pursuant to the Exchange Act or any applicable federal or state securities or blue sky laws;

   (iii) if such Transfer would cause the Company or any Subsidiary of the Company to be required to register as an investment company under the Investment Company Act of 1940, as amended;

   (iv) if such Transfer would cause the Company or any Subsidiary of the Company to be subject to regulation under the Investment Advisers Act of 1940;

   (v) if such Transfer would cause the assets of the Company or any Subsidiary of the Company to be deemed “Plan Assets” as defined under the Employee Retirement Income Security...
Act of 1974 or its accompanying regulations or result in any “prohibited transaction” thereunder involving the Company or any Subsidiary of the Company; or

(vi) until the Series A Redemption Date, to a Person that is not a Permitted Transferee. A list of Persons that are not Permitted Transferees may be obtained by contacting Chief Legal Counsel, Neiman Marcus Group, Inc., One Marcus Square, 1618 Main Street, Dallas, Texas, 75201.

(c) Without limiting the generality of the foregoing, if the Board of Directors shall at any time determine that a Transfer or other event has taken place that results in a violation of the transfer restrictions set forth in this Certificate of Designation or a Person intends to acquire or has attempted to acquire ownership of any Series B Preferred Shares in violation of the transfer restrictions set forth in this Certificate of Designation (whether or not such violation is intended), the Board of Directors will take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including refusing to give effect to such Transfer on the books of the Company, or instituting proceedings to enjoin such Transfer or other event. Any attempted Transfer of Series B Preferred Shares that is not permitted under the terms of this Certificate of Designation will be null and void ab initio, and the Company will not in any way give effect to any such impermissible Transfer, irrespective of any action or inaction by the Board of Directors. Nothing contained in this Section 5.01(c) will be deemed to prevent a transferor and transferee from disputing the Board of Director’s determination that the Transfer was in violation of Article V.

(d) Any Person who acquires or attempts or intends to acquire ownership of Series A Preferred Shares that will or may violate the transfer restrictions set forth in this Certificate of Designation will promptly upon knowledge of such violation or potential violation give written notice to the Company of such event, and shall provide to the Company such other information as the Company may reasonably request in order to determine the effect, if any, of such Transfer on the Company.

(e) If physical certificates representing shares of Series B Preferred Shares are issued, upon the surrender of any certificate representing Series B Preferred Shares, the Company shall, upon the request of the record holder of such certificate, promptly (but in any event within ten (10) Business Days after such request) execute and deliver (at the Company’s expense) a new certificate or certificates in exchange therefor representing Series B Preferred Shares with an aggregate Stated Value of the Series B Preferred Shares represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such Stated Value of the Series B Preferred Shares as is requested by the holder of the surrendered certificate, and Dividends shall accumulate on the aggregate Stated Value of the Series B Preferred Shares represented by such new certificate from the date to which Dividends have been fully paid on the aggregate Stated Value of the Series B Preferred Shares represented by the surrendered certificate and reasonably agreed to by the Company. The issuance of new certificates will be made without charge to the Holders of the Series B Preferred Shares, and the Company shall pay for any cost incurred by the Company in connection with such issuance; provided that the Company shall not pay for any documentary, stamp and similar issuance or transfer tax in respect of the preparation, execution and delivery of such new certificates pursuant to this Section 5.01. All transfers and exchanges of the Series B Preferred Shares will be made promptly by direct registration on the books and records of the Company and the Company shall take all such other actions as may be required to reflect and facilitate all transfers and exchanges permitted pursuant to this Section 5.01.

(f) If physical certificates representing shares of Series B Preferred Shares are issued, upon receipt of evidence reasonably satisfactory to the Company (it being understood that an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Series B Preferred Shares, and in the case of any such loss, theft or destruction, upon
receipt of indemnity reasonably satisfactory to the Company (provided that if the holder is a financial institution or other institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Company shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the Series B Preferred Shares represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(g) Unless otherwise agreed to by the Company and the applicable Holder, each certificate representing the Series B Preferred Shares will bear a restrictive legend substantially in the form set forth in Appendix I hereto, which is hereby incorporated in and expressly made a part of this Certificate of Designation, and will be subject to the restrictions set forth therein. In addition, each such certificate may have notations, additional legends or endorsements required by Law, stock exchange rules, and agreements to which the Company and all of the Holders in their capacity as Holders are subject, if any.

(h) Any attempted Transfer of Series B Preferred Shares not permitted under the terms of this Article V shall be null and void ab initio, and the Company shall not in any way give effect to any such impermissible Transfer.

SECTION 5.02. Remedies for Breach. If the Board shall at any time determine that a Transfer or other event has taken place that results in a violation of Article V or a Person intends to acquire or has attempted to acquire ownership of any Series B Preferred Shares in violation of Section 5.01 (whether or not such violation is intended), the Board shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including refusing to give effect to such Transfer on the books of the Company or instituting proceedings to enjoin such Transfer or other event, provided, however, that any Transfers or attempted Transfers or other events in violation of Section 5.01 shall be void ab initio as provided above, irrespective of any action or non-action by the Board.

SECTION 5.03. Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire ownership of Series B Preferred Shares that will or may violate Section 5.01 shall promptly upon knowledge of such violation or potential violation give written notice to the Company of such event, and shall provide to the Company such other information as the Company may reasonably request in order to determine the effect, if any, of such Transfer on the Company.

ARTICLE VI

TRANSFER AGENT

SECTION 6.01. Transfer Agent, Registrar and Paying Agent. The duly appointed Transfer Agent, registrar and paying agent for the Series B Preferred Shares shall be American Transfer & Trust Company, LLC. The Company may, in its sole discretion, appoint any other Person to serve as Transfer Agent, registrar or paying agent for the Series B Preferred Shares and thereafter may remove or replace such other Person at any time. Upon any such appointment, removal or replacement the Company shall send notice thereof by first class mail, postage prepaid, to the Holders.

ARTICLE VII

LIQUIDATION, DISSOLUTION AND WINDING UP

SECTION 7.01. Preferential Payments to Holders of Series B Preferred Shares. In the event of any Liquidation Event of the Company, the Holders shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payment shall be made to the holders of
Junior Stock by reason of their ownership thereof, an amount per share equal to the Liquidation Preference. If upon any such Liquidation Event, the assets of the Company available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 7.01, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

ARTICLE VIII

AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 8.01. Amendments.

(a) The Company may not amend, modify, supplement, repeal or waive any of the terms of this Certificate of Designation or the preferences, powers or rights of the Holders, except with the consent of the Holder Majority.

(b) No amendment, alteration, modification, supplement, repeal or waiver by the Company (whether by merger, consolidation, amendment, recapitalization or otherwise) to the Certificate of Incorporation, the Bylaws of the Company or the Certificate of Designation of the Series A Preferred Stock that by its terms would adversely affect the Holders in a manner disproportionate to any other holder or group of holders of Equity Interests of the Company shall be effective against the Holders without the consent of the Holder Majority.

(c) After an amendment, alteration, modification, supplement, repeal or waiver under this Section 8.01 becomes effective, the Company shall deliver to the Holders affected thereby a notice briefly describing the amendment, alteration, modification, supplement, repeal or waiver. Any failure of the Company to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, alteration, modification, supplement, repeal or waiver.

(d) No failure or delay of any Holder in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Holders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. A waiver of any provision of this Certificate of Designation or any consent to any departure by the Company or any of its Subsidiaries from this Certificate of Designation shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Company or any of its Subsidiaries in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices. Any notice or other communication required or permitted to be delivered to any party under this Certificate of Designation will be in writing and delivered by (i) email or (ii) overnight delivery via a national courier service, with respect to any Holder, at the email address or physical address on file with the Company and, with respect to the Company, to the following email address or physical address, as applicable:

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Notice or other communication pursuant to this Section 9.01 will be deemed given or received when delivered, except that any notice or communication received by email transmission on a non-Business Day or on any Business Day after 5:00 p.m. addressee’s local time or by overnight delivery on a non-Business Day will be deemed to have been given and received at 9:00 a.m. addressee’s local time on the next Business Day.

SECTION 9.02. Severability. Whenever possible, each provision hereof will be interpreted in a manner as to be effective and valid under applicable Law, but if any provision hereof is held to be prohibited by or invalid under applicable Law, then such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof.

SECTION 9.03. Governing Law. This Certificate of Designation and all questions relating to the interpretation or enforcement of this Certificate of Designation will be governed by and construed in accordance with the Laws of the State of Delaware without regard to the Laws of the State of Delaware or any other jurisdiction that would call for the application of the substantive Laws of any jurisdiction other than the State of Delaware.

(a) The various provisions set forth under this Certificate of Designation are for the benefit of the Holders and will be enforceable by them, including by one or more actions for specific performance.

(b) Except as expressly set forth herein, all remedies available under this Certificate of Designation, at law, in equity or otherwise, will be deemed cumulative and not alternative or exclusive of other remedies. The exercise by any Holder of a particular remedy will not preclude the exercise of any other remedy.
IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be signed by a duly authorized officer this 6th day of June, 2019.

THE COMPANY:

MYT HOLDING CO.

By: /s/ Tracy M. Preston
Name: Tracy M. Preston
Title: Authorized Officer

[Signature Page to Certificate of Designation of Cumulative Series B Preferred Stock of MYT Holding Co.]
THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN AND ARE NOT EXPECTED TO BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNTIL A SERIES A REDEMPTION DATE (AS DEFINED IN THE CERTIFICATE OF DESIGNATION (AS DEFINED BELOW)) EXCEPT (A) (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS (I) A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A OR (II) AN INSTITUTIONAL ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF SHARES OF SERIES B PREFERRED STOCK OF $250,000,000 FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE AND PROVIDED THAT PRIOR TO SUCH TRANSFER, THE TRANSFER AGENT IS FURNISHED WITH AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUERS THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT), (4) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (IF AVAILABLE AND PROVIDED THAT PRIOR TO SUCH TRANSFER, THE TRANSFER AGENT IS FURNISHED WITH AN OPINION OF COUNSEL ACCEPTABLE TO THE ISSUERS THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT), OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, (B) UNTIL A SERIES REDEMPTION DATE, TO PERSONS OR ENTITIES THAT ARE PERMITTED TRANSFEREES, AND (C) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS.

THE LIST OF PERSONS THAT ARE NOT PERMITTED TRANSFEREES MAY BE OBTAINED BY CONTACTING CHIEF LEGAL COUNSEL, NEIMAN MARCUS GROUP, INC., ONE MARCUS SQUARE, 1618 MAIN STREET, DALLAS, TEXAS, 75201.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFERS SET FORTH IN ARTICLE V OF THE CERTIFICATE OF DESIGNATION FILED WITH THE SECRETARY OF STATE FOR THE STATE OF DELAWARE PURSUANT TO SECTION 202 OF THE DELAWARE GENERAL CORPORATION LAW (THE “CERTIFICATE OF DESIGNATION”). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE CERTIFICATE OF DESIGNATION. A COPY OF THE CERTIFICATE OF DESIGNATION WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER UPON REQUEST.

In the case of the Securities sold pursuant to Regulation S, the shares of Series B Preferred Stock will bear an additional legend substantially to the following effect:

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Appendix I
Restrictive Legend to the Series B Preferred Shares Certificate
“BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON, NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON, AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT OF 1933, AS AMENDED.”
PLEDGE AGREEMENT

dated and effective as of

June 7, 2019

between

MYT PARENT CO.,
as the Pledgor,

MYT HOLDING CO.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as 8.000% Third Lien Notes Trustee

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as 8.750% Third Lien Notes Trustee

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent
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This PLEDGE AGREEMENT, dated and effective as of June 7, 2019, is between MYT PARENT CO., a Delaware corporation (together with its successors and permitted assigns, the "Pledgor"), MYT HOLDING CO., a Delaware corporation, a direct Wholly Owned Subsidiary of the Pledgor (together with its successors and permitted assigns, "MYT Holdco"), WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee under the 8.000% Indenture (as defined below) (together with its successors and permitted assigns in such capacity, the “8.000% Third Lien Notes Trustee”), WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee under the 8.750% Indenture (as defined below) (together with its successors and permitted assigns in such capacity, the “8.750% Third Lien Notes Trustee”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as collateral agent (together with its successors and permitted assigns in such capacity, the “Collateral Agent”) for the benefit of the Secured Parties (as defined below).

WHEREAS, reference is made to (a) the Indenture, dated as of the date hereof (as may be amended, restated, supplemented, waived or otherwise modified from time to time, the “8.000% Indenture”), among Neiman Marcus Group LTD LLC, a Delaware limited liability company (the “Issuer”), The Neiman Marcus Group LLC, a Delaware limited liability company (the “LLC Co-Issuer”), Mariposa Borrower, Inc., a Delaware corporation (the “Corporate Co-Issuer”), The NMG Subsidiary LLC, a Delaware limited liability company (the “New Co-Issuer Subsidiary” and, together with Corporate Co-Issuer and the LLC Co-Issuer, the “Co-Issuers” and, together with the Issuer, the “Issuers”), the guarantors party thereto from time to time, the 8.000% Third Lien Notes Trustee and the Collateral Agent, governing the 8.000% Third Lien Senior Secured Notes due 2024 of the Issuers (the “8.000% Third Lien Notes”) and (b) the Indenture, dated as of the date hereof (as may be amended, restated, supplemented, waived or otherwise modified from time to time, the “8.750% Indenture” and together with the 8.000% Indenture, the “Indentures”), among the Issuers, the guarantors party thereto from time to time, the 8.750% Third Lien Notes Trustee and the Collateral Agent, governing the 8.750% Third Lien Senior Secured Notes due 2024 of the Issuers (the “8.750% Third Lien Notes”); and

WHEREAS, the Pledgor is the legal and beneficial owner of the Pledged Collateral (as hereinafter defined) and will derive substantial benefits from the issuance and sale of such Notes pursuant to the respective Indentures.

Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Indenture.

(a) Capitalized terms used in this Agreement and not otherwise defined herein have the respective meanings assigned thereto in the Indentures. All terms referred to herein that are defined in the UCC (as defined herein) and not defined in this
Agreement or the Indenture have the meanings specified in Article 9 of the UCC. The term “instrument” shall have the meaning specified in Article 9 of the UCC.

(b) The rules of construction specified in Section 1.3 of each of the Indentures also apply to this Agreement.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“8.000% Indenture” has the meaning assigned to such term in the recitals of this Agreement.

“8.000% Third Lien Notes” has the meaning assigned to such term in the recitals of this Agreement.

“8.000% Third Lien Notes Trustee” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“8.750% Indenture” has the meaning assigned to such term in the recitals of this Agreement.

“8.750% Third Lien Notes” has the meaning assigned to such term in the recitals of this Agreement.

“8.750% Third Lien Notes Trustee” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“Agreement” means this Pledge Agreement, as may be amended, restated, supplemented, waived or otherwise modified from time to time.

“Collateral Agent” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“Common Stock” means the shares of common stock of MYT Holdco, par value $0.001 per share.

“Company Parties” means, collectively, Neiman Marcus Group, Inc. and each of its Subsidiaries that has executed and delivered the Transaction Support Agreement.

“Default Return” means additional dividends of 2.00% per annum payable in accordance with the Certificate of Designation governing the Series A Preferred Stock upon the occurrence and continuance of a Trigger Event (as defined therein).

“Event of Default” means an “Event of Default” under and as defined in each Indenture.

“Federal Securities Laws” has the meaning assigned to such term in Section 4.03.
“GCA” means the Guarantee and Collateral Agreement, dated as of the date hereof, between the Pledgor and Ankura Trust Company, LLC and with respect to the Second Lien Notes.

“German GAAP” means generally accepted accounting principles as in effect from time to time in the Federal Republic of Germany.

“Indenture” has the meaning assigned to such term in the recitals of this Agreement.

“Independent Third Party” means a person or entity other than (i) any member of the Company Parties, (ii) any of the Sponsors, (iii) an affiliate of any member of the Company Parties or any of the Sponsors or (iv) another Person or entity in which the Company Parties and/or any of the Sponsors and/or their respective affiliates owns at least 10% of the outstanding Equity Interests of such Person or entity (measured by voting power, economic value or number).

“Intercreditor Agreement” means any intercreditor agreement (upon and during the effectiveness thereof) entered into in compliance with each Indenture and the Notes Documents.

“Limited Guarantee” means the limited guarantee of the Second Lien Notes Obligations by each MYT Guarantor Entity on a senior basis.

“MYT Account” has the meaning set forth in the GCA.

“MYT Alternate Security” has the meaning set forth in the GCA.

“MYT Asset Sale” means any direct or indirect sale, disposition, monetization or other transfer of any assets or property of the MYT Entities (whether directly or indirectly or synthetically, including through derivative transactions) to an Independent Third Party. Notwithstanding the preceding, none of the following items will be deemed to be an MYT Asset Sale:

1. a sale, exchange or other disposition of cash, Cash Equivalents or Investment Grade Securities, or of obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, or dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the MYT Entities (including allowing any registrations or any applications for registration of any intellectual property to lapse or become abandoned);

2. dispositions of assets or property with an aggregate Fair Market Value in any calendar year of less than $5.0 million;

3. any transfer or disposition of property or assets or issuance or sale of Equity Interests by a Subsidiary of the MYT Holdco to the MYT Holdco or by the MYT Holdco or a Subsidiary of the MYT Holdco to another Subsidiary of MYT Holdco;
(4) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business, liquidation of inventory in the ordinary course of business or the conversion of accounts receivable to notes receivable or dispositions of accounts receivable in connection with the collection or compromise thereof;

(5) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(6) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the MYT Entities, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes; and

(7) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, dispositions of property subject to casualty events.

“MYT Deposit Event” means (i) the irrevocable deposit of net cash proceeds of MYT Secondary Sales or distributions in the MYT Account in an aggregate amount that is not less than (x) $200.0 million less (y) the aggregate amount of Qualified LCs that have been provided and (ii) the provision of such Qualified LCs.

“MYT Entities” means, collectively, (i) Mariposa Luxembourg I S.à r.l. (Luxembourg), (ii) Mariposa Luxembourg II S.à r.l. (Luxembourg), (iii) NMG Germany GmbH, (iv) mytheresa.com GmbH (Germany), (v) mytheresa.com Service GmbH (Germany), (vi) Theresa Warenvertrieb GmbH (Germany), (vii) once formed, MYT Netherlands Parent B.V. (Netherlands) and (viii) the Subsidiaries of any of the foregoing described in clauses (i) through (vii).

“MYT Group” means MYT Holdco and its Subsidiaries, including the MYT Operating Entities.

“MYT Holdco” has the meaning assigned thereto in the preamble to this Agreement.

“MYT Operating Entities” means NMG Germany GmbH (or any successor parent operating entity of MYT Holdco) and its operating Subsidiaries, including mytheresa.com GmbH, mytheresa.com Service GmbH and Theresa Warenvertrieb GmbH.

“MYT RCF Revenue Cap” means, as of any time, 12.5% of the consolidated revenues as reported in the monthly financial reports of the MYT Operating Entities during the immediately preceding twelve months for which such monthly financial reports are available.
“MYT Secondary Sale” means (i) the sale, disposition, monetization or other transfer (whether directly, indirectly or synthetically, including through derivative transactions or by means of a transaction involving Pledgor or any other entity that directly or indirectly owns equity interests in MYT Holdco) of equity interests of MYT Holdco by Neiman Marcus Group, Inc. or its subsidiaries to any Independent Third Party, other than a primary sale of equity interests for cash whose net cash proceeds are contributed to or retained by the MYT Entities or (ii) any MYT Asset Sale other than a Qualified MYT Asset Sale.

“NM Group” means Neiman Marcus Group LTD LLC, a Delaware limited liability company.

“Notes” means, collectively, (x) the 8.000% Third Lien Notes and (y) the 8.750% Third Lien Notes.

“Obligations” means the “Note Obligations” as defined in the Indenture.

“Pledgor” has the meaning assigned to such term in the introductory paragraph of this Agreement.

“Pledged Collateral” has the meaning assigned to such term in Section 2.01.

“Pledged Securities” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“Pledged Stock” has the meaning assigned to such term in Section 2.01.

“Projected Purchase Order” means an advance order (which may not be made more than nine months in advance of the earlier of (x) the date of delivery and (y) the date of payment) for inventory made in the ordinary course of business of the MYT Operating Entities.

“Projected RCF Amount” means an amount equal to the MYT RCF Revenue Cap, calculated as of the date of any Projected Purchase Order.

“Qualified LC” has the meaning set forth in the GCA.

“Qualified MYT Asset Sale” means any MYT Asset Sale made for fair market value and for not less than 75% cash, the net cash proceeds of which are reinvested within 180 days after receipt thereof by the MYT Entities in non-current assets (or an operating business that is similar to the business of the MYT Entities) held by the MYT Entities; provided that (i) any MYT Asset Sale or series of related MYT Asset Sales for more than $100.0 million in consideration may not be deemed to be a Qualified MYT Asset Sale, and (ii) non-current assets (or an operating business that is similar to the business of the MYT Entities) received by the MYT Entities from an Independent Third Party as consideration for a MYT Asset Sale shall be deemed to be cash for purposes of this definition.
“Requirement of Law” means, as to any person, any law, treaty, rule, regulation, statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such person or any of its property or assets or to which such person or any of its property or assets is subject.

“Secured Parties” means the “Secured Parties” as defined in the Indenture.

“Series A Certificate of Designation” the certificate of designation governing the Series A Preferred Stock.

“Series B Certificate of Designation” the certificate of designation governing the Series B Preferred Stock.

“Series A Preferred Stock” means any shares of Cumulative Series A Preferred Stock, $0.001 par value per share, of MYT Holdco.

“Series B Preferred Stock” means any shares of Cumulative Series B Preferred Stock, $0.001 par value per share, of MYT Holdco.

“Sponsors” means, any of Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., the Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates, but not including any portfolio company of any of the foregoing.

“Termination Date” has the meaning given to such term in Section 3.03.

“Trustees” means the 8.000% Third Lien Notes Trustee and the 8.750% Third Lien Notes Trustee.

“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

ARTICLE II

Pledge of Equity Interests

SECTION 2.01. Pledge. As security for the payment or performance, as the case may be, in full of the Obligations, the Pledgor hereby assigns and pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby
grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of the Pledgor’s right, title, and interest in, to and under:

(a) 50.0% of the Common Stock directly owned by the Pledgor now or at any time hereafter acquired by the Grantor, which as of the date hereof shall consist of the Common Stock listed on Schedule I and any certificates representing such Common Stock (collectively, the “Pledged Stock”);

(b) subject to Section 2.08, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the Pledged Stock;

(c) subject to Section 2.08, all rights and privileges of the Pledgor with respect to the Pledged Stock and other property referred to in clause (b) above; and

(d) all Proceeds of any of the foregoing (the items referred to in clauses (a) through this clause (d) being collectively referred to as the “Pledged Collateral”).

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever; subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Indenture.

SECTION 2.02. Delivery of Pledged Collateral.

(a) The Pledgor agrees promptly to deliver or cause to be delivered to the Collateral Agent for the benefit of the Secured Parties, any and all Pledged Securities.

(b) Upon delivery to the Collateral Agent, (i) any Pledged Securities required to be delivered pursuant to the foregoing paragraph (a) of this Section 2.02 shall be accompanied by stock powers, duly executed in blank or other instruments of transfer to the Collateral Agent and (ii) all other property comprising part of the Pledged Collateral delivered pursuant to the terms of this Agreement shall be accompanied to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral by proper instruments of assignment duly executed by the Pledgor. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided, that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Collateral. Each schedule so delivered shall be deemed to supplement any prior schedules so delivered.

(c) Notwithstanding anything to the contrary in any Notes Document, the Pledgor will not be required (nor, for the avoidance of doubt, will MYT Holdco or the Collateral Agent be required):
to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable) (A) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of Pledgor; (B) delivery of Collateral consisting of certificated Common Stock included in the Collateral or (C) as provided in Section 2.07; or

(ii) take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the security interest in any Pledged Collateral of Pledgor.

SECTION 2.03. Representations and Warranties. The Pledgor represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, as of the date hereof and as of the date that any additional Pledged Stock is acquired by the Pledgor, that:

(a) the Pledged Stock has been duly and validly authorized and issued and is fully paid and non-assessable;

(b) the Pledgor is the owner of, and has good title to, the Pledged Stock listed on Schedule I (as such Schedule may be updated from time to time) owned by the Pledgor, free of any and all Liens except Permitted Liens;

(c) other than as set forth in the Indenture or this Agreement or the schedules thereto or hereto, and except for restrictions and limitations imposed by the Notes Documents or securities laws generally or otherwise not prohibited by the Notes Documents then in effect, the Pledged Stock is and will continue to be freely transferable and assignable to the Collateral Agent, and none of the Pledged Stock is or will be subject to any option, right of first refusal, by-law, memorandum of association or articles of association provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of the Pledged Collateral hereunder, the Disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder other than under applicable Requirements of Law;

(d) the Pledgor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;

(e) other than as set forth in the Indenture or this Agreement or the schedules thereto or hereto or in the other Notes Documents, as of the Closing Date, no consent or approval of any Governmental Authority, any securities exchange or any other person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

(f) by virtue of the execution and delivery by the Pledgor of this Agreement, when the Pledged Securities are delivered to the Collateral Agent, for the benefit of the Secured Parties, in accordance with this Agreement, and a Uniform Commercial Code
financing statement naming the Collateral Agent as the secured party and covering the Pledged Collateral is filed in the appropriate filing office, the Collateral Agent will obtain, for the benefit of the Secured Parties, a valid, perfected and enforceable security interest in such Pledged Collateral, subject only to Permitted Liens, as security for the payment of the Obligations, to the extent such perfection is governed by the Uniform Commercial Code.

SECTION 2.04. Covenants. The Pledgor covenants and agrees with the Collateral Agent and the Secured Parties, that, from and after the date of this Agreement until the date of its termination pursuant to Section 5.15:

(a) The Pledgor agrees to furnish to the Collateral Agent prompt written notice of any change in (i) its organization name, (ii) its identity or type of organization, or (iii) its jurisdiction of organization. The Pledgor agrees not to effect or permit any such change unless all filings have been made, or will have been made within any statutory period, under the Uniform Commercial Code in order for the Collateral Agent to continue at all times following such change to have a valid and perfected security interest in all the Pledged Collateral in which a security interest may be perfected by such filing, for the benefit of the Secured Parties.

(b) Subject to the rights of the Pledgor under the Notes Documents to Dispose of Pledged Collateral, the Pledgor shall, at its own expense, use commercially reasonable efforts to defend its title to the Pledged Collateral against all persons and to defend the security interest of the Collateral Agent, for the benefit of the Secured Parties, in the Pledged Collateral and the priority thereof against any Lien that is not a Permitted Lien.

(c) The Pledgor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as may be reasonably necessary or advisable from time to time to better assure, preserve, protect and perfect the Collateral Agent’s security interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the security interest and the filing of any financing statements or other documents in connection herewith or therewith.

SECTION 2.05. Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, shall have the right but not the obligation (in its sole and absolute discretion) to hold the Pledged Securities in the name of the Pledgor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and be continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Following the occurrence and during the continuance of an Event of Default and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, the Pledgor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of the Pledgor. If an Event of Default shall have occurred and be continuing and the Collateral Agent has given at least one (1) Business Day’s
prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, the Collateral Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger share amounts for any purpose consistent with this Agreement. The Pledgor shall use its commercially reasonable efforts to cause MYT Holdco to comply with a request by the Collateral Agent, pursuant to this Section 2.05, to exchange certificates representing Pledged Securities of MYT Holdco for certificates of smaller or larger share amounts.

SECTION 2.06. Financing Statements. The Pledgor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the Pledged Collateral or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including (i) if required, whether the Pledgor is an organization, the type of organization and any organizational identification number issued to the Pledgor to the extent required and (ii) a description of collateral that describes such property in any other manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Pledged Collateral. Notwithstanding the foregoing, the Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Lien or the security interest in the Pledged Collateral.

SECTION 2.07. Control. MYT Holdco hereby agrees, upon written direction from the Collateral Agent and without further consent from the Pledgor, (a) to comply with all instructions and directions of any kind originated by the Collateral Agent concerning the Pledged Collateral, to liquidate or otherwise dispose of the Pledged Collateral as and to the extent directed by the Collateral Agent and to pay over to the Collateral Agent all proceeds without any set-off or deduction and (b) except as otherwise directed by the Collateral Agent, not to comply with the instructions or directions of any kind originated by the Pledgor or any other Person. Notwithstanding anything to the contrary set forth herein, the Collateral Agent agrees that it shall not give any directions pursuant to this Section 2.07 unless and until an Event of Default shall have occurred and be continuing and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder.

SECTION 2.08. Voting Rights; Dividends and Interest, Etc.

(a) Unless and until an Event of Default shall have occurred and be continuing and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder:

(i) The Pledgor shall be entitled to exercise any and all voting or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, any valid, enforceable provisions of the Amended and Restated Certificate of Incorporation of MYT Holding (the “Charter”) and the other Notes Documents; provided that, except as not prohibited by the valid,
enforceable provisions of the Charter, any of the Indentures and any other Notes Documents, such rights and powers shall not be exercised in any manner that could be reasonably likely to materially and adversely affect the rights and remedies of the Collateral Agent or any other Secured Party under this Agreement or the ability of the Secured Parties to exercise the same.

(ii) The Collateral Agent shall promptly execute and deliver to the Pledgor, or cause to be executed and delivered to the Pledgor, all such proxies, powers of attorney and other instruments as the Pledgor may reasonably request in writing for the purpose of enabling the Pledgor to exercise the voting or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above.

(iii) The Pledgor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are not prohibited by, and otherwise paid or distributed in accordance with, the terms and conditions of this Agreement, the Indenture and any other Notes Documents and applicable laws; provided that any noncash dividends, interest, principal or other distributions that would constitute Pledged Stock, whether resulting from a subdivision, combination or reclassification of the outstanding Common Stock, received in exchange for Pledged Stock or any part thereof, or in redemption thereof or as a result of any merger, consolidation, acquisition or other exchange of assets to which MYT Holdco may be a party or otherwise, shall be and become part of the Pledged Collateral, and, if received by the Pledgor, shall be promptly delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent).

(b) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, the Pledgor to receive dividends, interest, principal or other distributions with respect to the Pledged Securities that the Pledgor is authorized to receive pursuant to paragraph (a)(iii) of this Section 2.08 shall cease, and all such rights shall thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; provided that the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Pledgor to receive and retain such amounts. All dividends, interest, principal or other distributions received by the Pledgor contrary to the provisions of this Section 2.08 shall not be commingled by the Pledgor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and shall be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 4.02. After all Events of Default have been cured or waived, the Collateral Agent shall promptly repay to the Pledgor (without interest) all dividends, interest, principal or other
distributions that the Pledgor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 2.08 and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, all rights of the Pledgor to exercise the voting or consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.08, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.08, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, for the benefit of the Secured Parties, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder to permit the Pledgor to exercise such rights. After all Events of Default have been cured or waived, all rights of the Pledgor to exercise the voting and/or other consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.08 shall continue and all such rights shall no longer be vested in the Collateral Agent for the benefit of the Secured Parties, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.08 shall be reinstated.

SECTION 2.09. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Pledged Collateral are irrevocable and powers coupled with an interest.

ARTICLE III

MYT Group Covenants

SECTION 3.01. Distributions Upon Realization of Value. If MYT Holdco receives any distributions on account of the equity of the MYT Holdco or proceeds from a MYT Secondary Sale, MYT Holdco shall promptly pay or distribute such proceeds (net of any taxes payable by MYT Holdco) in the following order of priority, in each case, until the satisfaction and discharge in full of the Notes Obligations:

(a) first, until the earliest to occur of (i) a MYT Deposit Event, (ii) the provision of MYT Alternate Security or (iii) the satisfaction and discharge in full of the Second Lien Notes Obligations, into the MYT Account, up to an amount equal to $200.0 million; provided, that, upon the earlier to occur of (i) the satisfaction and discharge in full of the Second Lien Notes Obligations and (ii) provision of MYT Alternate Security, any amounts in the MYT Account shall be released and distributed in accordance with clauses (b), (c) and (d) below,

(b) second, to the holders of Series A Preferred Stock, pro rata based on the number of shares of Series A Preferred Stock held by each such holder at a
redemption price not to exceed an amount in respect of each share of Series A Preferred Stock equal to (i) $1.00, adjusted as appropriate in the event of any stock dividend, stock split, stock distribution, recapitalization, combination or similar event with respect to shares of Series A Preferred Stock, plus (ii) all accumulated and unpaid dividends (whether or not declared, and including all such dividends that have compounded) thereon, including Default Returns, through but not including, the date of payment (such amount in respect of each share of Series A Preferred Stock, the “Liquidation Preference” and such amount in the aggregate, the “Aggregate Liquidation Preference”); provided, that, if the amount distributed in respect of any share of Series A Preferred Stock, together with all prior amounts distributed in respect of such share pursuant to this clause (b), equals the Liquidation Preference in respect of such share, MYT Holdco shall redeem, and as a condition to receipt of such amount the holder of such share of Series A Preferred Stock shall surrender, such share of Series A Preferred Stock to MYT Holdco for cancellation, in each case in accordance with the procedures set forth in Article III of the Certificate of Designation of the Series A Preferred Stock,

(c) third, pursuant to and in accordance with the Certificate of Designation of the Series B Preferred Stock, to the holders of Series B Preferred Stock, pro rata based on the number of shares of Series B Preferred Stock held by each such holder, in an amount not to exceed the Aggregate Liquidation Preference received by the holders of Series A Preferred Stock in the foregoing clause (b) (excluding any Default Returns); provided, if the amount distributed in respect of any share of Series B Preferred Stock, together with all prior amounts distributed in respect of such share pursuant to this clause (c), equals the Liquidation Preference (excluding any Default Returns) in respect of such share, MYT Holdco shall redeem, and as a condition to receipt of such amount the holder of such share of Series B Preferred Stock shall surrender, such share of Series B Preferred Stock to MYT Holdco for cancellation, in each case in accordance with the procedures set forth in Article III of the Certificate of Designation of the Series B Preferred Stock, and

(d) fourth, (i) 50% of any remaining distributions to the holders of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder and (ii) 50% of any remaining distributions to the Issuer, which shall be in the form of a contribution as common equity and used by the Issuer to redeem the Notes at par pursuant to the Indentures.

SECTION 3.02. MYT Secondary Sales. If Pledgor, directly or indirectly, receives any distributions on account of the equity of the MYT Holdco or proceeds from any MYT Secondary Sale (for the avoidance of doubt, other than a result of distributions of proceeds from MYT Holdco described in Section 3.01(c) or 3.01(d) above), it shall promptly pay or contribute such proceeds to MYT Holdco and, thereafter, MYT Holdco shall distribute such proceeds (net of any taxes payable by Pledgor) in the relative amounts and priorities set forth in Section 3.01 (after taking into account any proceeds previously distributed pursuant to Section 13)
SECTION 3.01. No MYT Secondary Sale may be effected unless the applicable equityholder(s) shall cause the purchaser(s) to fund the proceeds of such MYT Secondary Sale directly or indirectly (if such proceeds are thereafter distributed or contributed to MYT Holdco, as applicable) to MYT Holdco for distribution in the manner set forth in Section 3.01.

SECTION 3.03. Restrictive Covenants. Until the earliest to occur of (i) the payment in full of the principal of and interest on the Notes and all fees and all other expenses or amounts payable under the Notes Documents (other than in respect of contingent indemnification and expense reimbursement claims not then due) and (ii) any transaction or series of transactions (a) that results in the sale or transfer of 100% of the operating business of the MYT Entities, in each case, to an Independent Third Party, (b) the proceeds of which are applied in accordance with the terms of Section 3.01 of this Agreement; provided that the provisions of this Section 3.03 shall survive following any such transaction or series of transactions until all proceeds that are received or receivable in connection therewith are applied in accordance with the terms of Section 3.01 of this Agreement and (c) after giving effect to which the Company, MYT Parent and the Sponsors (including any portfolio company thereof) retain no direct or indirect interest (economic or otherwise) in any of the MYT Operating Entities or assets (or the operating business of any of the MYT Entities immediately prior to such transaction), whether in the form of debt, equity, warrants, exchangeable or convertible securities, derivatives, phantom units, tracking stock, earn-outs, purchase price adjustments, other contractual rights or other instruments (clause (i) or (ii), the “Termination Date”):

(1) Limitation on Restricted Payments. MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise): declare or pay any dividend or make any payment or distribution on account of the MYT Guarantor Entities’ or any of their Subsidiaries’ Equity Interests (other than a dividend or other payment or distribution payable to the MYT Guarantor Entities or their Subsidiaries), including any payment made in connection with any merger, consolidation, liquidation or dissolution involving any of the MYT Guarantor Entities (other than dividends or distributions by MYT Holdco payable solely in MYT Holdco Common Stock); or

(b) purchase, redeem, defease or otherwise acquire or retire for value any of the MYT Guarantor Entities’ or any of their Subsidiaries’ equity interests including any purchase, redemption, defeasance or acquisition for value made, in connection with any merger, consolidation, liquidation or dissolution involving any of the MYT Guarantor Entities or their Subsidiaries.

Nothing contained in this Section 3.03(1) shall prohibit (x) the transactions described in Sections 3.01 and 3.02, (y) the Affiliate Transactions permitted under Section 3.03(7) and (z) the MYT Reorganization.

(2) Limitation on Incurrence of Indebtedness. MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), Incur any Indebtedness (including Acquired
Indebtedness) for borrowed money or any guarantee or other credit support for Indebtedness for borrowed money; 

**provided, however,** that the foregoing limitation will not apply to the following:

(a) the Incurrence by MYT Operating Entities of revolving (not term) indebtedness under the existing revolving credit facility of one or more of the MYT Operating Entities (as amended or refinanced from time to time, collectively, the “MYT RCF”) and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof), which shall be provided by one or more commercial banks to finance ordinary course working capital needs or capital expenditures and the Permitted Investments described in Section 3.03(8)(a), 

**provided** the aggregate principal amount of the Indebtedness under the MYT RCF shall not exceed the greater of (x) 40.0 million Euros and (y) the MYT RCF Revenue Cap; and 

**further provided** that, the MYT Operating Entities may from time to time borrow under the MYT RCF to fund purchases of inventory pursuant to a Projected Purchase Order up to an amount so that the amount of the Indebtedness outstanding under the MYT RCF at any time does not exceed the Projected RCF Amount under the MYT RCF, notwithstanding that such borrowings would cause the amount outstanding under the MYT RCF to exceed the MYT RCF Revenue Cap, so long as (1) the MYT RCF permits such borrowings and (2) the Projected RCF Amount at the time of such Projected Purchase Order exceeded 40.0 million Euros; and 

(b) intercompany Indebtedness of MYT Holdco and its Subsidiaries existing on the Issue Date; 

**provided** that to the extent any such Indebtedness is owed by an MYT Guarantor Entity to another Person that is not an MYT Guarantor Entity, such Indebtedness shall be unsecured and shall be subordinated in right of payment to the Limited Guarantee; and 

(c) Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the MYT Operating Entities and their Subsidiaries under or pursuant to any “synthetic lease” transactions to on-balance sheet Indebtedness of the MYT Operating Entities and their Subsidiaries, not to exceed $2.0 million; provided that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness.

(3) **Limitation on Issuances of Equity Interests.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), (a) authorize, issue or increase the authorized amount of Equity Interests of MYT Holdco that rank senior to the Common Stock as to priority in distributions or liquidation preference, (b) to authorize, issue or increase the
authorized amount of equity of any member of the MYT Group other than MYT Holdco (other than issuances of such equity to members of the MYT Group) or (c) amend or reclassify any equity of MYT Holdco into any of the foregoing equity described in clauses (a) and (b).

(4) **Limitation on Reorganizations.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), take any action, including forming a Subsidiary, recapitalization or reorganization, that results in any Person existing between MYT Holdco and NMG Germany GmbH (other than entities that are wholly owned Subsidiaries of MYT Holdco). Notwithstanding the foregoing, MYT Holdco shall be permitted to reorganize the ownership structure of MYT Holdco and its Subsidiaries to eliminate Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. on or prior to September 30, 2019 (the “MYT Reorganization”); provided that all equity pledges and guarantees by the MYT Guarantor Entities shall remain or be assumed by operation of law or otherwise in connection with such restructuring and without the creation of any additional tax liabilities at the time of the restructuring to the holders of the Notes.

(5) **Limitation on Liquidations.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), liquidate, dissolve or wind-up, or voluntarily petition for bankruptcy or fail to defend involuntary acts of bankruptcy, subject (in the case of any entities organized under the laws of Germany) to duties under applicable German law. Notwithstanding the foregoing, MYT Holdco and its Subsidiaries shall be permitted to directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise), liquidate, dissolve or wind-up, or voluntarily petition for bankruptcy or fail to defend involuntary acts of bankruptcy Mariposa Luxembourg I S.à r.l. and Mariposa Luxembourg II S.à r.l. in connection with the MYT Reorganization.

(6) **Limitation on Liens.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) create, incur or suffer to exist any Lien on any asset or property of any of the MYT Guarantor Entities or any of their Subsidiaries to secure Indebtedness for borrowed money or on any guarantee thereof, except:

- (a) Liens on the assets of the borrowers and guarantors under the MYT RCF, securing their obligations under the MYT RCF;
- (b) Liens existing or incurred on the Issue Date and any refinancing or replacements thereof; provided that such refinancings or replacements of such original Liens shall not extend to any assets other than the assets subject to the original Lien (and proceeds and products thereof and improvements thereon);
- (c) Liens on vehicles, equipment or personal property of the MYT Operating Entities and their Subsidiaries granted in the ordinary course of business;
(d) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods; and

(e) Liens on the collateral securing Indebtedness permitted to be incurred as secured Indebtedness pursuant to Section 3.03(2).

(7) **Limitation on Transactions with Affiliates.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan (including intercompany loans), advance or guarantee with, or for the benefit of, Neiman Marcus Group, Inc. or any Affiliates of Neiman Marcus Group, Inc., or any other Affiliates of MYT Holdco (other than the members of the MYT Group) and the MYT Group (each of the foregoing, an “Affiliate Transaction”), except for any reasonable, customary and arm’s length payments to or arrangements relating to the allocation of shared expenses (if any) between MYT Holdco, the MYT Group and Neiman Marcus Group, Inc. and their respective Affiliates (other than the members of the MYT Group).

(8) **Limitation on Investments.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) make any Investment in any Person after the Issue Date, other than (collectively, “Permitted Investments”):

(a) Investments made using common equity or the cash proceeds (net of offering expenses, discounts and commissions) of common equity of MYT Holdco (it being understood that an amount of cash proceeds of such common equity may be used to temporarily reduce the outstanding amount under the MYT RCF, and such amount may be borrowed under the MYT RCF to fund such Investments);

(b) Investments in members of MYT Group and its wholly-owned Subsidiaries;

(c) Investments by the MYT Operating Entities and their Subsidiaries in accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received by the MYT Operating Entities and their Subsidiaries in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(d) intercompany loans among the Subsidiaries of MYT Holdco;
(e) guarantees of operating leases or of other obligations that do not constitute Indebtedness, in each case, entered into by the MYT Operating Entities and their Subsidiaries in the ordinary course of business;

(f) purchases or acquisitions by the MYT Operating Entities and their Subsidiaries of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(g) Investments arising out of the receipt of non-cash consideration in connection with any Qualified MYT Asset Sales;

(h) non-cash Investments made in order to complete the MYT Reorganization; and

(i) Investments not to exceed $10.0 million after the Issue Date.

MYT Holdco shall not, and shall not permit any member of the MYT Group to, directly or indirectly, use any Permitted Investments (or proceeds thereof) (i) to provide assets to an entity that Incurs Indebtedness or issues Equity Interests, which Indebtedness, Equity Interests or proceeds thereof (as the case may be) are used to refinance any Indebtedness of MYT Holdco or any member of the MYT Group or (ii) to make the payments restricted by Section 3.03(1).

(9) **Limitation on Business Activities.** MYT Holdco shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (whether by merger, consolidation, amendment, recapitalization or otherwise) engage in any business or business activity other than that currently conducted by the MYT Group and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto. Notwithstanding the foregoing, the MYT Group will not acquire any securities or other interests in the Neiman Marcus Group, Inc. or its Affiliates (other than members of the MYT Group).

(10) **Non-Circumvention.** MYT Holdco shall not by any voluntary action directly or indirectly through any subsidiary, including amending its governing documents or through any reorganization, reclassification, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other similar voluntary action, avoid the observance or performance of any of covenants set forth under this Section 3.03. The business of the MYT Group shall be conducted, directly or indirectly, through MYT Holdco.

(11) **Assumption of Obligations.** In the event of any sale, conveyance, exchange or transfer of all or substantially all of MYT Holdco’s property or assets or the consolidation, merger or amalgamation of MYT Holdco with or into any other entity or the consolidation, merger or amalgamation of any other entity with or into MYT Holdco, the successor or acquiring Person (if other than MYT Holdco) shall expressly assume the due and punctual observance and performance of each and every covenant and condition of this
Agreement to be performed and observed by MYT Holdco and all of the obligations and liabilities under this Agreement, \textit{mutatis mutandis}.

(12) Information Rights.

(a) MYT Holdco shall deliver to the Trustees:

(i) by the earlier of (A) ninety (90) days after the end of each fiscal year of NM Group (or such longer period as may be provided by the SEC if NM Group were then subject to SEC reporting requirements as a non-accelerated filer) and (B) the date NM Group discloses to holders of its secured notes earnings information with respect to the corresponding fiscal year, the audited annual financial statements of the MYT Operating Entities for the most recently ended fiscal year of the MYT Operating Entities (which currently ends prior to the corresponding fiscal year of NM Group), prepared in accordance with German GAAP, together with a qualitative or quantitative explanation of the material applicable differences between German GAAP and GAAP;

(ii) by the earlier of (A) forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of NM Group (or such longer period as may be provided by the SEC if NM Group were then subject to SEC reporting requirements as a non-accelerated filer) and (B) the date NM Group discloses to holders of its secured notes earnings information with respect to the corresponding fiscal quarter, unaudited quarterly financial statements of the MYT Operating Entities for the fiscal quarter most recently ended of the MYT Operating Entities (which currently ends prior to the corresponding fiscal quarter of NM Group) and, commencing with the MYT Operating Entities’ “fiscal quarter ending in March 2020, the corresponding fiscal quarter of the prior fiscal year, prepared in accordance with German GAAP, together with a qualitative or quantitative explanation of the material applicable differences between German GAAP and GAAP;

(iii) with each set of consolidated financial statements referred to in clauses (ii) and (iii) of this Section 3.03(12)(a) above, a narrative discussion of the key financial information of the MYT Operating Entities consistent with those customarily provided with earnings press releases; and

(iv) within the time period specified for filing current reports on Form 8-K by the SEC as if such items were reportable on a Form 8-K, notice of any (a) issuances of equity interests (including any debt security that is convertible into, or exchangeable for, capital stock of MYT Holdco) by MYT Holdco that are junior to the Series A Preferred Stock, (b) issuances of Indebtedness other than in the ordinary course of business pursuant to the exceptions set forth in Section 3.03(2) above and (c) Permitted Investments.

(b) Notwithstanding the foregoing, the obligations in this Section 3.03(12) may be satisfied with respect to financial information of the MYT Operating Entities by furnishing the applicable financial statements of MYT Holdco or any Subsidiary thereof that is the direct or indirect parent of NMG Germany GmbH; \textit{provided} that such information is accompanied by consolidating information that explains
in reasonable detail the material differences between the information relating to such parent, on the one hand, and the information relating
to the MYT Operating Entities on a stand-alone basis, on the other hand; and provided further that such direct or indirect parent of NMG
Germany GmbH shall not conduct, transact or otherwise engage in any business or operations other than relating to its direct or indirect
ownership of all of the Equity Interests in, and management of, NMG Germany GmbH.

(c) MYT Holdco shall promptly furnish any information reasonably requested by holders or beneficial holders of at least 5% of the
outstanding Notes to confirm that MYT Holdco and its subsidiaries are in compliance with the covenants set forth under this Section 3.03.

(d) Documents required to be delivered pursuant to this Section 4.06(12) may be delivered electronically and if so delivered, shall be deemed
to have been delivered on the date on which (i) (x) such documents become available on the SEC’s Electronic Data Gathering Analysis and
Retrieval ("EDGAR") website or (y) NMG Germany GmbH (or any direct or indirect parent of NMG Germany GmbH) posts such
documents, or provides a link thereto on its website; or (ii) such documents are posted on NMG Germany GmbH’s behalf on
IntraLinks/IntraAgency or another similar non-public, password protected datasite. Notwithstanding the foregoing, no Trustee shall have
any obligation to monitor or confirm, on a continuing basis or otherwise, whether MYT Holdco or NMG German GmbH (or any direct or
indirect parent of NMG German GmbH) posts such reports, information and documents on any website or the SEC’s EDGAR service, or to
collect any such information from MYT Holdco or NMG German GmbH (or any direct or indirect parent of NMG German GmbH) website
or the SEC’s EDGAR service.

(e) Any Person seeking access to such datasite will be required to represent to and agree with the MYT Operating Entities and any such parent
(and by accepting such financial information, such Person will be deemed to have so represented and agreed with the MYT Operating
Entities and such parent) to the good faith satisfaction of the MYT Operating Entities or such parent that:

(i) it is a holder of a Note or a bona fide prospective investor in the Notes;

(ii) if it is a prospective purchaser of the Notes, it is (a) a “qualified institutional buyer” (as defined in Rule 144A of the Securities Act),
(b) a “non U.S. Person” (as defined in Regulation S under the Securities Act) or (c) an institutional “accredited investor” as defined in Rule 501(a)(1),
(2), (3) or (7) under the Securities Act;

(iii) it will not use the information in violation of applicable securities laws or regulations;

(iv) it will not communicate the information to any Person and will keep the
(v) it will use such information only in connection with evaluating, monitoring or disposing of an investment in the Notes; and

(vi) it will not use such information in any manner intended to compete with the business of the MYT Operating Entities.

(f) Delivery of reports, information and documents to any Trustee is for informational purposes only and its receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including MYT Holdco’s, NMG German GmbH’s (or any direct or indirect parent of NMG German GmbH’s) or any other Person’s compliance with any of its covenants under this Agreement or the Notes. No Trustee shall have any liability or responsibility for the content, filing or timeliness of any report, information or document delivered or filed under or in connection with this Agreement.

SECTION 3.04. Additional Restrictions. MYT Holdco and MYT Parent shall not (and shall not permit their Subsidiaries to) take any action that causes, directly or indirectly (including by amendment, modification, recapitalization, reclassification, reincorporation, redomiciling, share exchange, merger, consolidation, liquidation, dissolution or otherwise):

(a) the amount that is required to be paid or distributed by MYT Holdco in the manner described in Section 3.01(a) to exceed $200.0 million;

(b) the amount that is required to be paid or distributed by MYT Holdco in the manner described in Section 3.01(b) above, to exceed such amount required to be paid or distributed by MYT Holdco pursuant to the Certificate of Designation of the Series A Preferred Stock in effect on the Issue Date;

(c) the amount that is required to be paid or distributed by MYT Holdco in the manner described in Section 3.01(c) above, to exceed such amount required to be paid by MYT Holdco pursuant to the Certificate of Designation of the Series B Preferred Stock in effect on the Issue Date; or

(d) the Certificate of Incorporation of MYT Holdco, the Certificate of Designation of the Series A Preferred Stock or the Certificate of Designation of the Series B Preferred Stock to be amended, altered or otherwise modified in a manner materially adverse to the holders of the Common Stock or the Notes.

ARTICLE IV

Remedies

SECTION 4.01. Remedies Upon Default. In accordance with, and to the extent consistent with, the terms of any applicable Intercreditor Agreement and applicable

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Requirements of Law, the Collateral Agent may take any action specified in this Section 4.01. If an Event of Default shall occur and be continuing and the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, the Collateral Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC or applicable law. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Pledgor, the Issuer, or any other person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase or otherwise Dispose of and deliver the Pledged Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, in the over-the-counter market, at any exchange or broker’s board or office of the Collateral Agent or any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. To the extent prior notice is required under applicable law, the Collateral Agent shall give the Pledgor 10 Business Days’ written notice (which the Pledgor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent’s intention to make any Disposition of Pledged Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale, in the case of a private sale, shall state the time after which the sale is to be made and, in the case of a sale at a broker’s board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Pledged Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Pledged Collateral, or the portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Pledged Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Pledged Collateral shall have been given. The Collateral Agent or any Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Pledged Collateral so sold, free of any right or equity of redemption in the Pledgor, which right or equity is hereby waived or released. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Pledged Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

SECTION 4.02. Application of Proceeds. The Collateral Agent shall, subject to any applicable Intercreditor Agreement, promptly apply the proceeds, moneys or balances of any
The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon the request of the Collateral Agent prior to any distribution under this Section 4.02, each Secured Party shall provide to the Collateral Agent certificates setting forth the respective amounts referred to in this Section 4.02 that each applicable Secured Party believes it is entitled to receive, and the Collateral Agent shall be fully entitled to rely on such certificates. Upon any sale of Pledged Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Pledged Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

SECTION 4.03. Securities Act, Etc. In view of the position of the Pledgor in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the "Federal Securities Laws") with respect to any Disposition of the Pledged Collateral permitted hereunder. The Pledgor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent
were to attempt to Dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could Dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to Dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. The Pledgor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, subject to any applicable Intercreditor Agreement, in its sole and absolute discretion, (a) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (b) may approach and negotiate with a single potential purchaser to effect such sale. The Pledgor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent shall incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, subject to any applicable Intercreditor Agreement, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 4.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE V

Miscellaneous

SECTION 5.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 13.1 of the Indenture (whether or not then in effect), as such address may be changed by written notice to the Collateral Agent and the Pledgor.

SECTION 5.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the security interest in the Pledged Collateral and all obligations of the Pledgor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of any Notes Document, any other agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Notes Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Pledgor in respect of the Obligations or this Agreement (other than a defense of payment or performance).
SECTION 5.03. Limitation by Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable Requirement of Law, and all the provisions of this Agreement are intended to be subject to all applicable Requirements of Law that may be controlling and to be limited to the extent necessary so that they shall not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable Requirement of Law.

SECTION 5.04. Binding Effect; Several Agreement. This Agreement shall become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Pledged Collateral (and any such assignment or transfer shall be void) except as not prohibited by this Agreement or the Indenture. This Agreement shall be construed as a separate agreement with respect to Pledgor and MYT Holdco and may be amended, modified, supplemented, waived or released with respect to Pledgor or MYT Holdco without the approval of the other and without affecting the obligations of the other hereunder.

SECTION 5.05. Successors and Assigns. Section 7.05 of the Third Lien Notes Collateral Agreement, dated as of the date hereof, among the grantors party thereto, the Collateral Agent, the 8.00% Third Lien Notes Trustee and the 8.750% Third Lien Notes Trustee shall apply to this Agreement mutatis mutandis, and any removal, resignation or replacement of the Collateral Agent thereunder shall be effective hereunder.

SECTION 5.06. Collateral Agent’s Fees and Expenses; Concerning the Collateral Agent.

(a) The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder by Pledgor as provided in Section 7.6 of the Indenture and the provisions of Section 7.6 shall be incorporated by reference herein and apply to the Pledgor mutatis mutandis.

(b) The Collateral Agent has been appointed pursuant to the Indentures. The actions of the Collateral Agent hereunder are subject to the provisions of the Indentures (including the rights, benefits, privileges, protections, immunities and indemnities of the Collateral Agent, all of which are incorporated herein mutatis mutandis, as a part hereof) and the Intercreditor Agreements. Beyond the exercise of reasonable care in the custody thereof, the Collateral Agent shall have no duty as to any Pledged Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. Notwithstanding anything in this Agreement to the contrary and unless otherwise provided in the Intercreditor Agreements, the Collateral Agent shall act or refrain from acting with respect to any Pledge Collateral or any
occasion requiring or permitting an approval, consent, discretion, waiver, election or other action on the part of the Collateral Agent only on the written instructions and at the written direction of the holders of a majority of the aggregate principal amount of the Obligations then outstanding.

SECTION 5.07. Collateral Agent Appointed Attorney-in-Fact. Subject to any applicable Intercreditor Agreement, the Pledgor hereby appoints the Collateral Agent the attorney-in-fact of the Pledgor for the purpose of carrying out the provisions of this Agreement and, upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, subject to any applicable Requirements of Law and any applicable Intercreditor Agreement, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent has given at least one (1) Business Day’s prior written notice to the Issuer of the Collateral Agent’s intention to exercise its right hereunder, with full power of substitution either in the Collateral Agent’s name or in the name of the Pledgor, (a) to receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Pledged Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Pledged Collateral; (c) to ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Pledged Collateral; (d) to sign the name of the Pledgor on any invoice or bill of lading relating to any of the Pledged Collateral; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Pledged Collateral or to enforce any rights in respect of any Pledged Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Pledged Collateral; and (g) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Pledged Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Pledged Collateral for all purposes; provided that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Pledged Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to the Pledgor for any act or failure to act hereunder, except for their own or their Related Parties’ gross negligence, bad faith or willful misconduct.

SECTION 5.08. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR OTHER CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH
SECTIONS 5.09. Waivers; Amendment; Extension of Time.

(a) No failure or delay by the Collateral Agent or any Secured Party in exercising any right, power or remedy hereunder or under any other Notes Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent (on behalf of any Secured Party) hereunder and under the other Notes Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Pledgor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 5.09, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the purchase of a Note shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Collateral Agent or any Secured Party may have had notice or knowledge of such Default or Event of Default at the time. No notice or demand on the Pledgor in any case shall entitle any Note Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Pledgor, subject to any consent required in accordance with the Indenture or as otherwise provided in any applicable Intercreditor Agreement. Notwithstanding the foregoing, any waiver, amendment or modification of (i) the provisions of the GCA that correspond to Section 3.01(a) and the related definitions thereto shall be automatically deemed effective as to such section or definition herein without additional action by the parties hereto; provided that in no event shall Section 3.01(a) be amended or modified to require the amount to be paid or distributed by MYT Holdco thereunder to exceed $200.0 million, (ii) the provisions of the Series A Certificate of Designation that correspond to Section 3.01(b) and the related definitions thereto shall be automatically deemed effective as to such section or definition herein without additional action by the parties hereto; provided that in no event shall Section 3.01(b) be amended or modified to require the amount to be paid or distributed by MYT Holdco thereunder to exceed the amount required to be paid to such holders pursuant to the Series A Certificate of Designation as in effect on the date hereof, and (iii) the provisions of the Series B Certificate of Designation that correspond to Section 3.01(c) and the related definitions thereto shall be automatically deemed effective as to such section or definition herein without additional action by the parties hereto; provided that in no event shall Section 3.01(c) be amended or modified to require the amount to be paid or distributed by MYT Holdco thereunder to exceed the amount required to be paid to such holders pursuant to the Series B Certificate of Designation as in effect on the date hereof; in each case, only to the extent such waiver, amendment or modification described in clause (i), (ii) or (iii) is not adverse in any material respect to the Secured Parties.
SECTION 5.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER NOTES DOCUMENTS (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.10.

SECTION 5.11. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 5.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract, and shall become effective as provided in Section 5.04. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually signed original.

SECTION 5.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.


(a) Subject to the final sentence of this clause (a), each of the parties hereto hereby irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party or any affiliate thereof in any way relating to this Agreement or any other Notes Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in
this Agreement or any other Notes Document shall affect any right that the Collateral Agent or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Notes Document against the Pledgor or its properties in the courts of any jurisdiction.

(b) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Notes Document in any New York State or federal court of the United States of America sitting in New York County, and any appellate court from any thereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.01. Nothing in this Agreement or any other Notes Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 5.15. Termination or Release.

(a) This Agreement and the pledges made herein and all other security interests granted hereby, shall automatically terminate and/or be released upon the occurrence of the Termination Date.

(b) The security interest in the Pledged Collateral shall be automatically released, all without delivery of any instrument or performance of any act by any party, (i) upon any sale or other transfer by the Pledgor of any Pledged Collateral that is permitted under the Indentures or this Agreement, as applicable, (ii) upon the effectiveness of any written consent to the release of the security interest granted hereby in any Pledged Collateral pursuant to Article IX of the Indenture, or (iii) as otherwise may be provided in any applicable Intercreditor Agreement.

(c) In connection with any termination or release pursuant to this Section 5.15, the Collateral Agent shall execute and deliver to the Pledgor all documents that the Pledgor shall reasonably request in writing to evidence such termination or release (including Uniform Commercial Code termination statements), and will duly assign and transfer to the Pledgor, such of the Pledged Collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement. Any execution and delivery of documents pursuant to this Section 5.15 shall be without recourse to or warranty by the Collateral Agent. In connection with any release pursuant to this Section 5.15, the Pledgor shall be permitted to take any action in connection therewith consistent with such release including, without limitation, the filing of Uniform Commercial Code termination statements. Upon the receipt of any necessary or proper instruments of termination, satisfaction or release prepared by the Issuer pursuant to this Section 5.15, the Collateral Agent shall promptly execute, deliver or acknowledge such instruments or releases to evidence the release of
any Pledged Collateral permitted to be released pursuant to this Agreement. The Pledgor agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Collateral Agent (and its representatives and counsel) in connection with the execution and delivery of such release documents or instruments.

SECTION 5.16. Subject to Any Applicable Intercreditor Agreement. Notwithstanding anything herein to the contrary, (i) the Liens and security interests granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement are expressly subject to any applicable Intercreditor Agreement to the extent provided therein and (ii) the exercise of any right or remedy by the Collateral Agent hereunder or the application of proceeds (including insurance and condemnation proceeds) of any Pledged Collateral are subject to any applicable Intercreditor Agreement to the extent provided therein. In the event of any conflict between the terms of any applicable Intercreditor Agreement and the terms of this Agreement, the terms of the applicable Intercreditor Agreement shall govern.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**MYT PARENT CO.,**

as the Pledgor

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston  
Title: Vice President & Secretary

**MYT HOLDING CO.**

By:  /s/ Tracy M. Preston

Name: Tracy M. Preston  
Title: Vice President & Secretary

[Signature Page to Pledge Agreement]
WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.000% Third Lien Notes Trustee

By: /s/ Hallie E. Field
   Name: Hallie E. Field
   Title: Vice President

[Signature Page to Pledge Agreement]
By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

[Signature Page to Pledge Agreement]
WILMINGTON TRUST, NATIONAL ASSOCIATION, as Collateral Agent

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

[Signature Page to Pledge Agreement]
<table>
<thead>
<tr>
<th>Pledgor</th>
<th>Issuer</th>
<th>Certificate No.</th>
<th>Percentage of Issued Common Stock</th>
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