
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 8, 2020

MACY'S, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

1-13536
(Commission
File Number)

13-3324058
(IRS Employer
Identification No.)

151 West 34th Street, New York, New York 10001
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: **(513) 579-7780**

N/A
(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:

- ☐ Written communications 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 communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications 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:

Title of each class
Common Stock, \$.01 par value per share

Trading Symbol(s)
M

Name of each exchange on which registered
New York Stock Exchange

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

Emerging growth company ☐

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. ☐

Item 1.01. Entry into a Material Definitive Agreement.

Issuance of Notes

On June 8, 2020, Macy's, Inc. (the "Company") issued \$1.3 billion in aggregate principal amount of 8.375% Senior Secured Notes due 2025 (the "Notes") in a private offering at an offering price of 100% of the principal amount thereof. The Notes were offered to persons reasonably believed to be qualified institutional buyers in an offering exempt from registration in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and outside the United States in reliance on Regulation S under the Securities Act.

The Notes were issued pursuant to an indenture, dated as of June 8, 2020 (the "Indenture"), among the Company, the guarantors party thereto and U.S. Bank National Association, as trustee and collateral trustee. The Notes are senior secured obligations of the Company and are or will be secured on a first-priority basis by (i) a first mortgage/deed of trust in certain real property of subsidiaries of the Company that has been transferred to subsidiaries of Macy's Propco Holdings, LLC, a newly created direct, wholly-owned subsidiary of the Company ("Propco"), and (ii) a pledge by Propco of the equity interests in its subsidiaries that own such transferred real property. The Notes are, jointly and severally, unconditionally guaranteed on a secured basis by Propco and its subsidiaries (collectively, the "Secured Guarantors") and unconditionally guaranteed on an unsecured basis by Macy's Retail Holdings, LLC, a direct, wholly-owned subsidiary of the Company (together with the Secured Guarantors, the "Guarantors").

The Notes bear interest at the rate of 8.375% per annum, which accrues from June 8, 2020 and is payable in arrears on June 15 and December 15 of each year, commencing on December 15, 2020. The Notes mature on June 15, 2025, unless earlier redeemed or repurchased, and are subject to the terms and conditions set forth in the Indenture.

The Company may redeem some or all of the Notes at the redemption prices and on the terms specified in the Indenture. If the Company experiences specific kinds of changes in control or if Propco or any of its subsidiaries sells certain of its assets, then the Company must offer to repurchase the Notes on the terms set forth in the Indenture.

The Indenture contains certain covenants that, among other things, limit the ability of (i) certain of the Company's subsidiaries to guarantee additional indebtedness, (ii) the Company to pay distributions on, redeem or repurchase capital stock, (iii) Propco and its subsidiaries to pay distributions on, redeem or repurchase capital stock, make certain investments, engage in certain transactions with affiliates, consummate certain sales of assets and stock and incur or suffer to exist liens securing indebtedness and (iv) the Company and the Guarantors to effect a consolidation or merger, or convey, transfer or lease all or substantially all assets. The Indenture contains events of default customary for agreements of its type (with customary grace periods, as applicable) and provides that, upon the occurrence of an event of default arising from the failure of certain guarantees to be in full force and effect or the failure of certain liens to constitute a valid and perfected lien continuing for 30 days after receipt of written notice given by the trustee or the holders of at least 30% in principal amount of the then outstanding Notes of a particular series, all outstanding Notes will become due and payable immediately without further action or notice. If any other type of event of default occurs and is continuing, then the trustee or the holders of at least 30% in principal amount of the then outstanding Notes of a particular series may declare all Notes of such series to be due and payable immediately.

The above summary of the Indenture is qualified in its entirety by reference to the Indenture, which is attached hereto as Exhibit 4.1, and is incorporated herein by reference.

Entry into Asset-Based Credit Facility

On June 8, 2020, Macy's Inventory Funding LLC (the "ABL Borrower"), an indirect wholly owned subsidiary of the Company, and its parent, Macy's Inventory Holdings LLC (the "ABL Parent"), entered into an asset-based credit agreement (the "ABL Credit Facility") with Bank of America, N.A., as administrative agent and collateral agent, and the lenders party thereto. The ABL Credit Facility provides the ABL Borrower with (i) a \$2.851 billion revolving credit facility (the "Revolving ABL Facility"), including a swingline sub-facility and a letter of credit sub-facility, and (ii) a bridge revolving credit facility of up to \$300 million (the "Bridge Facility"). The ABL Borrower may request increases in the size of the Revolving ABL Facility up to an additional aggregate principal amount of \$750 million.

Additionally on June 8, 2020 and concurrently with closing the ABL Credit Facility, the ABL Borrower purchased all presently existing inventory, and assumed the liabilities in respect of all presently existing and outstanding trade payables owed to vendors in respect of such inventory, from Macy's Retail Holdings, LLC (f/k/a Macy's Retail Holdings, Inc.) ("MRH"), a wholly owned subsidiary of the Company, and certain wholly owned subsidiaries of MRH. The ABL Credit Facility is secured on a first priority basis (subject to customary exceptions) by (i) all assets of the ABL Borrower including all such inventory and the proceeds thereof and (ii) the equity of the ABL Borrower. The ABL Parent guaranteed the ABL Borrower's obligations under the ABL Credit Facility. The Revolving ABL Facility matures on May 9, 2024 and the Bridge Facility matures on December 30, 2020.

The ABL Credit Facility contains customary borrowing conditions including a borrowing base equal to the sum of (a) 80% (which shall automatically increase to 90% upon the satisfaction of certain conditions, including the delivery of an initial appraisal of the inventory) of the net orderly liquidation percentage of eligible inventory, minus (b) customary reserves. Amounts borrowed under the ABL Credit Facility are subject to interest at a rate per annum equal to (i) prior to the Step Down Date (as defined in the ABL Credit Facility), at the ABL Borrower's option, either (a) adjusted LIBOR plus a margin of 2.75% to 3.00% or (b) a base rate plus a margin of 1.75% to 2.00%, in each case depending on revolving line utilization and (ii) after the Step Down Date, at the ABL Borrower's option, either (a) adjusted LIBOR plus a margin of 2.25% to 2.50% or (b) a base rate plus a margin of 1.25% to 1.50%, in each case depending on revolving line utilization. The ABL Credit Facility also contains customary covenants that provide for, among other things, limitations on indebtedness, liens, fundamental changes, restricted payments, cash hoarding, and prepayment of certain indebtedness as well as customary representations and warranties and events of default typical for credit facilities of this type.

The ABL Credit Facility also requires (1) the Company and its restricted subsidiaries to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 as of the end of any fiscal quarter on or after April 30, 2021 if (a) certain events of default have occurred and are continuing or (b) Availability plus Suppressed Availability (each as defined in the ABL Credit Facility) is less than the greater of (x) 10% of the Loan Cap (as defined in the ABL Credit Facility) and (y) \$250 million, in each case, as of the end of such fiscal quarter and (2) prior to April 30, 2021, that the ABL Borrower not permit Availability plus Suppressed Availability to be lower than the greater of (x) 10% of the Loan Cap and (y) \$250 million.

The above summary of the ABL Credit Facility is qualified in its entirety by reference to the ABL Credit Facility, which is attached hereto as Exhibit 10.1, and is incorporated herein by reference.

Amendment to Existing Credit Agreement

On June 8, 2020, the Company and MRH entered into a first amendment (the "Revolving Credit Facility Amendment") to its existing credit agreement (as amended, the "Revolving Credit Facility") among the Company, MRH, the lenders party thereto, and Bank of America, N.A., as administrative agent and voluntarily reduced the lenders' commitment under the Revolving Credit Facility, which provides the Company with unsecured revolving credit of up to \$75 million.

The Revolving Credit Facility is unsecured. The Revolving Credit Facility contains covenants that provide for, among other things, limitations on fundamental changes, use of proceeds, and maintenance of property, as well as customary representations and warranties and events of default.

The above summary of the Revolving Credit Facility Amendment is qualified in its entirety by reference to the Revolving Credit Facility Amendment, which is attached hereto as Exhibit 10.2, and is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation.

The information set forth in Item 1.01 is incorporated herein by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit Number	Description
<u>4.1</u>	<u>Indenture, dated as of June 8, 2020, among Macy's, Inc., as issuer, the guarantors party thereto and U.S. Bank National Association, as trustee and collateral trustee, relating to the Company's 8.375% Senior Secured Notes due 2025.</u>
<u>4.2</u>	<u>Form of 8.375% Senior Secured Notes due 2025 (included as Exhibit A to Exhibit 4.1).</u>

10.1* Credit Agreement, dated as of June 8, 2020, among Macy's Inventory Funding LLC, as the Borrower, Macy's Inventory Holdings LLC, as Parent, Bank of America, N.A., as Agent, L/C Issuer and Swing Line Lender, the other lenders party thereto, BofA Securities, Inc., Credit Suisse Loan Funding LLC, JPMorgan Chase Bank, N.A., Fifth Third Bank, National Association, MUFG Union Bank, N.A., PNC Capital Markets LLC and Wells Fargo Bank, National Association, as Joint Lead Arrangers and Joint Bookrunners, Credit Suisse Loan Funding LLC and JPMorgan Chase Bank, N.A., as Co-Syndication Agents and Fifth Third Bank, National Association, MUFG Union Bank, N.A., PNC Bank, National Association and Wells Fargo Bank, National Association, as Co-Documentation Agents.

10.2 Amendment No. 1 to Credit Agreement dated as of June 8, 2020 among Macy's Retail Holdings, LLC, a Delaware limited liability company (f/k/a Macy's Retail Holdings, Inc.), as Borrower, Macy's, Inc., a Delaware corporation, as Parent, the Lenders party thereto, and Bank of America, N.A., as Administrative Agent.

104 Cover Page Interactive Data File (embedded within the Inline XBRL Document).

* Pursuant to Item 601(a)(5) of Regulation S-K, certain schedules and similar attachments have been omitted. The registrant hereby agrees to furnish a copy of any omitted schedule or similar attachment to the SEC upon request.

MACY'S, INC.

SIGNATURE

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.

MACY'S, INC.

Dated: June 9, 2020

By: /s/ Elisa D. Garcia

Name: Elisa D. Garcia

Title: Chief Legal Officer and Secretary

MACY'S, INC.,
THE GUARANTORS PARTY HERETO FROM TIME TO TIME

AND

U.S. BANK NATIONAL ASSOCIATION,
as Trustee and Collateral Trustee

8.375% Senior Secured Notes due 2025

INDENTURE

Dated as of June 8, 2020

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INDENTURE dated as of June 8, 2020, by and between MACY'S, INC., a Delaware corporation (the "Issuer" or the "Company"), the Guarantors party hereto from time to time and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (the "Trustee") and as collateral trustee (the "Collateral Trustee").

W I T N E S S E T H

WHEREAS, the Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance of (i) its 8.375% Senior Secured Notes due 2025 issued on the date hereof (the "Initial Notes") and (ii) any additional Notes ("Additional Notes" and, together with the Initial Notes, the "Notes") that may be issued after the Issue Date.

WHEREAS, all things necessary (i) to make the Notes, when executed and duly issued by the Issuer and authenticated and delivered hereunder, the valid obligations of the Issuer, and (ii) to make this Indenture a valid agreement of the Issuer have been done;

WHEREAS, the Notes will be guaranteed on a senior secured basis by each Secured Guarantor and a senior unsecured basis by the Unsecured Guarantor; and

NOW, THEREFORE, in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders, as follows:

ARTICLE I
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 Definitions.

"Access and Use Rights Agreement" means that certain Access and Use Rights Agreement, dated as of the Issue Date, by and among Bank of America, N.A., as administrative agent and collateral agent on behalf of each ABL Secured Party (as defined therein) and the Collateral Trustee, on behalf of itself and each Other Secured Party (as defined therein), as amended, amended and restated and otherwise modified pursuant to the terms of this Indenture or the Collateral Trust Agreement, as applicable

"Additional Assets" means:

(1) any real property (other than Capital Stock) used or to be used by Propco or a Real Estate Subsidiary of Propco (it being understood that capital expenditures on real property or to replace any real property that is the subject of such Asset Disposition shall be deemed an investment in Additional Assets);

(2) the Capital Stock of a Person that owns real property of a similar nature to the Real Property Collateral and has no other material assets, and that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by Propco or a Subsidiary of Propco; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Real Estate Subsidiary of Propco;

provided, that any such real property and Capital Stock are pledged as Collateral securing the Notes; *provided* further, that for purposes of the calculation of Applicable Proceeds, any such real property shall be valued at fair market value based on one or more broker opinions of value from a broker of national standing selected by the Company.

"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 the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

“AI” means an “accredited investor” as described in Rule 501(a)(4) under the Securities Act.

“Alternative Currency” means any currency (other than Dollars) that is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars (as determined in good faith by the Company).

“Applicable Premium” means the greater of (A) 1.0% of the principal amount of such Note and (B) on any redemption date, the excess (to the extent positive) of:

(a) the present value at such redemption date of (i) the redemption price of such Note at June 15, 2022 (such redemption price (expressed in percentage of principal amount) being set forth in the table under Section 5.6(e) (excluding accrued but unpaid interest, if any)), plus (ii) all required interest payments due on such Note to and including such date set forth in clause (i) (excluding accrued but unpaid interest, if any), computed upon the redemption date using a discount rate equal to the Applicable Treasury Rate at such redemption date plus 50 basis points; over

(b) the outstanding principal amount of such Note; in each case, as calculated by the Issuer or on behalf of the Issuer by such Person as the Issuer shall designate. The Trustee shall have no duty to calculate or verify the calculations of the Applicable Premium.

“Applicable Treasury Rate” means the weekly average for each Business Day during the most recent week that has ended at least two (2) Business Days prior to the redemption date of the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 (or, if such statistical release is not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the redemption date to June 15, 2022; provided, however, that if the period from the redemption date to June 15, 2022 is not equal to the constant maturity of a United States Treasury security for which a yield is given, the Applicable Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to such applicable 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 shall be used.

“Asset Disposition” means:

the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets constituting Collateral of Propco or any of its Subsidiaries (each referred to in this definition as a “disposition”) other than:

- (1) a disposition by Propco or a Subsidiary of Propco to Propco or a Subsidiary of Propco;
- (2) a disposition of cash, Cash Equivalents or Investment Grade Securities;
- (3) a disposition of inventory, goods or other assets in the ordinary course of business or consistent with past practice;
- (4) transactions permitted under Section 4.1 or a transaction that constitutes a Change of Control;
- (5) an issuance of Capital Stock by a Subsidiary of Propco to Propco or to another Subsidiary of Propco;
- (6) the making of any Permitted Investment;

- (7) dispositions in connection with Permitted Liens, Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions;
- (8) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or consistent with past practice or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
- (9) conveyances, sales, transfers, licenses, sublicenses, cross-licenses or other dispositions of intellectual property, software or other general intangibles and licenses, sublicenses, cross-licenses, leases or subleases of other property, in each case, in the ordinary course of business or consistent with past practice or pursuant to a research or development agreement in which the counterparty to such agreement receives a license in the intellectual property or software that result from such agreement;
- (10) the lease, assignment, license, sublease or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and, with respect to real property constituting Collateral of Propco or any of its Subsidiaries, pursuant to the Master Lease;
- (11) (i) foreclosure, condemnation, expropriation, forced disposition or any similar action with respect to any property or other assets, *provided* that any net cash proceeds are applied to invest in additional Collateral or an amount equal to the fair market value of such property or other assets is applied pursuant to Section 3.5; and (ii) the granting of Liens not prohibited by this Indenture;
- (12) any disposition of Capital Stock of a Subsidiary of Propco pursuant to an agreement or other obligation with or to a Person (other than Propco or a Subsidiary of Propco) from whom such Subsidiary was acquired, or from whom such Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition, *provided* that any net proceeds are applied to restore the affected property or to invest in additional Collateral or an amount equal to the fair market value of such Capital Stock is applied pursuant to Section 3.5;
- (13) any surrender or waiver of contractual rights or the settlement, release, surrender or waiver of contractual, tort, litigation or other claims of any kind;
- (14) the unwinding of any Cash Management Obligations or Hedging Obligations;
- (15) transfers of property or assets subject to Casualty Events upon receipt of the net proceeds of such Casualty Event *provided* that any net cash proceeds are applied to invest in additional Collateral or an amount equal to the fair market value of such property or assets is applied pursuant to Section 3.5;
- (16) the disposition of any assets (including Capital Stock) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the reasonable determination of the Company to consummate any acquisition permitted by this Indenture, *provided* that any net cash proceeds are applied to invest in additional Collateral or an amount equal to the fair market value of such assets is applied pursuant to Section 3.5;
- (17) conveyance, transfer or other disposition in accordance with the provisions of the Master Lease of any portion of (a) the real estate owned by any Subsidiary of Propco that is not needed in connection with the Company's or its Subsidiaries' operation of the retail store or distribution center, as applicable, then located on the real estate, or (b) any then vacant improvements not comprising a portion of, or required in connection with the Company's or its Subsidiaries' use and operation of, the retail store or distribution center then located on the real estate, *provided*, in each case, that any net cash proceeds are applied to invest in additional Collateral or an amount equal to the fair market value of such real estate or vacant improvements is applied pursuant to Section 3.5; and

(18) any sale, transfer or other disposition to affect the formation of any Subsidiary of Propco that is a Delaware Divided LLC; *provided* that upon formation of such Delaware Divided LLC, such Delaware Divided LLC shall be a Subsidiary of Propco.

In the event that a transaction (or any portion thereof) meets the criteria of a permitted Asset Disposition and would also be a Permitted Investment, Propco, in its sole discretion, will be entitled to divide and classify such transaction (or a portion thereof) as an Asset Disposition and/or one or more of the types of Permitted Investments.

“Bankruptcy Law” means Title 11 of the United States Code or similar federal or state law for the relief of debtors.

“Board of Directors” means (i) with respect to the Company or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorized committee thereof; (ii) with respect to any partnership, the board of directors or other governing body of the general partner, as applicable, of the partnership or any duly authorized committee thereof; (iii) with respect to a limited liability company, the managing member or members or any duly authorized controlling committee thereof; and (iv) with respect to any other Person, the board or any duly authorized committee of such Person serving a similar function.

Whenever any provision requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval). Unless the context requires otherwise, Board of Directors means the Board of Directors of the Company.

“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York, United States or in the jurisdiction of the place of payment are authorized or required by law to close. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall not be reflected in computing interest or fees, as the case may be.

“Business Successor” means (i) any former Subsidiary of the Company and (ii) any Person that, after the Issue Date, has acquired, merged or consolidated with a Subsidiary of the Company (that results in such Subsidiary ceasing to be a Subsidiary of the Company), or acquired (in one transaction or a series of transactions) all or substantially all of the property and assets or business of a Subsidiary or assets constituting a business unit, line of business or division of a Subsidiary of the Company.

“Capital Stock” of any Person means any and all shares of, rights to purchase or acquire, warrants, options or depositary receipts for, or other equivalents of, or partnership or other interests in (however designated), equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into, or exchangeable for, such equity.

“Capitalized Lease Obligations” means an obligation that is required to be classified and accounted for as a capitalized lease (and, for the avoidance of doubt, not a straight-line or operating lease) for financial reporting purposes in accordance with GAAP. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty; *provided* that all obligations of the Company and its Subsidiaries that are or would be characterized as an operating lease as determined in accordance with GAAP as in effect on January 1, 2015 (whether or not such operating lease was in effect on such date) shall continue to be accounted for as an operating lease (and not as a Capitalized Lease Obligation) for purposes of this Indenture regardless of any change in GAAP following January 1, 2015 (that would otherwise require such obligation to be recharacterized as a Capitalized Lease Obligation).

“Capitalized Software Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

“Cash Equivalents” means:

- (1) (a) Dollars, Canadian dollars, pounds sterling, yen, euro, any national currency of any member state of the European Union or any Alternative Currency; or (b) any other foreign currency held by the Company and its Subsidiaries from time to time in the ordinary course of business or consistent with past practice;
- (2) securities issued or directly and fully guaranteed or insured by the United States, Canadian, United Kingdom or Japanese governments, a member state of the European Union or, in each case, any agency or instrumentality thereof (provided that the full faith and credit obligation of such country or such member state is pledged in support thereof), with maturities of 36 months or less from the date of acquisition;
- (3) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits, demand deposits or bankers’ acceptances having maturities of not more than two years from the date of acquisition thereof issued by any bank, trust company or other financial institution (a) whose commercial paper is rated at least “P2” or the equivalent thereof by S&P or at least “A2” or the equivalent thereof by Moody’s (or, if at the time, neither S&P or Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) or (b) having combined capital and surplus in excess of \$100.0 million;
- (4) repurchase obligations for underlying securities of the types described in clauses (2), (3), (7) and (8) entered into with any Person meeting the qualifications specified in clause (3) above;
- (5) securities with maturities of two years or less from the date of acquisition backed by standby letters of credit issued by any Person meeting the qualifications in clause (3) above;
- (6) commercial paper and variable or fixed rate notes issued by any Person meeting the qualifications specified in clause (3) above (or by the parent company thereof) maturing within two years after the date of creation thereof, or if no rating is available in respect of the commercial paper or variable or fixed rate notes, the issuer of which has an equivalent rating in respect of its long-term debt;
- (7) marketable short-term money market and similar securities having a rating of at least “P2” or “A2” from either S&P or Moody’s, respectively (or, if at the time, neither S&P nor Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company);
- (8) readily marketable direct obligations issued by any state, province, commonwealth or territory of the United States of America or any political subdivision, taxing authority or any agency or instrumentality thereof, rated BBB- (or the equivalent) or better by S&P or Baa3 (or the equivalent) or better by Moody’s (or, if at the time, neither S&P nor Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of not more than two years from the date of acquisition;
- (9) readily marketable direct obligations issued by any foreign government or any political subdivision, taxing authority or agency or instrumentality thereof, with a rating of “BBB-” or higher from S&P or “Baa3” or higher by Moody’s or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of not more than two years from the date of acquisition;

(10) Investments with average maturities of 24 months or less from the date of acquisition in money market funds with a rating of “A” or higher from S&P or “A2” or higher by Moody’s or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company);

(11) with respect to any Foreign Subsidiary: (i) obligations of the national government of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, in each case maturing within one year after the date of investment therein, (ii) certificates of deposit of, bankers’ acceptance of, or time deposits with, any commercial bank which is organized and existing under the laws of the country in which such Foreign Subsidiary maintains its chief executive office and principal place of business provided such country is a member of the Organization for Economic Cooperation and Development, and whose short-term commercial paper rating from S&P is at least “P2” or the equivalent thereof or from Moody’s is at least “A2” or the equivalent thereof (any such bank being an “Approved Foreign Bank”), and in each case with maturities of not more than 270 days from the date of acquisition and (iii) the equivalent of demand deposit accounts which are maintained with an Approved Foreign Bank;

(12) Indebtedness or Preferred Stock issued by Persons with a rating of “A” or higher from S&P or “A2” or higher by Moody’s or the equivalent of such rating by such rating organization (or, if at the time, neither S&P nor Moody’s is rating such obligations, then a comparable rating from another Nationally Recognized Statistical Rating Organization selected by the Company) with maturities of not more than two years from the date of acquisition;

(13) bills of exchange issued in the United States of America, Canada, the United Kingdom, Japan, a member state of the European Union eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent);

(14) investments in industrial development revenue bonds that (i) “re-set” interest rates not less frequently than quarterly, (ii) are entitled to the benefit of a remarketing arrangement with an established broker dealer and (iii) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by any bank meeting the qualifications specified in clause (3) above; and

(15) any investment company, money market, enhanced high yield, pooled or other investment fund investing 90% or more of its assets in instruments of the types specified in the clauses above.

In the case of Investments made in a country outside the United States of America, Cash Equivalents shall also include investments of the type and maturity described in the clauses above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in clause (1) above, provided that such amounts are converted into any currency listed in clause (1) as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts. For the avoidance of doubt, any items identified as Cash Equivalents under this definition will be deemed to be Cash Equivalents for all purposes under this Indenture regardless of the treatment of such items under GAAP.

“Cash Management Obligations” means (1) obligations in respect of any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements, electronic fund transfer, treasury services and cash management services, including controlled disbursement services, working capital lines, lines of credit, overdraft facilities, foreign exchange facilities, deposit and other accounts and merchant services, or other cash management arrangements or any automated clearing house arrangements, (2) other obligations in respect of netting or setting off arrangements, credit, debit or purchase card programs, stored value card and similar arrangements and (3) obligations in respect of any other services related, ancillary or complementary to the foregoing (including any overdraft and related liabilities arising from treasury, depository, cash pooling arrangements and cash management services, corporate credit and purchasing cards and related programs or any automated clearing house transfers of funds).

“Casualty Event” means any taking under power of eminent domain or similar proceeding and any loss due to fire or other casualty, in each case relating to property or other assets that constituted Collateral in respect of any equipment, assets or real property (including any improvements thereon).

“Change of Control” means the occurrence of any of the following:

- (a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries taken as a whole to any Person other than the Company or one of its Subsidiaries;
- (b) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any Person becomes the beneficial owner, directly or indirectly, of more than 50% of the then outstanding number of shares of the Company’s Voting Stock or other Voting Stock into which the Voting Stock of the Company is reclassified, consolidated, exchanged or changed, measured by voting power rather than number of shares; or
- (c) Propco is not a direct or indirect wholly owned Subsidiary of the Company.

Notwithstanding the foregoing, a transaction shall not be deemed to involve a Change of Control under clause (b) above if (i) the Company becomes a direct or indirect wholly owned subsidiary of a holding company and (ii)(A) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the Company’s Voting Stock immediately prior to that transaction or (B) immediately following that transaction no Person (other than a holding company satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company. The term “Person,” as used in this definition, has the meaning given thereto in Section 13(d)(3) of the Exchange Act.

Notwithstanding the preceding or any provision of Section 13d-3 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person’s parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the board of directors (or similar body) of such parent entity and (iii) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

“Change of Control Triggering Event” means the occurrence of a Change of Control and, except in the case of the occurrence of an event described in clause (c) of the definition of “Change of Control,” a Rating Event.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collateral” means all properties and assets of Propco and the other Secured Guarantors now owned or hereafter acquired in which Liens have been granted, or purported to be granted, or required to be granted, to the Collateral Trustee to secure any or all of the Parity Lien Obligations in accordance with the Security Documents, except:

- (1) any properties and assets in which the Collateral Trustee is required to release its Liens pursuant to Section 7 of the Collateral Trust Agreement; and

- (2) any properties and assets that no longer secure the Notes or any Obligations in respect thereof pursuant to Section 12.2(b);

provided that if such Liens are required to be released as a result of the sale, transfer or other disposition of any properties or assets of Propco or any Secured Guarantor, such assets or properties will cease to be excluded from the Collateral if Propco or any Secured Guarantor thereafter acquires or reacquires such assets or properties; *provided, further*, that the Collateral Trustee's Liens will attach to the cash proceeds received in respect of any such sale, transfer or other disposition to the extent provided in the Security Documents and shall be deposited in the Collateral Proceeds Account to the extent required by Section 12.8.

"Collateral Coverage Ratio" means, as of any date of determination, the ratio of (x) the fair market value of the Original Collateral (in the case of Real Property Collateral, based on one or more broker opinions of value from a broker of national standing selected by the Company) to (y) the aggregate principal amount of Indebtedness secured with a Parity Lien on the Collateral (and, for the avoidance of doubt, excluding any Indebtedness secured by a Lien on the Collateral with junior priority to the Parity Liens on the Collateral).

"Collateral Trust Agreement" means the Collateral Trust Agreement, dated as of June 8, 2020, by and among the Secured Grantors, the Trustee, the Collateral Trustee and Additional Parity Representative (as defined therein) from time to time party thereto, if any, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Collateral Trustee" means U.S. Bank National Association, as collateral trustee for the holders of the Parity Lien Obligations under the Security Documents and any successor pursuant to the provisions of this Indenture and the Security Documents.

"Company" means Macy's, Inc., a Delaware corporation, together with its successors and assigns.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense and capitalized fees, including amortization or write-off of (i) intangible assets and non-cash organization costs, (ii) deferred financing and debt issuance fees, costs and expenses, (iii) capitalized expenditures (including Capitalized Software Expenditures), customer acquisition costs and incentive payments, media development costs, conversion costs and contract acquisition costs, the amortization of original issue discount resulting from the issuance of Indebtedness at less than par and amortization of favorable or unfavorable lease assets or liabilities and (iv) capitalized fees related to any Qualified Securitization Financing or Receivables Facility, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP and any write down of assets or asset value carried on the balance sheet.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

- (1) increased (without duplication) by:

(a) Fixed Charges of such Person for such period (including (w) non-cash rent expense, (x) net losses or any obligations on any Hedging Obligations or other derivative instruments, (y) bank, letter of credit and other financing fees and (z) costs of surety bonds in connection with financing activities, plus amounts excluded from the definition of "Consolidated Interest Expense" and any non-cash interest expense), to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(b) (x) provision for taxes based on income, profits, revenue or capital, including federal, foreign, state, provincial, territorial, local, unitary, excise, property, franchise, value added and similar taxes and withholding taxes (including any future taxes or other levies which replace or are intended to be in lieu of such taxes and any penalties and interest related to such taxes or arising from tax examinations) and similar taxes of such Person paid or accrued during such period (including in respect of repatriated funds), (y) any distributions made to a Parent Entity with respect to the foregoing and (z) the net tax expense associated with any adjustments made pursuant to the definition of "Consolidated Net Income" in each case, to the extent deducted and (not added back) in computing Consolidated Net Income; *plus*

(c) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(d) any fees, costs, expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any actual, proposed or contemplated Equity Offering, Permitted Investment, Restricted Payment, acquisition, disposition, recapitalization or the incurrence of Indebtedness or Lien permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Issue Date), including (i) such fees, expenses or charges (including rating agency fees, consulting fees and other related expenses and/or letter of credit or similar fees) related to the offering or incurrence of, or ongoing administration, of the Notes, any Credit Facilities, any Securitization Fees and the Transactions, including Transaction Expenses, and (ii) any amendment, waiver or other modification of the Notes, Receivables Facilities, Securitization Facilities, any other Credit Facilities, any Securitization Fees, any other Indebtedness or any Equity Offering, in each case, whether or not consummated, to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(e) (i) the amount of any restructuring charge, accrual, reserve (and adjustments to existing reserves) or expense, integration cost, inventory optimization programs or other business optimization expense or cost (including charges directly related to the implementation of cost-savings initiatives and tax restructurings) that is deducted (and not added back) in such period in computing Consolidated Net Income, including any costs incurred in connection with acquisitions or divestitures after the Issue Date, any severance, retention, signing bonuses, relocation, recruiting and other employee related costs, costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employment benefit plans (including any settlement of pension liabilities), systems development and establishment costs, operational and reporting systems, technology initiatives, contract termination costs, future lease commitments and costs related to the opening and closure and/or consolidation of facilities (including severance, rent termination, moving and legal costs) and to exiting lines of business and consulting fees incurred with any of the foregoing and (ii) fees, costs and expenses associated with acquisition related litigation and settlements thereof; *plus*

(f) any other non-cash charges, write-downs, expenses, losses or items reducing Consolidated Net Income for such period including (i) non-cash losses on the sale of assets and any write-offs or write-downs, deferred revenue or impairment charges, (ii) impairment charges, amortization (or write offs) of financing costs (including debt discount, debt issuance costs and commissions and other fees associated with Indebtedness, including the Notes) of such Person and its Subsidiaries and/or (iii) the impact of acquisition method accounting adjustment and any non-cash write-up, write-down or write-off with respect to re-valuing assets and liabilities in connection with the Transactions or any Investment, deferred revenue or any effects of adjustments resulting from the application of purchase accounting, purchase price accounting (including any step-up in inventory and loss of profit on the acquired inventory) (*provided* that if any such non-cash charge, write-down, expense, loss or item represents an accrual or reserve for potential cash items in any future period, (A) the Company may elect not to add back such non-cash charge, expense or loss in the current period and (B) to the extent the Company elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA when paid), or other items classified by the Company as special items less other non-cash items of income increasing Consolidated Net Income (excluding any amortization of a prepaid cash item that was paid in a prior period or such non-cash item of income to the extent it represents a receipt of cash in any future period); *plus*

(g) the amount of pro forma “run rate” cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the reduction of a public target’s Public Company Costs), operating expense reductions, other operating improvements (including the entry into material contracts or arrangements), revenue enhancements, and initiatives and synergies (it is understood and agreed that “run rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or expected to be taken, net of the amount of actual benefits realized during such period from such actions) projected by the Company in good faith to be reasonably anticipated to be realizable or a plan for realization shall have been established within 36 months of the date thereof (including from any actions taken in whole or in part prior to such date), which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a pro forma basis as though such cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the reduction of a public target’s Public Company Costs), operating expense reductions, other operating improvements and initiatives and synergies had been realized on the first day of such period, net of the amount of actual benefits realized prior to or during such period from such actions; *plus*

(h) any costs or expenses incurred by the Company or a Subsidiary or a Parent Entity pursuant to any management equity plan, stock option plan, phantom equity plan, profits interests or any other management, employee benefit or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement, and any costs or expenses in connection with the roll-over, acceleration or payout of Capital Stock held by management, to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds contributed to the capital of the Company or net cash proceeds of an issuance of Capital Stock (other than Disqualified Stock) of the Company; *plus*

(i) rent expense as determined in accordance with GAAP not actually paid in cash during such period (net of rent expense paid in cash during such period over and above rent expense as determined in accordance with GAAP); *plus*

(j) losses, charges and expenses related to the pre-opening and opening of new stores, and start-up period prior to opening, that are operated, or to be operated, by the Company or any Subsidiary; *plus*

(k) without duplication of amounts already included in the calculation of Consolidated EBITDA, for the first 18 months following a new store opening, an annualized amount for the most recent four consecutive fiscal quarters ending immediately prior to such date of determination based on the greater of (x) actual Consolidated EBITDA attributable to such new store for each month such new store is in operation and (y) the 24-month average Consolidated EBITDA for all similar stores that have been in operation for a period of at least 24 months (as reasonably determined by the Company); *plus*

(l) losses, charges and expenses related to a new facility until the date that is 24 months after the date of commencement of construction or the date of acquisition thereof, as the case may be; *plus*

(m) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(n) any net loss included in the Consolidated Net Income attributable to non-controlling or minority interests pursuant to the application of Accounting Standards Codification Topic 810-10-45; *plus*

(o) the amount of any non-controlling or minority interest expense consisting of Subsidiary income attributable to non-controlling or minority equity interests of third parties in any non-wholly owned Subsidiary; *plus*

(p) unrealized or realized foreign exchange losses resulting from the impact of foreign currency changes; *plus*

(q) with respect to any joint venture, an amount equal to the proportion of those items described in clauses (b) and (c) above relating to such joint venture corresponding to the Company's and its Subsidiaries' proportionate share of such joint venture's Consolidated Net Income (determined as if such joint venture were a Subsidiary) to the extent deducted (and not added back) in computing Consolidated Net Income; *plus*

(r) the amount of any costs or expenses relating to payments made to stock appreciation or similar rights, stock option, restricted stock, phantom equity, profits interests or other interests or rights holders of the Company or any of its Subsidiaries 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 Subsidiaries or any Parent Entities, which payments are being made to compensate such holders as though they were equityholders at the time of, and entitled to share in, such distribution; *plus*

(s) adjustments of the nature or type used in connection with the calculation of “Adjusted EBITDA” as set forth in footnote (1) of “Summary Historical Consolidated Financial Information” contained in the Offering Memorandum; and (2) decreased (without duplication) by non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period (other than non-cash gains relating to the application of Accounting Standards Codification Topic 840—Leases).

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

(1) consolidated interest expense of such Person and its Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (a) amortization of original issue discount or premium resulting from the issuance of Indebtedness at less than par, (b) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (c) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of any Hedging Obligations or other derivative instruments pursuant to GAAP), (d) the interest component of Capitalized Lease Obligations, and (e) net payments, if any made (less net payments, if any, received), pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (i) Securitization Fees, (ii) penalties and interest relating to taxes, (iii) annual agency or similar fees paid to the administrative agents, collateral agents and other agents under any Credit Facility, (iv) any additional interest or liquidated damages owing pursuant to any registration rights obligations, (v) costs associated with obtaining Hedging Obligations, (vi) accretion or accrual of discounted liabilities other than Indebtedness, (vii) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or purchase accounting in connection with the Transactions or any acquisition, (viii) amortization, expensing or write-off of deferred financing fees, amendment and consent fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, fees and expenses, discounted liabilities, original issue discount and any other amounts of non-cash interest and, adjusted to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program, (ix) any expensing of bridge, arrangement, structuring, commitment, agency, consent and other financing fees and any other fees related to the Transactions or any acquisitions after the Issue Date, (x) any accretion of accrued interest on discounted liabilities and any prepayment, make-whole or breakage premium, penalty or cost, (xi) interest expense with respect to Indebtedness of any direct or indirect parent of such Person resulting from push-down accounting) and (xii) any lease, rental or other expense in connection with a Non-Financing Lease Obligations); *plus*

(2) consolidated capitalized interest of such Person and its Subsidiaries for such period, whether paid or accrued;*less*

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP and before any reduction in respect of Preferred Stock dividends; *provided, however*, that there will not be included in such Consolidated Net Income:

(1) any net income (loss) of any Person if such Person is not a Subsidiary (including any net income (loss) from investments recorded in such Person under the equity method of accounting), except that the Company’s equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed (or to the extent converted into cash or Cash Equivalents) or that (as determined by the Company in its reasonable discretion) could have been distributed by such Person during such period to the Company or a Subsidiary as a dividend or other distribution or return on investment;

(2) solely for the purpose of determining the amount available for Restricted Payments under Section 3.2(a)(B)(1) hereof, any net income (loss) of any Subsidiary (other than the Guarantors) if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Subsidiary, directly or indirectly, to the Company or a Guarantor by operation of the terms of such Subsidiary's articles, charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Subsidiary or its stockholders (other than (a) restrictions that have been waived or otherwise released (or such Person reasonably believes such restriction could be waived or released and is using commercially reasonable efforts to pursue such waiver or release) and (b) restrictions pursuant to the Notes, this Indenture, or other similar indebtedness, except that the Company's equity in the net income of any such Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed (or to the extent converted, or having the ability to be converted, into cash or Cash Equivalents) or that could have been distributed by such Subsidiary during such period to the Company or another Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Subsidiary, to the limitation contained in this clause);

(3) any gain (or loss) (a) in respect of facilities no longer used or useful in the conduct of the business of the Company or its Subsidiaries, abandoned, closed, disposed or discontinued operations, (b) on disposal, abandonment or discontinuance of disposed, abandoned, closed or discontinued operations, and (c) attributable to asset dispositions, abandonments, sales or other dispositions of any asset (including pursuant to any Sale and Leaseback Transaction) or the designation of an Unrestricted Subsidiary other than in the ordinary course of business;

(4) (a) any extraordinary, exceptional, unusual, infrequently occurring or nonrecurring loss, charge or expense, Transaction Expenses, restructuring and duplicative running costs, restructuring charges or reserves (whether or not classified as restructuring expense on the consolidated financial statements), relocation costs, start-up or initial costs for any project or new production line, division or new line of business, integration and facilities' or bases' opening costs, facility consolidation and closing costs, severance costs and expenses, one-time charges (including compensation charges), payments made pursuant to the terms of change in control agreements that the Company or a Subsidiary had entered into with employees of the Company or a Subsidiary, signing, retention and completion bonuses (including management bonus pools), recruiting costs, costs incurred in connection with any strategic or cost savings initiatives, transition costs, contract terminations, litigation and arbitration fees, costs and charges (including settlements), expenses in connection with one-time rate changes, costs incurred with acquisitions, investments and dispositions (including travel and out-of-pocket costs, human resources costs (including relocation bonuses), management transition costs, advertising costs, non-recurring product and intellectual property development costs or reserves (including costs and expenses relating to business optimization programs and new systems design and costs or reserves associated with improvements to IT and accounting functions), retention charges (including charges or expenses in respect of incentive plans), system establishment costs and implementation costs) and operating expenses attributable to the implementation of strategic or cost-savings initiatives, and, curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments) and professional, legal, accounting, consulting and other service fees incurred with any of the foregoing and (b) any charge, expense, cost, accrual or reserve of any kind associated with acquisition related litigation and settlements thereof;

(5) (a) at the election of the Company with respect to any quarterly period, the cumulative effect of a change in law, regulation or accounting principles and changes as a result of the adoption or modification of accounting policies, (b) subject to the last paragraph of the definition of "GAAP," the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period (including any impact resulting from an election by the Company to apply IFRS or other Accounting Changes) and (c) any costs, charges, losses, fees or expenses in connection with the implementation or tracking of such changes or modifications specified in the foregoing clauses (a) and (b);

(6) (a) any equity-based or non-cash compensation or similar charge, cost or expense or reduction of revenue, including any such charge, cost, expense or reduction arising from any grant of stock, stock appreciation or similar rights, stock options, restricted stock, phantom equity, profits interests or other interests, or other rights or equity- or equity based incentive programs (“*equity incentives*”), any income (loss) associated with the equity incentives or other long-term incentive compensation plans (including under deferred compensation arrangements of the Company or any Parent Entity or Subsidiary and any positive investment income with respect to funded deferred compensation account balances), roll-over, acceleration or payout of Capital Stock by employees, directors, officers, managers, contractors, consultants, advisors or business partners (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or any Parent Entity or Subsidiary, and any cash awards granted to employees of the Company and its Subsidiaries in replacement for forfeited awards, (b) any non-cash losses realized in such period in connection with adjustments to any employee benefit plan due to changes in estimates, actuarial assumptions, valuations, studies or judgments or non-cash compensation expense resulting from the application of Accounting Standards Codification Topic 718, Compensation—Stock Compensation and (c) any net pension or post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, amortization of such amounts arising in prior periods, amortization of the unrecognized obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards No. 87, 106 and 112, and any other item of a similar nature;

(7) any income (loss) from the extinguishment, conversion or cancellation of Indebtedness, Hedging Obligations or other derivative instruments (including deferred financing costs written off, premiums paid or other expenses incurred);

(8) any unrealized or realized gains or losses in respect of any Hedging Obligations or any ineffectiveness recognized in earnings related to hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions;

(9) any fees, losses, costs, expenses or charges incurred during such period (including any transaction, retention bonus or similar payment), or any amortization thereof for such period, in connection with (a) any acquisition, recapitalization, Investment, Asset Disposition, disposition, issuance or repayment of Indebtedness (including such fees, expense or charges related to the offering, issuance and rating of the Notes, other securities and any Credit Facilities), issuance of Capital Stock, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Notes, other securities and any Credit Facilities), in each case, including the Transactions, any such transaction consummated on, prior to or after the Issue Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful (including, for avoidance of doubt, the effects of expensing all transaction-related expenses in accordance with Accounting Standards Codification Topic 805—Business Combinations and any adjustments resulting from the application of Accounting Standards Codification Topic 460—Guarantees or any related pronouncements) and (b) complying with the requirements under, or making elections permitted by, the documentation governing any Indebtedness;

(10) any unrealized or realized gain or loss resulting in such period from currency translation increases or decreases or transaction gains or losses, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from Hedging Obligations for currency risk), intercompany balances, other balance sheet items, Hedging Obligations or other obligations of the Company or any Subsidiary owing to the Company or any Subsidiary and any other realized or unrealized foreign exchange gains or losses relating to the translation of assets and liabilities denominated in foreign currencies;

(11) any unrealized or realized income (loss) or non-cash expense attributable to movement in mark-to-market valuation of foreign currencies, Indebtedness or derivative instruments pursuant to GAAP;

(12) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Subsidiaries) in such Person’s consolidated financial statements pursuant to GAAP and related pronouncements, including in the inventory (including any impact of changes to inventory valuation policy methods, including changes in capitalization of variances), property and equipment, software, loans, leases, goodwill, intangible assets, in-process research and development, deferred revenue (including deferred costs related thereto and deferred rent) and debt line items thereof, resulting from the application of acquisition method accounting, recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition (by merger, consolidation, amalgamation or otherwise), joint venture investment or other Investment or the amortization or write-off or write-down of any amounts thereof;

(13) any impairment charge, write-off or write-down, including impairment charges, write-offs or write-downs related to intangible assets, long-lived assets, goodwill, investments in debt or equity securities (including any losses with respect to the foregoing in bankruptcy, insolvency or similar proceedings) and investments recorded using the equity method or as a result of a change in law or regulation and the amortization of intangibles arising pursuant to GAAP;

(14) (a) accruals and reserves (including contingent liabilities) that are established or adjusted in connection with the Transactions or within 24 months after the closing of any acquisition or disposition that are so required to be established or adjusted as a result of such acquisition or disposition in accordance with GAAP, or changes as a result of adoption or modification of accounting policies and (b) earn-out, non-compete and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments;

(15) any income (loss) related to any realized or unrealized gains and losses resulting from Hedging Obligations or embedded derivatives that require similar accounting treatment (including embedded derivatives in customer contracts), and the application of Accounting Standards Codification Topic 815—Derivatives and Hedging and its related pronouncements or mark to market movement of other financial instruments pursuant to Accounting Standards Codification Topic 825—Financial Instruments, or the equivalent accounting standard under GAAP or an alternative basis of accounting applied in lieu of GAAP;

(16) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures and any deferred tax expense associated with tax deductions or net operating losses arising as a result of the Transactions, or the release of any valuation allowances related to such item;

(17) the amount of (x) Board of Director (or equivalent thereof) fees and indemnities, costs and expenses paid or accrued in such period to (or on behalf of) to any member of the Board of Directors (or the equivalent thereof) of the Company, any of its Subsidiaries and (y) payments made to option holders of the Company or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Entity, 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, including any cash consideration for any repurchase of equity;

(18) the amount of loss or discount on sale of Securitization Assets, Receivables Assets and related assets in connection with a Qualified Securitization Financing or Receivables Facility; and

(19) at the election of the Company with respect to any quarterly period, effects of adjustments to accruals and reserves during a period relating to any change in the methodology of calculating reserves for returns, rebates and other chargebacks (including government program rebates).

In addition, to the extent not already excluded (or included, as applicable) from the Consolidated Net Income of such Person and its Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall be increased by the amount of: (i) any expenses, charges or losses that are reimbursed by indemnification or other reimbursement provisions in connection with any investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed and only to the extent that such amount is in fact reimbursed within 365 days of the date of such evidence (net of any amount so added back in a prior period to the extent not so reimbursed within the applicable 365-day period) and (ii) to the extent covered by insurance (including business interruption insurance) and actually reimbursed, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer within 365 days of the date of such evidence (net of any amount so added back in a prior period to the extent not so reimbursed within the applicable 365-day period), expenses, charges or losses with respect to liability or Casualty Events or business interruption.

“Consolidated Total Indebtedness” means, as of any date of determination, an amount equal to (a) the aggregate principal amount of outstanding Indebtedness for borrowed money (excluding Indebtedness with respect to Cash Management Obligations and intercompany Indebtedness plus (b) the aggregate principal amount of Capitalized Lease Obligations and unreimbursed drawings under letters of credit of the Company and its Subsidiaries outstanding on such date (*provided* that any unreimbursed amount under commercial letters of credit shall not be counted as Consolidated Total Indebtedness until five Business Days after such amount is drawn), minus (c) the aggregate amount of cash and Cash Equivalents included on the consolidated balance sheet of the Company and its Subsidiaries as of the end of the most recent fiscal period for which consolidated financial statements are available (which may be internal financial statements) (*provided* that the cash proceeds of any proposed incurrence of Indebtedness shall not be included in this clause (c) for purposes of calculating the Consolidated Total Leverage Ratio), with such pro forma adjustments as are consistent with the pro forma adjustments set forth under Section 1.3. For the avoidance of doubt, Consolidated Total Indebtedness shall exclude Indebtedness in respect of any Receivables Facility or Securitization Facility.

“Consolidated Total Leverage Ratio” means, as of any date of determination, the ratio of (x) Consolidated Total Indebtedness as of such date to (y) LTM EBITDA.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any Non-Financing Lease Obligation, dividend or other obligation that does not constitute Indebtedness (“*primary obligations*”) of any other Person (the “*primary obligor*”), including any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (2) to advance or supply funds:
 - (a) for the purchase or payment of any such primary obligation; or
 - (b) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Controlled Investment Affiliate” means, as to any Person, any other Person, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Company and/or other companies.

“Corporate Trust Office” means (i) with respect to the Trustee, the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office as of the date hereof (x) solely for purposes of surrender for registration of transfer or exchange or for presentation for payment or repurchase or for conversion is located at 111 Fillmore Avenue, St. Paul, MN 55107, Attention: Macy’s, Inc., and (y) for all other purposes is located at One Federal Street, Boston, MA 02110, Attention: Macy’s, Inc. – Carolina D. Altomare, or such other office as the Trustee may from time to time designate in writing to the Company and the Holders or (ii) the designated corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“Credit Facility” means, with respect to the Company or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements (including commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks or institutions and whether provided under one or more credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term “Credit Facility” shall include any agreement or instrument (1) changing the maturity of any Indebtedness incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Company as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

“Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“Default” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Derivative Instrument” with respect to a Person, means any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Person or any Affiliate of such Person that is acting in concert with such Person in connection with such Person’s investment in the Notes (other than a Screened Affiliate) is a party (whether or not requiring further performance by such Person), the value and/or cash flows of which (or any material portion thereof) are materially affected by the value and/or performance of the Notes and/or the creditworthiness of the Company and/or any one or more of the Guarantors (the “Performance References”).

“Definitive Notes” means certificated Notes.

“Depository” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provisions of this Indenture.

“Designated Non-Cash Consideration” means the fair market value (as determined in good faith by the Company) of non-cash consideration received by Propco or any Subsidiary of Propco in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 3.5 hereof.

“Designated Preferred Stock” means Preferred Stock of the Company (other than Disqualified Stock) that is issued for cash (other than to the Company or a Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any such Subsidiary for the benefit of their employees to the extent funded by the Company or such Subsidiary) and that is designated as “Designated Preferred Stock” pursuant to an Officer’s Certificate of the Company at or prior to the issuance thereof, the net cash proceeds of which are excluded from the calculation set forth in Section 3.2(a)(B)(3) hereof.

“Discharge of Parity Lien Obligations” means the occurrence of all of the following:

- (1) termination or expiration of all commitments to extend credit that would constitute Parity Lien Debt;
- (2) with respect to each Series of Parity Lien Debt, either (x) payment in full in cash of the principal of and interest and premium (if any) on all Parity Lien Debt of such Series or (y) there has been a legal defeasance or covenant defeasance pursuant to the terms of the applicable Parity Lien Debt Documents for such Series of Parity Lien Debt; and
- (3) payment in full in cash of all other Parity Lien Obligations that are outstanding and unpaid at the time the Parity Lien Debt is paid in full in cash or, in the case of such other Parity Lien Obligations which constitute Hedging Obligations, the cash collateralization of all such Hedging Obligations on terms satisfactory to each applicable counterparty, and the expiration or termination of all outstanding transactions under the relevant hedging agreements (in each case, other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at such time);

provided, however, that if, at any time after the Discharge of Parity Lien Obligations has occurred, the Company thereafter enters into any Parity Lien Document evidencing Parity Lien Debt the inurrence of which is not prohibited by any applicable Parity Lien Debt Document, then such Discharge of Parity Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Indenture and the Collateral Trust Agreement and the Parity Lien Intercreditor Agreement, if any, with respect to such new Parity Lien Debt (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Parity Lien Obligations), and, from and after the date on which the Company designates such Funded Debt as Parity Lien Debt in an Officer’s Certificate in the form required under the Collateral Trust Agreement delivered to each Parity Lien Representative and the Collateral Trustee, the Obligations under such Parity Lien Document shall automatically and without any further action be treated as Parity Lien Obligations for all purposes of this Indenture and the Collateral Trust Agreement and the Parity Lien Intercreditor Agreement, if any, including for purposes of the Lien priorities and rights in respect of Collateral set forth in this Indenture and the Collateral Trust Agreement and the Parity Lien Intercreditor Agreement, if any.

“Disinterested Director” means, with respect to any Affiliate Transaction, a member of the Board of Directors having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors shall be deemed not to have such a financial interest by reason of such member’s holding Capital Stock of the Company or any options, warrants or other rights in respect of such Capital Stock.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

- (1) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise; or
- (2) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part, in each case on or prior to the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding; *provided, however*, that (i) only the portion of Capital Stock which so matures or is 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 (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with Section 3.2 hereof; *provided, however*, that if such Capital Stock is issued to any future, current or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any other entity in which the Company or a Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of Directors (or the compensation committee thereof) or any other plan for the benefit of current, former or future employees (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or its Subsidiaries or by any such plan to such employees (or their respective Controlled Investment Affiliates or Immediate Family Members), such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Distribution Center Collateral” means each mortgaged property described under “Description of Property—Distribution Centers” in the Offering Memorandum constituting Collateral and any other properties or assets constituting, part of or related to a distribution center that become Collateral in accordance with the Security Documents.

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

“DTC” means The Depository Trust Company or any successor securities clearing agency.

“Equity Offering” means (x) a sale of Capital Stock (other than through the issuance of Disqualified Stock or Designated Preferred Stock or through an Excluded Contribution) other than (a) offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions or other securities of the Company or any Parent Entity and (b) issuances of Capital Stock to any Subsidiary of the Company or (y) a cash equity contribution to the Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“Excluded Contribution” means net cash proceeds or property or assets received by the Company as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Company after the Issue Date or from the issuance or sale (other than to a Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preferred Stock) of the Company, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer’s Certificate of the Company.

“Existing Unsecured Notes” means the 3.45% Senior notes due 2021; the 6.375% Senior notes due 2037; 6.9% Senior debentures due 2029; 6.7% Senior debentures due 2034; 6.65% Senior debentures due 2024; 7.0% Senior debentures due 2028; 8.75% Senior debentures due 2029; 6.9% Senior debentures due 2032; 6.7% Senior debentures due 2028; 7.875% Senior debentures due 2030; 6.79% Senior debentures due 2027; 10.25% Senior debentures due 2021; 7.6% Senior debentures due 2025; 9.5% amortizing debentures due 2021; 9.75% amortizing debentures due 2021; 3.875% Senior notes due 2022; 5.125% Senior notes due 2042; 2.875% Senior notes due 2023; 4.3% Senior notes due 2043; 4.375% Senior notes due 2023; 3.625% Senior notes due 2024; and 4.500% Senior notes due 2034, in each case, issued by the Unsecured Guarantor and guaranteed on a senior unsecured basis by the Company.

“fair market value” shall be conclusively established by means of an Officer’s Certificate or resolutions of the Board of Directors setting out such fair market value as determined by such Officer or such Board of Directors, in each case in good faith.

“Fitch” means Fitch Ratings, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

“Fixed Charges” means, with respect to any Person for any period, the sum of (without duplication):

- (1) Consolidated Interest Expense of such Person for such Period;
- (2) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock of any Subsidiary of such Person during such period; and
- (3) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock of such Person during such period.

“Funded Debt” means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

- (1) in respect of borrowed money or advances; or
- (2) evidenced by loan agreements, bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof), whether or not then available or drawn.

For the avoidance of doubt, “Funded Debt” shall not include Hedging Obligations.

“GAAP” means generally accepted accounting principles in the United States of America 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 have been approved by a significant segment of the accounting profession, which are in effect from time to time; *provided* that all terms of an accounting or financial nature used in this Indenture shall be construed, and all computations of amounts and ratios referred to in this Indenture shall be made (a) without giving effect to any election under Accounting Standards Codification Topic 825—Financial Instruments, or any successor thereto or comparable accounting principle (including pursuant to the Accounting Standards Codification), to value any Indebtedness of the Company or any Subsidiary at “fair value,” as defined therein and (b) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations shall be determined in accordance with the definition of Capitalized Lease Obligations. At any time after the Issue Date, the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in this Indenture); *provided* that any such election, once made, shall be irrevocable; *provided, further*, any calculation or determination in this Indenture that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company’s election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP. The Company shall give notice of any such election made in accordance with this definition to the Trustee. For the avoidance of doubt, solely making an election (without any other action) referred to in this definition will not be treated as an incurrence of Indebtedness.

If there occurs a change in IFRS or GAAP, as the case may be, and such change would cause a change in the method of calculation of any standards, terms or measures (including all computations of amounts and ratios) used in this Indenture (an “Accounting Change”), then the Company may elect that such standards, terms or measures shall be calculated as if such Accounting Change had or had not occurred.

“Guarantee” means, any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

provided, however, that the term “Guarantee” will not include (x) endorsements for collection or deposit in the ordinary course of business or consistent with past practice and (y) standard contractual indemnities or product warranties provided in the ordinary course of business, and *provided further* that the amount of any Guarantee shall be deemed to be the lower of (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made and (ii) the maximum amount for which such guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee or, if such Guarantee is not an unconditional guarantee of the entire amount of the primary obligation and such maximum amount is not stated or determinable, the amount of such guaranteeing Person’s maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantor” means each Secured Guarantor, the Unsecured Guarantor and any Subsidiary of the Unsecured Guarantor that Guarantees the Notes, in each case until such Notes Guarantee is released in accordance with the terms of this Indenture.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contracts, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

“High Store Status” means, with respect to any retail store at the time of determination, that such retail store has a grade of A- or higher from the Store Grader or the equivalent of such rating by the Store Grader or, if no grade then exists, the equivalent of such rating as determined in good faith by the Company.

“High Store Collateral” means each mortgaged property constituting Store Collateral that has High Store Status (with respect to an Asset Disposition, such grade to be determined on the date of contractually agreeing to such Asset Disposition).

“Holder” means each Person in whose name the Notes are registered on the Registrar’s books, which shall initially be the nominee of DTC.

“IAI” means an institutional “accredited investor” as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

“IFRS” means the International Financial Reporting Standards as issued by the International Accounting Standards Board as in effect from time to time.

“Immediate Family Members” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships, the estate of such individual and such other individuals above) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“incur” means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) will be deemed to be incurred by such Subsidiary at the time it becomes a Subsidiary and the terms “incurred” and “incurrence” have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only be “incurred” at the time any funds are borrowed thereunder.

“Indebtedness” means, with respect to any Person on any date of determination (without duplication):

- (1) the principal of indebtedness of such Person for borrowed money;
- (2) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all reimbursement obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have not been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of incurrence);
- (4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables or similar obligations, including accrued expenses owed, to a trade creditor), which purchase price is due more than one year after the date of placing such property in service or taking final delivery and title thereto;
- (5) Capitalized Lease Obligations of such Person;
- (6) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Company) and (b) the amount of such Indebtedness of such other Persons;
- (8) Guarantees by such Person of the principal component of Indebtedness of the type referred to in clauses (1), (2), (3), (4), (5) and (9) of other Persons to the extent Guaranteed by such Person; and
- (9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the net payments under such agreement or arrangement giving rise to such obligation that would be payable by such Person at the termination of such agreement or arrangement);

with respect to clauses (1), (2), (3), (4), (5) and (9) above, if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amount of funds borrowed and then outstanding. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount of Indebtedness, or liquidation preference thereof, in the case of any other Indebtedness. Indebtedness shall be calculated without giving effect to the effects of Accounting Standards Codification Topic 815—Derivatives and Hedging and related pronouncements to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

- (i) Contingent Obligations incurred in the ordinary course of business or consistent with past practice, other than Guarantees or other assumptions of Indebtedness;

(ii) Cash Management Obligations;

(iii) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the Issue Date, Non-Financing Lease Obligations, Sale and Leaseback Transactions or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;

(iv) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) incurred prior to the Issue Date or in the ordinary course of business or consistent with past practice;

(v) in connection with the purchase by the Company or any Subsidiary of any business, any deferred or prepaid revenue, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;

(vi) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes;

(vii) obligations under or in respect of Qualified Securitization Financing or Receivables Facilities;

(viii) Indebtedness of any Parent Entity appearing on the balance sheet of the Company solely by reason of push down accounting under GAAP;

(ix) Capital Stock (other than in the case of clause (6) above, Disqualified Stock); or

(x) amounts owed to dissenting stockholders (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Section 4.1.

"Indenture" means this Indenture, as amended, supplemented or otherwise modified from time to time.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing; *provided, however*, that such firm or appraiser is not an Affiliate of the Company.

"Initial Notes" has the meaning ascribed to it in the recitals of this Indenture.

"Initial Purchasers" means Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, BofA Securities, Inc., Goldman Sachs & Co. LLC, Wells Fargo Securities, LLC, MUFG Securities Americas Inc., U.S. Bancorp Investments, Inc., Fifth Third Securities, Inc., PNC Capital Markets LLC, and Citigroup Global Markets Inc.

"Insolvency or Liquidation Proceeding" means:

(1) any voluntary or involuntary case commenced by or against the Company or any Secured Guarantor under Title 11, U.S. Code or any similar federal or state law for the relief of debtors, any other proceeding for the reorganization, recapitalization, receivership, liquidation or adjustment or marshaling of the assets or liabilities of the Company or any Secured Guarantor, any receivership or assignment for the benefit of creditors relating to the Company or any Secured Guarantor or any similar case or proceeding relative to the Company or any Secured Guarantor or its creditors, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshaling of assets or liabilities or other winding up of or relating to the Company or any Secured Guarantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other proceeding of any type or nature in which substantially all claims of creditors of the Company or any Secured Guarantor are determined and any payment or distribution is or may be made on account of such claims.

“Intercompany License Agreement” means any cost sharing agreement, commission or royalty agreement, license or sublicense agreement, distribution agreement, services agreement, intellectual property rights transfer agreement, any related agreements or similar agreements, in each case where all parties to such agreement are one or more of the Company or a Subsidiary.

“Investment” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of advances, loans or other extensions of credit (excluding (i) accounts receivable, trade credit, advances or extensions of credit to customers, suppliers, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Person in the ordinary course of business or consistent with past practice, (ii) any debt or extension of credit represented by a bank deposit other than a time deposit, (iii) intercompany advances arising from cash management, tax and accounting operations and (iv) intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided*, however, that endorsements of negotiable instruments and documents in the ordinary course of business or consistent with past practice will not be deemed to be an Investment.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash and Cash Equivalents by the applicable Person in respect of such Investment to the extent such amounts do not increase any other baskets under this Indenture.

“Investment Grade Securities” means:

(1) securities issued or directly and fully Guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities issued or directly and fully guaranteed or insured by the Canadian, United Kingdom or Japanese governments, a member state of the European Union, or any agency or instrumentality thereof (other than Cash Equivalents);

(3) debt securities or debt instruments with a rating of “BBB-” or higher from S&P or “Baa3” or higher by Moody’s or the equivalent of such rating by such rating organization or, if no rating of Moody’s or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Rating Organization, but excluding any debt securities or instruments constituting loans or advances among the Company and its Subsidiaries;

(4) investments in any fund that invests exclusively in investments of the type described in clauses (1), (2) and (3) above which fund may also hold cash and Cash Equivalents pending investment or distribution; and

(5) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

“Investment Grade Status” shall occur when the Notes receive two of the following:

- (1) a rating of “BBB-” or higher from S&P;
- (2) a rating of “Baa3” or higher from Moody’s; or
- (3) a rating of “BBB-” or higher from Fitch;

or the equivalent of such rating by such rating organization or, if no rating of S&P, Moody’s or Fitch then exists, the equivalent of such rating by any other Nationally Recognized Statistical Rating Organization.

“Issue Date” means June 8, 2020.

“Issuer” has the meaning assigned to it in the recitals of this Indenture.

“Junior Lien Collateral Agent” means the Junior Lien Representative for the holders of any initial Junior Lien Obligations.

“Junior Lien Intercreditor Agreement” means an intercreditor agreement substantially in the form of Exhibit C hereto (which agreement in such form or with changes thereto permitted by Section 9.1 hereof the Collateral Trustee is authorized to enter into) entered into among the Collateral Trustee and the applicable Junior Lien Collateral Agent in connection with the incurrence of any Junior Lien Obligations, as it may be amended from time to time.

“Junior Lien Obligations” means Indebtedness with a Junior Lien Priority and all other Obligations in respect thereof including, without limitation interest and premium (if any) (including Post-Petition Interest whether or not allowable), together with all Hedging Obligations and all guarantees of any of the foregoing.

“Junior Lien Priority” means Indebtedness that is secured by a Lien on the Collateral that is junior in priority to the Liens on the Collateral securing the Obligations pursuant to a Junior Lien Intercreditor Agreement (it being understood that junior Liens are not required to rank equally and ratably with other junior Liens, and that Indebtedness secured by junior Liens may be secured by Liens that are senior in priority to, or rank equally and ratably with, or junior in priority to, other Liens constituting junior Liens).

“Junior Lien Representative” means any duly authorized representative of any holders of Junior Lien Obligations, which representative is named as such in the Junior Lien Intercreditor Agreement or any joinder thereto.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien, hypothecation or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof); *provided* that in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

“Limited Condition Transaction” means (1) any Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise and which may include, for the avoidance of doubt, a transaction that may constitute a Change of Control), whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, Disqualified Stock or Preferred Stock requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment, (3) any Restricted Payment requiring irrevocable notice in advance thereof; and (4) any asset sale or a disposition excluded from the definition of “Asset Disposition.”

“Long Derivative Instrument” means a Derivative Instrument (i) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to the Performance References and/or (ii) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to the Performance References.

“LTM EBITDA” means Consolidated EBITDA of the Company measured for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which consolidated financial statements are available (which may be internal financial statements), in each case with such pro forma adjustments giving effect to such Indebtedness, acquisition or Investment, as applicable, since the start of such four quarter period and as are consistent with the pro forma adjustments set forth under Section 1.3.

“Management Advances” means loans or advances made to, or Guarantees with respect to loans or advances made to, future, present or former employees, directors, officers, managers, contractors, consultants or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of any Parent Entity, the Company or any Subsidiary:

- (1) (a) in respect of travel, entertainment, relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or (b) for purposes of funding any such person’s purchase of Capital Stock (or similar obligations) of the Company, its Subsidiaries or any Parent Entity with (in the case of this clause (1)(b)) the approval of the Board of Directors of the Company;
- (2) in respect of relocation or moving related expenses, payroll advances and other analogous or similar expenses or payroll expenses, in each case incurred in connection with any closing or consolidation of any facility or office; or
- (3) not exceeding \$25.0 million and 1.25% of LTM EBITDA in the aggregate outstanding at the time of incurrence.

“Market Capitalization” means an amount equal to (i) the total number of issued and outstanding shares of common Capital Stock of the Company or any Parent Entity on the date of the declaration of a Restricted Payment permitted pursuant to Section 3.2(b)(vi) multiplied by (ii) the arithmetic mean of the closing prices per share of such common Capital Stock on the principal securities exchange on which such common Capital Stock are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“Master Lease” means that certain Master Lease Agreement, dated as of June 8, 2020, by and among Macy’s Logistics, LLC, Macy’s Mall Real Estate, LLC, Bloomingdale’s Real Estate, LLC, Macy’s USQ, LLC, Macy’s Brooklyn, LLC, and Macy’s State Street, LLC, each, an Ohio limited liability company, as landlords, and Macy’s Retail Holdings, LLC, Macy’s Corporate Services, LLC, Bloomingdale’s, LLC, and Macy’s West Stores, LLC, each, a Delaware limited liability company, as tenants, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

“Moody’s” means Moody’s Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

“MRH Bank Facilities” means the Credit Agreement, dated as of May 9, 2019, among the Unsecured Guarantor, the Company and Bank of America, N.A., as administrative agent, as the same may be amended, supplemented or otherwise modified from time to time.

“MRH Consolidated Net Tangible Assets” means total assets (less depreciation and valuation reserves and other reserves and items deductible from gross book value of specific asset accounts under GAAP) after deducting therefrom (i) all current liabilities and (ii) all goodwill, trade names, trademarks, patents, unamortized debt discount, organization expenses, and other like intangibles, all as set forth on the most recent balance sheet of the Unsecured Guarantor and its consolidated Subsidiaries and computed in accordance with GAAP.

“MRH Existing Indebtedness” means (i) the Unsecured Guarantor’s 3.45% Senior notes due 2021, 6.375% Senior notes due 2037, 6.9% Senior debentures due 2029, 6.7% Senior debentures due 2034, 6.65% Senior debentures due 2024, 7.0% Senior debentures due 2028, 8.75% Senior debentures due 2029, 6.9% Senior debentures due 2032, 6.7% Senior debentures due 2028, 7.875% Senior debentures due 2030, 6.79% Senior debentures due 2027, 10.25% Senior debentures due 2021, 7.6% Senior debentures due 2025, 9.5% amortizing debentures due 2021, 9.75% amortizing debentures due 2021, 3.875% Senior notes due 2022, 5.125% Senior notes due 2042, 2.875% Senior notes due 2023, 4.3% Senior notes due 2043, 4.375% Senior notes due 2023, 3.625% Senior notes due 2024 and 4.500% Senior notes due 2034; and (ii) any other secured Indebtedness of the Unsecured Guarantor or secured or unsecured Indebtedness of its Restricted Subsidiaries existing on December 10, 2015.

“MRH Permitted Lien” means:

- (a) Liens (other than Liens on inventory) securing
 - (A) MRH Existing Indebtedness;
 - (B) Indebtedness under the MRH Bank Facilities in an aggregate principal amount at any one time not to exceed \$2,800.0 million, less (i) principal payments actually made by the Unsecured Guarantor on any term loan facility under such MRH Bank Facilities (other than principal payments made in connection with or pursuant to a refinancing of the MRH Bank Facilities in compliance with clause (a)(I) below) and (ii) any amounts by which any revolving credit facility commitments under the MRH Bank Facilities are permanently reduced (other than permanent reductions made in connection with or pursuant to a refinancing of the MRH Bank Facilities in compliance with clause (a)(I) below), except that under no circumstances shall the total allowable Indebtedness under this clause (a)(B) be less than \$2,153.1 million (subject to increase from and after the Issue Date at a rate, compounded annually, equal to 3.0% per annum) if incurred for the purpose of providing the Unsecured Guarantor and its Subsidiaries with working capital, including without limitation, bankers’ acceptances, letters of credit, and similar assurances of payment whether as part of the MRH Bank Facilities or otherwise;
 - (C) Indebtedness existing as of the Issue Date of any Subsidiary of the Unsecured Guarantor engaged primarily in the business of owning or leasing real property;
 - (D) Indebtedness incurred for the purpose of financing store construction and remodeling or other capital expenditures;
 - (E) Indebtedness in respect of the deferred purchase price of property or arising under any conditional sale or other title retention agreement;
 - (F) Indebtedness of a Person acquired by the Unrestricted Subsidiary or a Subsidiary of the Unrestricted Subsidiary at the time of such acquisition;
 - (G) to the extent deemed to be “Indebtedness”, obligations under swap agreements, cap agreements, collar agreements, insurance agreements, or any other agreement or arrangement, in each case designed to provide protection against fluctuations in interest rates, the cost of currency or the cost of goods (other than inventory);
 - (H) other Indebtedness in outstanding amounts not to exceed, in the aggregate, the greater of \$750.0 million and 12.5% of MRH Consolidated Net Tangible Assets of the Unsecured Guarantor and the Restricted Subsidiaries of the Unsecured Guarantor at any particular time; and
 - (I) Indebtedness incurred in connection with any extension, renewal, refinancing, replacement or refunding (including successive extensions, renewals, refinancings, replacements or refundings), in whole or in part, of any Indebtedness of the Unsecured Guarantor or the Restricted Subsidiaries of the Unsecured Guarantor; *provided* that the principal amount of the Indebtedness so incurred pursuant to this clause (I) does not exceed the sum of the principal amount of the Indebtedness so extended, renewed, refinanced, replaced or refunded, plus all interest accrued thereon and all related fees and expenses (including any payments made in connection with procuring any required lender or similar consents);

(b) Liens incurred and pledges and deposits made in the ordinary course of business in connection with liability insurance, workers' compensation, unemployment insurance, old-age pensions and other social security benefits other than in respect of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended;

(c) Liens securing performance, surety and appeal bonds and other obligations of like nature incurred in the ordinary course of business;

(d) Liens on goods and documents securing trade letters of credit;

(e) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's and vendors' Liens, incurred in the ordinary course of business and securing obligations which are not yet due or which are being contested in good faith by appropriate proceedings;

(f) Liens securing the payment of taxes, assessments and governmental charges or levies, either (i) not delinquent or (ii) being contested in good faith by appropriate legal or administrative proceedings and as to which adequate reserves shall have been established on the books of the relevant Person in conformity with GAAP;

(g) zoning restrictions, easements, rights of way, reciprocal easement agreements, operating agreements, covenants, conditions or restrictions on the use of any parcel of property that are routinely granted in real estate transactions or do not interfere in any material respect with the ordinary conduct of the business of the Unsecured Guarantor and its Subsidiaries or the value of such property for the purpose of such business;

(h) Liens on property existing at the time such property is acquired;

(i) purchase money Liens upon or in any property acquired or held in the ordinary course of business to secure Indebtedness incurred solely for the purpose of financing the acquisition of such property;

(j) Liens on the assets of any Subsidiary of the Unsecured Guarantor at the time such Subsidiary is acquired;

(k) Liens with respect to obligations in outstanding amounts not to exceed \$100.0 million at any particular time and that (i) are not incurred in connection with the borrowing of money or obtaining advances or credit (other than trade credit in the ordinary course of business) and (ii) do not in the aggregate interfere in any material respect with the ordinary conduct of the business of the Unsecured Guarantor and its Subsidiaries; and

(l) without limiting the ability of the Unsecured Guarantor or any Restricted Subsidiary of the Unsecured Guarantor to create, incur, assume or suffer to exist any Lien otherwise permitted under any of the foregoing clauses, any extension, renewal or replacement, in whole or in part, of any Lien described in the foregoing clauses; *provided* that any such extension, renewal or replacement Lien is limited to the property or assets covered by the Lien extended, renewed or replaced or substitute property or assets, the value of which is determined by the Board of Directors of the Unsecured Guarantor to be not materially greater than the value of the property or assets for which the substitute property or assets are substituted.

provided that, notwithstanding the foregoing, any Lien on an asset of the Unsecured Guarantor or any of its Restricted Subsidiaries which is not prohibited by any outstanding Indebtedness of the Unsecured Guarantor or any of its Restricted Subsidiaries (other than Indebtedness under the Secured Note Documents) without equally and ratably securing such Indebtedness shall be deemed to be a "MRH Permitted Lien" for all purposes under this Indenture.

"Nationally Recognized Statistical Rating Organization" means a nationally recognized statistical rating organization within the meaning of Rule 436 under the Securities Act.

“Net Available Cash” with respect to any Asset Disposition, means cash proceeds received (including any cash proceeds received from the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Disposition, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

(1) all legal, accounting, consulting, investment banking, survey costs, title and recording expenses, title insurance premiums, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, relocation expenses, commissions, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such transaction;

(2) all Taxes paid, reasonably estimated to be payable, Tax reserves set aside or payable or accrued as a liability under GAAP (including, for the avoidance of doubt, any income, withholding and other Taxes payable as a result of the distribution or deemed distribution of such proceeds to the Company or any of its Subsidiaries, transfer taxes, deed or mortgage recording taxes and Taxes that would be payable in connection with any repatriation of such proceeds), as a consequence of such transaction, including any Permitted Tax Amount or any transactions occurring or deemed to occur to effectuate a payment under this Indenture;

(3) all distributions and other payments required to be made to non-controlling interest or minority interest holders (other than the Company or any of its respective Subsidiaries) in Subsidiaries or joint ventures as a result of such transaction;

(4) all costs associated with unwinding any related Hedging Obligations in connection with such transaction;

(5) the deduction of appropriate amounts required to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such transaction and retained by the Company or any Subsidiary after such transaction, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction;

(6) any portion of the purchase price from such transaction placed in escrow, whether for the satisfaction of any indemnification obligations in respect of such transaction, as a reserve for adjustments to the purchase price associated with any such transaction or otherwise in connection with such transaction; and

(7) the amount of any liabilities (other than Indebtedness in respect of the Notes and other Parity Lien Obligations) directly associated with such asset being sold and retained by the Company or any of its Subsidiaries.

“Net Short” means, with respect to a Holder or beneficial owner, as of a date of determination, either (i) the value of its Short Derivative Instruments exceeds the sum of the (x) the value of its Notes plus (y) the value of its Long Derivative Instruments as of such date of determination or (ii) it is reasonably expected that such would have been the case were a Failure to Pay or Bankruptcy Credit Event (each as defined in the 2014 ISDA Credit Derivatives Definitions) to have occurred with respect to the Company or any Guarantor immediately prior to such date of determination.

“Non-Financing Lease Obligation” means a lease obligation that is not required to be accounted for as a financing or capital lease in accordance with GAAP. For the avoidance of doubt, a straight-line or an operating lease shall be considered a Non-Financing Lease Obligation.

“Non-Guarantor” means any Subsidiary of the Company that is not a Guarantor.

“Non-High Store Collateral” means each mortgaged property constituting Store Collateral that does not have High Store Status (with respect to an Asset Disposition, such grade to be determined on the date of contractually agreeing to such Asset Disposition).

“Non-U.S. Person” means a Person who is not a U.S. Person (as defined in Regulation S).

“Note Documents” means the Notes (including Additional Notes), the Note Guarantees and this Indenture.

“Note Guarantees” means the Guarantees of the Initial Notes and any Additional Notes.

“Notes” has the meaning ascribed to it in the recitals of this Indenture.

“Notes Custodian” means the custodian with respect to the Global Notes (as appointed by DTC) or any successor Person thereto, and shall initially be the Trustee.

“Notes Guarantees” means each Secured Guarantee, the Unsecured Guarantee and any Guarantee of the Senior Notes by any Subsidiary of the Company as provided under “—Certain Covenants—Limitation on Guarantees by Subsidiaries of the Company.”

“Obligations” means any principal, interest (including Post-Petition Interest and fees accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer or any Guarantor whether or not a claim for Post-Petition Interest or fees is allowed in such proceedings), penalties, fees, compensation, 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 Memorandum” means the final offering memorandum, dated May 27, 2020, relating to the offering by the Issuer of the Initial Notes.

“Officer” means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Assistant Treasurer, any Managing Director, the Secretary or any Assistant Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an “Officer” for the purposes of this Indenture by the Board of Directors of such Person.

“Officer’s Certificate” means, with respect to any Person, a certificate signed by one Officer of such Person.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably satisfactory to the Trustee. The counsel may be an employee of or counsel to the Company or its Subsidiaries.

“Original Collateral” means, at the time of determination:

- (1) for the purpose of clause (2) of the definition of “Permitted Liens”:
 - (a) the Collateral as of the Issue Date,
 - (b) the proceeds of the Collateral as of the Issue Date or the Collateral described in clauses (c) and (d) below, including without limitation all money deposited in the Collateral Proceeds Account,
 - (c) any other properties or assets acquired by Propco or a Subsidiary of Propco as a result of investment of Applicable Proceeds of an Asset Disposition of the Collateral as of the Issue Date or any Collateral described in this clause (c) or clause (d) below in accordance with clause (3)(b) under Section 3.5(a)(iii)(B) which has become Collateral in accordance with the Security Documents, and
 - (d) any property or assets acquired in a Permitted Asset Swap with respect to the Collateral as of the Issue Date or any Collateral described in clause (c) above or this clause (d); and
- (2) otherwise, the Collateral.

“Parent Entity” means, with respect to a Person, any direct or indirect parent of such Person.

“Pari Passu Indebtedness” means Indebtedness of the Company which ranks equally in right of payment to the Notes or of any Guarantor if such Indebtedness ranks equally in right of payment to the Notes Guarantees of the Notes.

“Paying Agent” means any Person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Note on behalf of the Issuer.

“Parity Lien” means a Lien granted, or purported to be granted, by a Parity Lien Security Document to the Collateral Trustee, at any time, upon any property of any Secured Guarantor to secure Parity Lien Obligations.

“Parity Lien Debt” means:

(1) the Notes issued on the date of this Indenture; and

(2) any other Funded Debt (including any Additional Notes), that is secured by a Parity Lien and that was permitted to be incurred and permitted to be so secured under this Indenture and each other applicable Parity Lien Debt Document;

provided, in the case of any Funded Debt referred to in clause (2) of this definition, that:

(a) on or before the date on which such Funded Debt is incurred by the Company or by a Subsidiary, such Funded Debt is designated by the Company, in an Officer’s Certificate in the form required under the Collateral Trust Agreement delivered to each Parity Lien Representative and the Collateral Trustee, as “Parity Lien Debt” for the purposes of this Indenture and the Collateral Trust Agreement;

(b) unless such Funded Debt is issued under an existing Parity Lien Debt Document for any Series of Parity Lien Debt whose Parity Lien Representative is already party to the Collateral Trust Agreement and the Parity Lien Intercreditor Agreement, the Parity Lien Representative for such Funded Debt executes and delivers a joinder in the form required under the Collateral Trust Agreement and a joinder in the form required under the Parity Lien Intercreditor Agreement (or, if the Parity Lien Intercreditor Agreement has not been executed, executes and delivers the Parity Lien Intercreditor Agreement); and

(c) all other requirements set forth in the Collateral Trust Agreement as to the confirmation, grant or perfection of the Collateral Trustee’s Liens to secure such Funded Debt in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (c) will be conclusively established if the Company delivers to the Collateral Trustee an Officer’s Certificate in the form required under the Collateral Trust Agreement stating that such requirements and other provisions have been satisfied and that such Funded Debt is “Parity Lien Debt”).

For the avoidance of doubt, Hedging Obligations do not constitute Parity Lien Debt but may constitute Parity Lien Obligations.

“Parity Lien Documents” means, collectively, the Note Documents and any other indenture, credit agreement or other agreement pursuant to which any Parity Lien Debt is incurred and the Parity Lien Security Documents.

“Parity Lien Intercreditor Agreement” means an intercreditor agreement substantially in the form of Exhibit D hereto (which agreement in such form or with changes thereto permitted by Section 9.1 hereof the Collateral Trustee is authorized to enter into) entered into among the Collateral Trustee and the applicable Parity Lien Representative in connection with the incurrence of any Parity Lien Obligations, as it may be amended from time to time.

“Parity Lien Obligations” means Parity Lien Debt and all other Obligations in respect thereof including, without limitation interest and premium (if any) (including Post-Petition Interest whether or not allowable), together with all Hedging Obligations and all guarantees of any of the foregoing. In addition to the foregoing, all obligations owing to the Trustee and the Collateral Trustee in their capacities as such, whether pursuant to the Collateral Trust Agreement, this Indenture or one or more of the Parity Lien Obligations (with the obligations described in this sentence being herein referred to as the “Trustee Obligations”), which Trustee Obligations shall be entitled to the priority provided in Section 4 of the Collateral Trust Agreement.

“Parity Lien Representative” means:

- (1) in the case of the Notes, the Trustee; and
- (2) in the case of any other Series of Parity Lien Debt, the trustee, agent or representative of the holders of such Series of Parity Lien Debt who maintains the transfer register for such Series of Parity Lien Debt and (A) is appointed as a representative for such Parity Lien Debt (for purposes related to the administration of the Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Parity Lien Debt, (B) has become a party to the Collateral Trust Agreement by executing a joinder in the form required under the Collateral Trust Agreement, together with its successors and assigns in such capacity and (C) has become a party to the Parity Lien Intercreditor Agreement by executing a joinder in the form required under the Parity Lien Intercreditor Agreement (or, if the Parity Lien Intercreditor Agreement has not been executed, by executing the Parity Lien Intercreditor Agreement).

“Parity Lien Secured Parties” means the holders of Parity Lien Obligations and each Parity Lien Representative.

“Parity Lien Security Documents” means all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements or other grants or transfers for security executed and delivered by the Company or any Secured Guarantor creating or perfecting (or purporting to create or perfect) a Lien upon Collateral in favor of the Collateral Trustee, for the benefit of any of the Parity Lien Secured Parties, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and described in Section 8 of the Collateral Trust Agreement.

“Permitted Asset Swap” means (i) (A) the concurrent purchase and sale or exchange of assets used or useful in a business of the Company or its Subsidiaries or a combination of such assets and cash and Cash Equivalents between Propco or any of its Subsidiaries and another Person or (B) the purchase and sale or exchange of assets or a combination of such assets and cash and Cash Equivalents between Propco, any of its Subsidiaries or another Person who becomes a Subsidiary of Propco substantially concurrently upon receipt of such assets or combination of such assets and cash and Cash Equivalents; (ii) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased; (iii) dispositions of property to the extent that the proceeds of such disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased) and (iv) to the extent allowable under Section 1031 of the Code or comparable law or regulation, any exchange of like property (excluding any boot thereon) for use in a Similar Business; in each case provided that such assets are or become Collateral in accordance with the Security Documents; *provided that*:

- (1) in the case of any Permitted Asset Swap of Real Property Collateral for real property that will become Real Property Collateral, the fair market value of the assets will be determined in good faith by the Company based on one or more broker opinions of value from a broker of national standing selected by the Company;
- (2) Specified Real Estate Assets may not be disposed of in a Permitted Asset Swap;
- (3) a Permitted Asset Swap of any Distribution Center Collateral or High Store Collateral, or of any Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly through one or more Subsidiaries, any Distribution Center Collateral or High Store Collateral, in each case must be in exchange for cash or Cash Equivalents, Distribution Center Collateral, High Store Collateral or properties or assets constituting, part of or related to a distribution center or a retail store that has High Store Status and, in each case, that become Collateral in accordance with the Security Documents;

(4) a Permitted Asset Swap of any Non-High Store Collateral, or of any Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly through one or more Subsidiaries, any Non-High Store Collateral, in each case must be in exchange for cash or Cash Equivalents, Store Collateral with a rating from the Store Grader not lower than the rating assigned to such Non-High Store Collateral, properties or assets constituting, part of or related to a retail store with a rating from the Store Grader not lower than the rating assigned to such Non-High Store Collateral, Distribution Center Collateral or properties or assets constituting, part of or related to a distribution center, in each case, that become Collateral in accordance with the Security Documents; and

(5) the aggregate fair market value of any Permitted Asset Swap of Store Collateral, or of any Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly through one or more Subsidiaries, any Store Collateral, in each case after the Issue Date for real property that will become Store Collateral when aggregated with the Applicable Proceeds from an Asset Disposition of Store Collateral that have been applied under Section 3.5(a)(iii)(B) to invest in Store Collateral or properties or assets constituting, part of or related to a retail store that become Collateral in accordance with the Security Documents shall be no greater than \$500 million after the Issue Date.

“Permitted Intercompany Activities” means any transactions between or among the Company and its Subsidiaries that are entered into in the ordinary course of business or consistent with past practice of the Company and its Subsidiaries and, in the reasonable determination of the Company are necessary or advisable in connection with the ownership or operation of the business of the Company and its Subsidiaries, including (i) payroll, cash management, purchasing, insurance and hedging arrangements; (ii) management, technology and licensing arrangements; and (iii) customary loyalty and rewards programs.

“Permitted Investment” means (in each case, by Propco or any of its Subsidiaries):

(1) Investments in (a) a Real Estate Subsidiary (including the Capital Stock of, or guarantees of obligations of, a Real Estate Subsidiary) or Propco or (b) a Person (including the Capital Stock of any such Person) that will, upon the making of such Investment, become a Real Estate Subsidiary;

(2) Investments in another Person if as a result of such Investment such other Person, in one transaction or a series of transactions, is merged, amalgamated, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, or is liquidated into, Propco or a Real Estate Subsidiary, and any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, combination, transfer or conveyance;

(3) Investments in cash, Cash Equivalents or Investment Grade Securities;

(4) Investments in receivables owing to the Company or any Subsidiary created or acquired in the ordinary course of business or consistent with past practice;

(5) Investments in payroll, travel, entertainment, relocation, moving related and similar advances that are made in the ordinary course of business or consistent with past practice;

(6) Investments (including debt obligations and equity interests) (a) received in settlement, compromise or resolution of debts created in the ordinary course of business or consistent with past practice, (b) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by Propco or any such Subsidiary, (c) as a result of foreclosure, perfection or enforcement of any Lien, (d) in satisfaction of judgments or (e) pursuant to any plan of reorganization or similar arrangement including upon the bankruptcy or insolvency of a debtor or litigation, arbitration or other disputes or otherwise with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

- (7) Investments made as a result of the receipt of promissory notes or other non-cash consideration (including earn-outs) from a sale or other disposition of property or assets, including an Asset Disposition, *provided* such assets are pledged as Collateral securing the Notes;
- (8) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);
- (9) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Section 3.6;
- (10) any transaction to the extent constituting an Investment that is permitted by and made in accordance with Section 3.9 (except those described in clauses (b) (i), (vii), (viii) and (xi) of that paragraph);
- (11) Investments consisting of (i) purchases or other acquisitions of inventory, supplies, materials, equipment and similar assets or (ii) licenses, sublicenses, cross-licenses, leases, subleases, assignments, contributions or other Investments of intellectual property or other intangibles or services in the ordinary course of business pursuant to any joint development, joint venture or marketing arrangements with other Persons or any Intercompany License Agreement and any other Investments made in connection therewith;
- (12) (i) Guarantees of Indebtedness not prohibited by this Indenture and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business or consistent with past practice, and (ii) performance guarantees and Contingent Obligations with respect to obligations that are permitted by this Indenture;
- (13) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Indenture;
- (14) Investments of a Subsidiary of Propco acquired after the Issue Date or of an entity merged or amalgamated into or consolidated with Propco or merged or amalgamated into or consolidated with a Subsidiary of Propco after the Issue Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
- (15) Investments in connection with the Transactions;
- (16) purchases of Notes and other Parity Lien Obligations;
- (17) guaranty and indemnification obligations arising in connection with surety bonds issued in the ordinary course of business or consistent with past practice;
- (18) Investments (a) consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with past practice, (b) made in the ordinary course of business or consistent with past practice in connection with obtaining, maintaining or renewing client, franchisee and customer contacts and loans or (c) advances, loans, extensions of credit (including the creation of receivables) or prepayments made to, and guarantees with respect to obligations of, franchisees, distributors, suppliers, lessors, licensors and licensees in the ordinary course of business or consistent with past practice;
- (19) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with past practice;
- (20) Investments consisting of UCC Article 3 endorsements for collection or deposit and Article 4 trade arrangements with customers (or any comparable or similar provisions in other applicable jurisdictions) in the ordinary course of business or consistent with past practices; and

(21) non-cash Investments in connection with tax planning and reorganization activities, and Investments in connection with Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions.

“Permitted Liens” means, with respect to any Person:

- (1) Liens securing the Notes (other than any Additional Notes) and the related Guarantees;
- (2) Liens on the Collateral securing Parity Lien Obligations in respect of (i) Parity Lien Debt (and Parity Lien Obligations in respect thereof) so long as immediately after giving pro forma effect to the incurrence of such Indebtedness and the use of proceeds thereof, the Collateral Coverage Ratio shall be at least 2.00 to 1.00; *provided*, that any such Parity Lien Debt (and Parity Lien Obligations in respect thereof) shall have a Stated Maturity no earlier than the Stated Maturity date of the Notes, and shall have a Weighted Average Life that is not shorter than that applicable to the Notes;
- (3) Liens on the Collateral securing Junior Lien Obligations in respect of (i) Indebtedness with a Junior Lien Priority (and Junior Lien Obligations in respect thereof) and (ii) any Refinancing Indebtedness in respect thereof;
- (4) pledges, deposits or Liens (a) in connection with workmen’s compensation laws, payroll taxes, unemployment insurance laws, employers’ health tax and other social security laws or similar legislation or other insurance related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto), (b) securing liability, reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments) for the benefit of insurance carriers under insurance or self-insurance arrangements or otherwise supporting the payments of items set forth in the foregoing clause (a), or (c) in connection with bids, tenders, completion guarantees, contracts, leases, utilities, licenses, public or statutory obligations, or to secure the performance of bids, trade contracts, government contracts and leases, statutory obligations, surety, stay, indemnity, warranty, release, judgment, customs, appeal, performance bonds, guarantees of government contracts, return of money bonds, bankers’ acceptance facilities and obligations of a similar nature (including those to secure health, safety and environmental obligations), and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case incurred in the ordinary course of business or consistent with past practice;
- (5) Liens with respect to outstanding motor vehicle fines and Liens imposed by law or regulation, including carriers’, warehousemen’s, mechanics’, landlords’, suppliers’, materialmen’s, repairmen’s, architects’, construction contractors’ or other similar Liens, in each case for amounts not overdue for a period of more than 120 days or, if more than 120 days overdue, are unfiled and no other action has been taken to enforce such Liens or that are being contested in good faith by appropriate proceedings;
- (6) Liens for Taxes, assessments or other governmental charges that are not overdue for a period of more than 120 days or not yet payable or subject to penalties for nonpayment or that are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves required pursuant to GAAP (or other applicable accounting principles) have been made in respect thereof;
- (7) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, rights of way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties, exceptions on title policies insuring Liens granted on any mortgaged properties or any other collateral or Liens incidental to the conduct of the business of such Person or to the ownership of its properties, including servicing agreements, development agreements, site plan agreements, subdivision agreements, facilities sharing agreements, cost sharing agreements and other similar agreements, charges or encumbrances, which do not in the aggregate materially interfere with the ordinary course conduct of the business of Propco and its Subsidiaries, taken as a whole;

(8) Liens (a) securing Hedging Obligations, Cash Management Obligations and the costs thereof; (b) that are rights of set-off, rights of pledge or other bankers' Liens (i) relating to treasury, depository and cash management services or any automated clearing house transfers of funds in the ordinary course of business or consistent with past practice, (ii) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Propco or any Subsidiary or consistent with past practice or (iii) relating to purchase orders and other agreements entered into with customers of Propco or any Subsidiary in the ordinary course of business or consistent with past practice; (c) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes; and (d) (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection and (ii) in favor of a banking or other financial institution or electronic payment service providers arising as a matter of law encumbering deposits (including the right of set-off) arising in the ordinary course of business in connection with the maintenance of such accounts and (iii) arising under customary general terms and conditions of the account bank in relation to any bank account maintained with such bank and attaching only to such account and the products and proceeds thereof, which Liens, in any event, do not secure any Indebtedness;

(9) other than with respect to Collateral, leases, licenses, subleases and sublicenses of assets (including real property, intellectual property, software and other technology rights), in each case entered into in the ordinary course of business, consistent with past practice or, with respect to intellectual property, software and other technology rights, that are not material to the conduct of the business of Propco and its Restricted Subsidiaries, taken as a whole;

(10) Liens securing or otherwise arising out of judgments, decrees, attachments, orders or awards not giving rise to an Event of Default under Section 6.1(a) (vii);

(11) Liens arising from UCC financing statements, including precautionary financing statements (or similar filings) regarding operating leases or consignments entered into by Propco and its Subsidiaries;

(12) Liens existing on the Issue Date, excluding Liens securing the Notes;

(13) Liens securing Obligations relating to any Indebtedness or other obligations of Propco or a Subsidiary of Propco owing to Propco or another Subsidiary of Propco, or Liens in favor of Propco, any Subsidiary of Propco or the Trustee or the Collateral Trustee;

(14) Liens securing Refinancing Indebtedness incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under this Indenture (other than Liens incurred in reliance on clause (3) of this definition); *provided* that (a) any such Lien is limited to all or part of the same property or assets (plus property and assets affixed or appurtenant thereto and additions, improvements, accessions, proceeds, dividends or distributions thereof, including after-acquired property that is (i) affixed or incorporated into the property or assets covered by such Lien, (ii) after-acquired property or assets subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after-acquired property or assets and (iii) the proceeds and products thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Obligations relating to the Indebtedness or other obligations being refinanced or is in respect of property or assets that is or could be the security for or subject to a Permitted Lien hereunder, and (b) in the case of a Lien securing Refinancing Indebtedness;

(15) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which Propco or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

(16) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets that are not overdue for a period of more than 120 days or that are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves required pursuant to GAAP (or other applicable accounting principles) have been made in respect thereof;

(17) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business or consistent with past practice;

(18) Liens deemed to exist in connection with Investments permitted under clause (4) of the definition of "Cash Equivalents";

(19) Liens on (i) goods the purchase price of which is financed by a documentary letter of credit issued for the account of Propco or any Subsidiary of Propco or Liens on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments and (ii) specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(20) Liens on vehicles or equipment of Propco or any Subsidiary of Propco in the ordinary course of business or consistent with past practice;

(21) Liens on assets or securities deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets or securities if such sale is otherwise permitted by this Indenture;

(22) (a) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto, and (b) Liens, pledges, deposits made or other security provided to secure liabilities to, or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefits of), insurance carriers in the ordinary course of business or consistent with past practice;

(23) Liens solely on any cash earnest money deposits made in connection with any letter of intent or purchase agreement permitted under this Indenture;

(24) Liens (i) on cash advances or escrow deposits in favor of the seller of any property to be acquired in an Investment permitted under this Indenture to be applied against the purchase price for such Investment or otherwise in connection with any escrow arrangements with respect to any such Investment (including any letter of intent or purchase agreement with respect to such Investment), and (ii) consisting of an agreement to sell, transfer, lease or otherwise dispose of any property in an asset sale, in each case, solely to the extent such Investment or sale, transfer, lease or other disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(25) rights of recapture of unused real property in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any government, statutory or regulatory authority;

(26) the rights reserved to or vested in any Person or government, statutory or regulatory authority by the terms of any lease, license, franchise, grant or permit held by Propco or any Subsidiary of Propco or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(27) restrictive covenants affecting the use to which real property may be put and Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; *provided* that such Liens or covenants do not interfere with the ordinary conduct of the business of Propco or any Subsidiary of Propco;

(28) Liens on property, assets or Permitted Investments used to defease or to satisfy or discharge Indebtedness; *provided* such defeasance, satisfaction or discharge is not prohibited by this Indenture;

(29) Liens relating to escrow arrangements securing Indebtedness, including (i) Liens on escrowed proceeds from the issuance of Indebtedness for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, arrangers, trustee or collateral agent thereof) and (ii) Liens on cash or Cash Equivalents set aside at the time of the incurrence of any Indebtedness, in either case to the extent such cash or Cash Equivalents prefund the payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance of such Indebtedness) and are held in an escrow account or similar arrangement to be applied for such purpose; and

(30) Liens arising in connection with any Permitted Intercompany Activities, Permitted Tax Restructuring and related transactions.

In the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens (at the time of incurrence or at a later date), Propco in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Permitted Lien in any manner that complies with this Indenture and such Permitted Lien shall be treated as having been made pursuant only to the clause or clauses of the definition of Permitted Lien to which such Permitted Lien has been classified or reclassified.

“Permitted Plan” means any employee benefits plan of the Company or any of its Affiliates and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

“Permitted Tax Amount” means (a) if and for so long as the Company, Propco, or a Parent Entity or Subsidiary of Propco (the “Group Member”) is a member of a group filing a consolidated or combined tax return with any Parent Entity, any dividends or other distributions to fund any income Taxes for which such Parent Entity is liable up to an amount not to exceed with respect to such Taxes the amount of any such Taxes that the Group Member and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis calculated as if the Group Member and its Subsidiaries had paid Tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an a group consisting only of the Group Member and its Subsidiaries; and (b) for any taxable year (or portion thereof) ending after the Issue Date for which the Company, Propco, or a Parent Entity or Subsidiary of Propco (the “Flow-Through Entity”) is treated as a disregarded entity, partnership, or other flow-through entity for U.S. federal, state, provincial, territorial, and/or local income Tax purposes, the payment of dividends or other distributions to the direct or indirect owner or owners of equity of the Company in an aggregate amount equal to each of the direct or indirect owners’ Tax Amount. Each direct or indirect owner’s “Tax Amount” is the product of (i) the aggregate taxable income of the Flow-Through Entity and its Subsidiaries allocated to such owner for U.S. federal income tax purposes for such taxable year (or portion thereof) and (ii) the highest combined marginal U.S. federal, state and/or local income tax rate applicable to an individual residing in California or New York, New York (whichever is higher for the relevant taxable year or portion thereof).

“Permitted Tax Restructuring” means any reorganizations and other activities related to tax planning and tax reorganization entered into prior to, on or after the date hereof so long as such Permitted Tax Restructuring is not materially adverse to the holders of the Notes (as determined by the Company in good faith).

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

“Post-Petition Interest” means any interest or entitlement to fees or expenses or other charges that accrue after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable as a claim in any such bankruptcy or insolvency proceeding.

“Predecessor Note” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.10 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

“Preferred Stock,” as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“Propco” means Macy’s Propco Holdings, LLC, an Ohio limited liability company and a direct, wholly-owned subsidiary of the Company, together with its successors and assigns.

“QIB” means any “qualified institutional buyer” as such term is defined in Rule 144A.

“Qualified Securitization Financing” means any Securitization Facility that meets the following conditions: (i) the Board of Directors shall have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and its Subsidiaries, (ii) all sales of Securitization Assets and related assets by the Company or any Subsidiary (other than Propco or any of its Subsidiaries) to the Securitization Subsidiary or any other Person are made for fair consideration (as determined in good faith by the Company) and (iii) the financing terms, covenants, termination events and other provisions thereof shall be fair and reasonable terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings.

“Rating Agencies” means S&P, Moody’s and Fitch or if no rating of S&P, Moody’s or Fitch is publicly available, as the case may be, the equivalent of such rating selected by the Company by any other Nationally Recognized Statistical Rating Organization.

“Rating Event” means the rating on the Notes is lowered by at least two of the three Rating Agencies and the Notes are rated below Investment Grade Status by at least two of the three Rating Agencies, on any day during the period (which period will be extended so long as the rating of the applicable senior notes is under publicly announced consideration for a possible downgrade by any of the Rating Agencies) commencing 60 days prior to the first public notice of the occurrence of a Change of Control or the intention of the Company to effect a Change of Control and ending 60 days following consummation of such Change of Control.

“Real Estate Subsidiary” means a Subsidiary of Propco which (1) owns real property constituting Collateral subject to the Master Lease and related assets and (2) owns no material assets other than Collateral and Permitted Investments.

“Real Property Collateral” means, collectively, the Distribution Center Collateral, the Specified Real Estate Assets and the Store Collateral, in each case, to the extent constituting Collateral or becoming Collateral in accordance with the Security Documents.

“Receivables Assets” means (a) any accounts receivable owed to the Company or a Subsidiary (other than Propco or any of its Subsidiaries) subject to a Receivables Facility and the proceeds thereof and (b) all collateral securing such accounts receivable, all contracts and contract rights, guarantees or other obligations in respect of such accounts receivable, all records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in connection with a non-recourse accounts receivable factoring arrangement.

“Receivables Facility” means an arrangement between the Company or a Subsidiary (other than Propco or any of its Subsidiaries) and a commercial bank, an asset based lender or other financial institution or an Affiliate thereof pursuant to which (a) the Company or such Subsidiary (other than Propco or any of its Subsidiaries), as applicable, sells (directly or indirectly) to such commercial bank, asset based lender or other financial institution (or such Affiliate) Receivables Assets and (b) the obligations of the Company or such Subsidiary, as applicable, thereunder are non-recourse (except for Securitization Repurchase Obligations) to the Company and such Subsidiary and (c) the financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings, and shall include any guaranty in respect of such arrangements.

“refinance” means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms “refinances,” “refinanced” and “refinancing” as used for any purpose in this Indenture shall have a correlative meaning.

“Refinancing Indebtedness” means Indebtedness that is incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the Issue Date or incurred (or established) in compliance with this Indenture (including Indebtedness of the Company that refinances Indebtedness of any Subsidiary and Indebtedness of any Subsidiary that refinances Indebtedness of the Company or another Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; *provided*, however, that such Refinancing Indebtedness is incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being Refinanced, *plus* (y) accrued and unpaid interest, dividends, premiums (including tender premiums), defeasance costs, underwriting discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing.

“Regulation S” means Regulation S under the Securities Act.

“Regulation S-X” means Regulation S-X under the Securities Act.

“Regulatory Debt Facility” means, with respect to the Company or any of its Subsidiaries, one or more Credit Facilities entered into pursuant to the laws, rules or regulations of the United States (including, for the avoidance of doubt, any agency or instrumentality of the United States, including the Federal Reserve and other federal bank regulatory agencies) promulgated under the Coronavirus Aid, Relief, and Economic Security Act or any other legislation, regulation, act or similar law of the United States in response to, or related to the effect of, COVID-19, in each case, as amended from time to time.

“Related Taxes” means (i) any Taxes, including sales, use, transfer, rental, *ad valorem*, value added, stamp, property, consumption, franchise, license, capital, registration, business, customs, net worth, gross receipts, excise, occupancy, intangibles or similar Taxes and other fees and expenses (other than (x) Taxes measured by income and (y) withholding Taxes), required to be paid (*provided* such Taxes are in fact paid) by any Parent Entity by virtue of its:

(a) being organized or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Company or any of the Company’s Subsidiaries) or otherwise maintain its existence or good standing under applicable law,

(b) being a holding company parent, directly or indirectly, of the Company or any Subsidiaries of the Company,

(c) receiving dividends from or other distributions in respect of the Capital Stock of, directly or indirectly, the Company or any Subsidiaries of the Company,
or

(d) having made any payment in respect to any of the items for which the Company is permitted to make payments to any Parent Entity pursuant to Section 3.2; and

(ii) any Permitted Tax Amount.

“Restricted Investment” means any Investment other than a Permitted Investment.

“Restricted Notes” means Initial Notes and Additional Notes bearing the Restricted Notes Legend.

“Restricted Notes Legend” means the legend set forth in Section 2.1(d)(i).

“Restricted Subsidiary” means, with respect to the Unsecured Guarantor, any Subsidiary of the Unsecured Guarantor other than an Unrestricted Subsidiary.

“Rule 144A” means Rule 144A under the Securities Act.

“S&P” means Standard & Poor’s Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

“Sale and Leaseback Transaction” means any arrangement providing for the leasing by the Company or any of the Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Subsidiary to a third Person in contemplation of such leasing.

“Screened Affiliate” means any Affiliate of a Holder (i) that makes investment decisions independently from such Holder and any other Affiliate of such Holder that is not a Screened Affiliate, (ii) that has in place customary information screens between it and such Holder and any other Affiliate of such Holder that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Company or its Subsidiaries, (iii) whose investment policies are not directed by such Holder or any other Affiliate of such Holder that is acting in concert with such Holder in connection with its investment in the Notes, and (iv) whose investment decisions are not influenced by the investment decisions of such Holder or any other Affiliate of such Holder that is acting in concert with such Holders in connection with its investment in the Notes.

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

“Secured Indebtedness” means any Indebtedness secured by a Lien other than Indebtedness with respect to Cash Management Obligations.

“Secured Note Documents” means the Notes (including Additional Notes), the Note Guarantees, this Indenture and the Security Documents.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“Securitization Asset” means (a) any accounts receivable, loan receivables, royalty, franchise fee, license fee, patent or other revenue streams and other rights to payment or related assets and the proceeds thereof and (b) all collateral securing such receivable or asset, all contracts and contract rights, guarantees or other obligations in respect of such receivable or asset, lockbox accounts and records with respect to such account or asset and any other assets customarily transferred (or in respect of which security interests are customarily granted) together with accounts or assets in connection with a securitization, factoring or receivable sale transaction.

“Securitization Facility” means any of one or more securitization, financing, factoring or sales transactions, as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, pursuant to which the Company or any of the Subsidiaries (other than Propco or its Subsidiaries) sells, transfers, pledges or otherwise conveys any Securitization Assets (whether now existing or arising in the future) to a Securitization Subsidiary or any other Person.

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any Securitization Asset or Receivables Asset or participation interest therein issued or sold in connection with, and other fees, expenses and charges (including commissions, yield, interest expense and fees and expenses of legal counsel) paid in connection with, any Qualified Securitization Financing or Receivables Facility.

“Securitization Repurchase Obligation” means any obligation of a seller of Securitization Assets or Receivables Assets in a Qualified Securitization Financing or a Receivables Facility to repurchase or otherwise make payments with respect to Securitization Assets 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.

“Securitization Subsidiary” means any Subsidiary of the Company in each case formed for the purpose of and that solely engages in one or more Qualified Securitization Financings or Receivables Facilities and other activities reasonably related thereto or another Person formed for this purpose.

“Security Agreement” means that certain Security Agreement, dated as of the Issue Date, among the Company, the Secured Guarantors and the Collateral Trustee, as amended, amended and restated and otherwise modified pursuant to the terms of this Indenture or the Collateral Trust Agreement, as applicable.

“Security Documents” means, collectively, the Collateral Trust Agreement, the Security Agreement, mortgages and other security or intercreditor agreements relating to the Collateral (including any Parity Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement) and instruments filed and recorded in appropriate jurisdictions to preserve and protect the Liens on the Collateral (including, without limitation, financing statements under the UCC of the relevant states applicable to the Collateral), each for the benefit of the Collateral Trustee, as amended, amended and restated, modified, renewed or replaced from time to time.

“Series of Parity Lien Debt” means, severally, the Notes and each other issue or series of Parity Lien Debt for which a single transfer register is maintained. For the avoidance of doubt, all reimbursement obligations in respect of letters of credit issued pursuant to a Parity Lien Document shall be part of the same Series of Parity Lien Debt as all other Parity Lien Debt incurred pursuant to such Parity Lien Document.

“Short Derivative Instrument” means a Derivative Instrument (i) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to the Performance References and/or (ii) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to the Performance References.

“Significant Subsidiary” means (i) Propco and (ii) any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02(w)(2) of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Issue Date.

“Similar Business” means (a) any businesses, services or activities engaged in by the Company or any of its Subsidiaries or any Associates on the Issue Date, (b) any businesses, services and activities engaged in by the Company or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof and (c) a Person conducting a business, service or activity specified in clauses (a) and (b), and any subsidiary thereof. For the avoidance of doubt, any Person that invests in or owns Capital Stock or Indebtedness of another Person that is engaged in a Similar Business shall be deemed to be engaged in a Similar Business.

“Specified Real Estate Asset” means each mortgaged property described under “Description of Property—Urban Iconic Properties” in the Offering Memorandum.

“Standard Securitization Undertakings” means representations, warranties, covenants, guarantees and indemnities entered into by the Company or any Subsidiary of the Company which the Company has determined in good faith to be customary in a Securitization Facility or Receivables Facility, including those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking or, in the case of a Receivables Facility, a non-credit related recourse accounts receivable factoring arrangement.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Store Collateral” means each mortgaged property described under “Description of Property—Mall Locations” in the Offering Memorandum constituting Collateral and any other properties or assets constituting, part of or related to a retail store that become Collateral in accordance with the Security Documents.

“Store Grader” means Green Street Advisors LLC or any of its successor or assigns.

“Subordinated Indebtedness” means, with respect to any person, any Indebtedness (whether outstanding on the Issue Date or thereafter incurred) which is expressly subordinated in right of payment to the Notes pursuant to a written agreement.

“Subsidiary” means, with respect to any Person:

(1) 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; or

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) 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 interests or otherwise; and

(b) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity; or

(3) at the election of the Company, any partnership, joint venture, limited liability company or similar entity of which such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Taxes” means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

“Transaction Expenses” means any fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) incurred or paid by the Company or any Subsidiary associated or in connection with the Transactions, including any fees, costs and expenses associated with payments or distributions to dissenting stockholders (including in connection with, or as a result of, exercise of dissenters’ or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential) with respect thereto).

“Transactions” means the draw-down on the Revolving Credit Facility in March 2020, the entry into the ABL Credit Facility, the issuance of the Notes, the payment of Transaction Expenses, other related transactions as described in the offering memorandum and the consummation of any other transaction in connection with the foregoing.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended.

“Trust Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such Person’s knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

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

“UCC” means the Uniform Commercial Code (or equivalent statute) as in effect from time to time in the State of New York *provided, however*, that at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of a collateral agent’s security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“Unrestricted Subsidiary” means (1) Macy’s Credit and Customer Services, Inc., (2) any Subsidiary of the Unsecured Guarantor the primary business of which consists of, and is restricted by the charter, partnership agreement, or similar organizational document of such Subsidiary to, financing operations on behalf of the Unsecured Guarantor and its Subsidiaries, and/or purchasing accounts receivable or direct or indirect interests therein, and/or making loans secured by accounts receivable or direct or indirect interests therein (and business related to the foregoing), or which is otherwise primarily engaged in, and restricted by its charter, partnership agreement, or similar organizational document to, the business of a finance company (and business related thereto), which, in accordance with the provisions of this Indenture, has been designated by Board Resolution of the Company as an Unrestricted Subsidiary, in each case unless and until any of the Subsidiaries of the Unsecured Guarantor referred to in the foregoing clauses (a) and (b) is, in accordance with the provisions of this Indenture, designated by a resolution of the Board of Directors of the Unsecured Guarantor as a Restricted Subsidiary, and (3) any Subsidiary of the Unsecured Guarantor of which, in the case of a corporation, more than 50% of the issued and outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation has or might have voting power upon the occurrence of any contingency), or, in the case of any partnership or other legal entity, more than 50% of the ordinary equity capital interests, is at the time directly or indirectly owned or controlled by one or more Unrestricted Subsidiaries and the primary business of which consists of, and is restricted by the charter, partnership agreement, or similar organizational document of such Subsidiary to, financing operations on behalf of the Unsecured Guarantor and its Subsidiaries, and/or purchasing accounts receivable or direct or indirect interests therein, and/or making loans secured by accounts receivable or direct or indirect interests therein (and business related to the foregoing), or which is otherwise primarily engaged in, and restricted by its charter, partnership agreement or similar organizational document to, the business of a finance company (and business related thereto).

“Unsecured Guarantor” means Macy’s Retail Holdings, LLC, together with its successors and assigns.

“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 of the United States of America, which, in either case, are not callable or redeemable at the option of the Company thereof, and shall also include a depositary 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 depositary 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 depositary 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 depositary receipt.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

“Weighted Average Life” means, with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness and (y) the amount of such principal payment by (ii) the sum of all such principal payments.

SECTION 1.2 Other Definitions.

Term	Defined in Section
“ <u>Acceptable Commitment</u> ”	3.5(a)(iii)(B)
“ <u>Accounting Change</u> ”	“GAAP”
“ <u>Accredited Investor Notes</u> ”	2.1(b)
“ <u>Action</u> ”	12.7(u)
“ <u>Additional Restricted Notes</u> ”	2.1(b)
“ <u>Advance Offer</u> ”	3.5
“ <u>Advance Portion</u> ”	3.5
“ <u>Affiliate Transaction</u> ”	3.9(a)
“ <u>Agent Members</u> ”	2.1(e)(ii)
“ <u>Applicable Premium Deficit</u> ”	8.4(a)
“ <u>Approved Foreign Bank</u> ”	“Cash Equivalents”
“ <u>Asset Disposition Offer</u> ”	3.5(a)
“ <u>Authenticating Agent</u> ”	2.2
“ <u>CERCLA</u> ”	12.7(p)
“ <u>Change of Control Offer</u> ”	3.10(a)
“ <u>Change of Control Payment</u> ”	3.10(b)
“ <u>Change of Control Payment Date</u> ”	3.10(b)(ii)
“ <u>Clearstream</u> ”	2.1(b)
“ <u>Covenant Defeasance</u> ”	8.3
“ <u>Defaulted Interest</u> ”	2.14
“ <u>equity incentives</u> ”	“Consolidated Net Income”
“ <u>Euroclear</u> ”	2.1(b)
“ <u>Event of Default</u> ”	6.1(a)
“ <u>Excess Proceeds</u> ”	3.5(a)

Term	Defined in Section
“Global Notes”	2.1(b)
“Guaranteed Obligations”	10.1
“Increased Amount”	3.6(a)
“Initial Default”	6.1(b)
“Initial Lien”	3.6(a)
“Institutional Accredited Investor Global Notes”	2.1(b)
“Institutional Accredited Investor Notes”	2.1(b)
“Issuer Order”	2.2
“Legal Defeasance”	8.2
“Legal Holiday”	13.6
“Notes Register”	2.3
“primary obligations”	“Contingent Obligations”
“protected purchaser”	2.10
“Redemption Date”	5.6(a)
“Registrar”	2.3
“Regulation S Global Note”	2.1(b)
“Regulation S Notes”	2.1(b)
“Related Person”	12.7(b)
“Resale Restriction Termination Date”	2.6(b)
“Restricted Payment”	3.2(a)
“Restricted Period”	2.1(b)
“Rule 144A Global Note”	2.1(b)
“Rule 144A Notes”	2.1(b)
“Security Document Order”	12.7(q)
“Special Interest Payment Date”	2.14(a)

Term	Defined in Section
“Special Record Date”	2.14(a)
“Successor Company”	4.1(a)(i)
“Suspended Covenants”	3.17
“Suspension Period”	3.17
“Treasury Capital Stock”	3.2(b)(ii)

SECTION 1.3 Rules of Construction.

- (a) Unless the context otherwise requires:
- (i) a term has the meaning assigned to it;
 - (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
 - (iii) “or” is not exclusive;
 - (iv) “including” means including without limitation;
 - (v) words in the singular include the plural and words in the plural include the singular;
 - (vi) “will” shall be interpreted to express a command;
 - (vii) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the Issuer dated such date prepared in accordance with GAAP;
 - (viii) the principal amount of any preferred stock shall be (i) the maximum liquidation value of such preferred stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such preferred stock, whichever is greater;
 - (ix) all amounts expressed in this Indenture or in any of the Notes in terms of money refer to the lawful currency of the United States of America;
 - (x) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
 - (xi) except as otherwise stated, (a) references herein to Articles, Sections and Exhibit mean the Articles and Sections of and Exhibits to this Indenture and (b) each reference herein to a particular Article or Section includes the Sections, subsections and paragraphs subsidiary thereto; and
 - (xii) unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

(b) Notwithstanding anything to the contrary herein, in the event any Lien is incurred or other transaction is undertaken in reliance on any ratio based exceptions, thresholds and baskets, such ratio(s) shall be calculated with respect to such incurrence, issuance or other transaction without giving effect to amounts being utilized under any other exceptions, thresholds or baskets (other than ratio based baskets) on the same date. Each Lien incurred and each other transaction undertaken will be deemed to have been incurred, issued or taken first, to the extent available, pursuant to the relevant ratio based test. Any calculation or measure that is determined with reference to the Company's financial statements (including Consolidated EBITDA, Consolidated Interest Expense, Consolidated Net Income, Fixed Charges and Consolidated Total Leverage Ratio) may be determined with reference to the financial statements of a Parent Entity instead, so long as such Parent Entity does not hold any material assets other than, directly or indirectly, the Capital Stock of the Company.

(c) For purposes of making the computation referred to above when such computation is to be made on a "pro forma" basis, any Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, operational changes, business expansions and disposed or discontinued operations that have been made by the Company or any of its Subsidiaries, during the reference period or subsequent to the reference period and on or prior to or simultaneously with any calculation date shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, operational changes, business expansions and disposed or discontinued operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the reference period. If since the beginning of such period any Person that subsequently became a Subsidiary or was merged or amalgamated with or into the Company or any of its Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, amalgamation, consolidation, operational change, business expansion or disposed or discontinued operation that would have required adjustment pursuant to this definition, then all ratios and other calculations shall be calculated giving pro forma effect thereto for such period as if such Investment, acquisition, disposition, merger, amalgamation, consolidation or disposed operation had occurred at the beginning of the reference period.

(d) Notwithstanding anything to the contrary herein, when calculating any ratio based exceptions, thresholds and baskets, such ratio(s), in each case in connection with a Limited Condition Transaction, the date of determination of such ratio and of any Default or Event of Default blocker shall, at the option of the Company, be the date the definitive agreement for such Limited Condition Transaction is entered into and such ratios shall be calculated on a pro forma basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of any Lien) as if they occurred at the beginning of the reference period, and, for the avoidance of doubt, (x) if any such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Company or the target Person or the Collateral Coverage Ratio) at or prior to the consummation of the relevant Limited Condition Transaction, such ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (y) such ratios shall not be tested at the time of consummation of such Limited Condition Transaction or related transactions; *provided*, further, that if the Company elects to have such determinations occur at the time of entry into such definitive agreement, any such transaction shall be deemed to have occurred on the date the definitive agreement is entered into and thereafter for purposes of subsequently calculating any ratios under this Indenture after the date of such agreement and before the consummation of such Limited Condition Transaction, and to the extent baskets were utilized in satisfying any covenants, such baskets shall be deemed utilized, but any calculation of Consolidated Net Income for purposes of making of Restricted Payments by the Company (not related to such Limited Condition Transaction) shall not reflect such Limited Condition Transaction until it is closed.

(e) For purposes of this Indenture, whenever pro forma effect is to be given to a transaction (including the Transactions), the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Company (and may include, for the avoidance of doubt, cost savings, operating expenses reductions and synergies resulting from such transactions which is being given pro forma effect. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the relevant calculation date had been the applicable rate for the entire reference period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed with a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the reference period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Company may designate.

ARTICLE II
THE NOTES

SECTION 2.1 Form, Dating and Terms

(a) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited. The Initial Notes issued on the date hereof will be in an aggregate principal amount of \$1,300,000,000. In addition, the Issuer may issue, from time to time in accordance with the provisions of this Indenture, Additional Notes (as provided herein), subject to compliance with Section 3.6. Furthermore, Notes may be authenticated and delivered upon registration of transfer, exchange or in lieu of, other Notes pursuant to Sections 2.2, 2.6, 2.10, 2.12, 5.5 or 9.4, in connection with an Asset Disposition Offer or Collateral Advance Offer pursuant to Section 3.5 or in connection with a Change of Control Offer pursuant to Section 3.10.

With respect to any Additional Notes, the Issuer shall set forth in one or more indentures supplemental hereto, the following information:

- (A) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;
- (B) the issue price and the issue date of such Additional Notes, including the date from which interest shall accrue; and
- (C) whether such Additional Notes shall be Restricted Notes.

In authenticating and delivering Additional Notes, the Trustee shall be entitled to receive and shall be fully protected in relying upon, in addition to the Opinion of Counsel and Officer's Certificate required by Section 13.2, an Opinion of Counsel as to the due authorization, execution, delivery, validity and enforceability of such Additional Notes.

The Initial Notes and the Additional Notes shall be considered collectively as a single class for all purposes of this Indenture, *provided* that any Additional Notes will not be issued with the same CUSIP, ISIN or other identifying number as the Initial Notes unless such Additional Notes are fungible with the Initial Notes for U.S. federal income tax purposes, or the if the Company otherwise determines that any Additional Notes should be differentiated from any other Notes. Holders of the Initial Notes and the Additional Notes will vote and consent together on all matters to which such Holders are entitled to vote or consent as one class, and none of the Holders of the Initial Notes or the Additional Notes shall have the right to vote or consent as a separate class on any matter to which such Holders are entitled to vote or consent.

(b) The Initial Notes are being offered and sold by the Issuer pursuant to a Purchase Agreement, dated May 27, 2020, among the Issuer and Credit Suisse Securities (USA) LLC and J.P. Morgan Securities LLC, as representatives for the several Initial Purchasers. The Initial Notes and any Additional Notes (if issued as Restricted Notes) (the "Additional Restricted Notes") will be resold initially only to (A) Persons they reasonably believe to be QIBs in reliance on Rule 144A and (B) Non-U.S. Persons in reliance on Regulation S. Such Initial Notes and Additional Restricted Notes may thereafter be transferred to, among others, persons reasonably believed to be QIBs, purchasers in reliance on Regulation S, and AIs and IAIs in accordance with Rule 501 under the Securities Act in each case, in accordance with the procedure described herein. Additional Notes offered after the date hereof may be offered and sold by the Issuer from time to time pursuant to one or more purchase agreements in accordance with applicable law.

Initial Notes and Additional Restricted Notes offered and sold to persons reasonably believed to be QIBs in the United States of America in reliance on Rule 144A (the “Rule 144A Notes”) shall be issued in the form of a permanent global Note substantially in the form of Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, including appropriate legends as set forth in Section 2.1(d) (the “Rule 144A Global Note”), deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The Rule 144A Global Note may be represented by more than one certificate if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Rule 144A Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Notes and any Additional Restricted Notes offered and sold to non-U.S. Persons outside the United States of America (the “Regulation S Notes”) in reliance on Regulation S shall be issued in the form of a permanent global Note substantially in the form of Exhibit A including appropriate legends as set forth in Section 2.1(d) (the “Regulation S Global Note”). Each Regulation S Global Note will be deposited upon issuance with, or on behalf of, the Trustee as custodian for DTC in the manner described in this Article II. Prior to the 40th day after the later of the commencement of the offering of the Initial Notes and the Issue Date (such period through and including such 40th day, the “Restricted Period”), interests in the Regulation S Global Note may only be transferred to non-U.S. persons pursuant to Regulation S, unless exchanged for interests in a Global Note in accordance with the transfer and certification requirements described herein.

Investors may hold their interests in the Regulation S Global Note through organizations other than Euroclear Bank S.A./N.V. (“Euroclear”) or Clearstream Banking, *société anonyme* (“Clearstream”) that are participants in DTC’s system or directly through Euroclear or Clearstream, if they are participants in such systems, or indirectly through organizations which are participants in such systems. If such interests are held through Euroclear or Clearstream, Euroclear and Clearstream will hold such interests in the applicable Regulation S Global Note on behalf of their participants through customers’ securities accounts in their respective names on the books of their respective depositaries. Such depositaries, in turn, will hold such interests in the applicable Regulation S Global Note in customers’ securities accounts in the depositaries’ names on the books of DTC.

The Regulation S Global Note may be represented by more than one certificate if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Notes and Additional Restricted Notes resold to IAIs (the “Institutional Accredited Investor Notes”) in the United States of America will be issued in the form of a permanent global Note substantially in the form of Exhibit A including appropriate legends as set forth in Section 2.1(d) (the “Institutional Accredited Investor Global Note”) deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The Institutional Accredited Investor Global Note may be represented by more than one certificate, if so required by DTC’s rules regarding the maximum principal amount to be represented by a single certificate. The aggregate principal amount of the Institutional Accredited Investor Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for DTC or its nominee, as hereinafter provided.

Initial Notes and Additional Restricted Notes resold to AIs in the United States of America will be issued in the form of a Definitive Note substantially in the form of Exhibit A including the legend as set forth in Section 2.1(d) (an “Accredited Investor Note”).

The Rule 144A Global Note, the Regulation S Global Note and the Institutional Accredited Investor Global Note are sometimes collectively herein referred to as the “Global Notes.”

The principal of (and premium, if any) and interest on the Notes shall be payable at the office or agency of the Paying Agent designated by the Issuer maintained for such purpose (which shall initially be the Corporate Trust Office of the Trustee maintained for such purpose, it being understood that, in acting hereunder and in connection with the Notes, the Paying Agent shall act solely as an agent of the Company and will not thereby assume any obligations towards or relationship of agency or trust for or with any Holder), or at such other office or agency of the Issuer as may be maintained for such purpose pursuant to Section 2.3; *provided, however*, that, at the option of the Paying Agent, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Notes Register or (ii) wire transfer to an account located in the United States maintained by the payee, subject to the last sentence of this paragraph. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by wire transfer of immediately available funds to the accounts specified by DTC. Payments in respect of Notes represented by Definitive Notes (including principal, premium, if any, and interest) held by a Holder of at least \$1,000,000 aggregate principal amount of Notes represented by Definitive Notes will be made in accordance with the Notes Register, or by wire transfer to a Dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee or Paying Agent, as applicable, may accept in its discretion).

The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage, in addition to those set forth on Exhibit A and in Section 2.1(d). The Issuer shall approve any notation, endorsement or legend on the Notes. Each Note shall be dated the date of its authentication. The terms of the Notes set forth in Exhibit A are part of the terms of this Indenture and, to the extent applicable, the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to be bound by such terms.

(c) Denominations. The Notes shall be issuable only in fully registered form in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

(d) Restrictive and Global Note Legends.

(i) Unless and until (A) an Initial Note or an Additional Note issued as a Restricted Note is sold under an effective registration statement or (B) the Issuer receives an Opinion of Counsel satisfactory to it to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act, the Rule 144A Global Note, the Regulation S Global Note, the Institutional Accredited Investor Global Note and the Accredited Investor Note shall each bear the following legend on the face thereof:

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. 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, REGISTRATION AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”)), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT (“REGULATION S”), OR (C) IT IS AN “ACCREDITED INVESTOR” (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN “ACCREDITED INVESTOR”)), (2) AGREES TO OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER SUCH NOTE PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD THEN IMPOSED BY RULE 144 UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION) ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE NOTES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER 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) OUTSIDE THE UNITED STATES PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION PURSUANT TO REGULATION S MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 UNDER THE SECURITIES ACT, (E) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON IT BEHALF BY A U.S. BROKER DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS NOTE (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS NOTE) OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER’S OR THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM.

- (ii) Each Global Note, whether or not an Initial Note, shall bear the following legend on the face thereof:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), NEW YORK, NEW YORK, TO THE ISSUER OR THE AGENT OF THE ISSUER 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.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

In the case of the Regulation S Global Note: 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.

- (e) Book-Entry Provisions. (i) This Section 2.1(e) shall apply only to Global Notes deposited with the Trustee, as custodian for DTC, and for which the applicable procedures of DTC shall govern.

(i) Each Global Note initially shall (x) be registered in the name of DTC or the nominee of DTC, (y) be delivered to the Notes Custodian for DTC and (z) bear legends as set forth in Section 2.1(d)(ii). Transfers of a Global Note (but not a beneficial interest therein) will be limited to transfers thereof in whole, but not in part, to DTC, its successors or its respective nominees, except as set forth in Section 2.1(e)(iv) and (f). If a beneficial interest in a Global Note is transferred or exchanged for a beneficial interest in another Global Note, the Notes Custodian will (x) record a decrease in the principal amount of the Global Note being transferred or exchanged equal to the principal amount of such transfer or exchange and (y) record a like increase in the principal amount of the other Global Note. Any beneficial interest in one Global Note that is transferred to a Person who takes delivery in the form of an interest in another Global Note, or exchanged for an interest in another Global Note, will, upon transfer or exchange, cease to be an interest in such Global Note and become an interest in the other Global Note and, accordingly, will thereafter be subject to all transfer and exchange restrictions, if any, and other procedures applicable to beneficial interests in such other Global Note for as long as it remains such an interest.

(ii) Members of, or participants in, DTC (“Agent Members”) shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC or by the Notes Custodian as the custodian of DTC or under such Global Note, and DTC may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Note.

(iii) In connection with any transfer of a portion of the beneficial interest in a Global Note pursuant to Section 2.1(f) to beneficial owners who are required to hold Definitive Notes, the Notes Custodian shall reflect on its books and records the date and a decrease in the principal amount of such Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, one or more Definitive Notes of like tenor and amount.

(iv) In connection with the transfer of an entire Global Note to beneficial owners pursuant to Section 2.1(f), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations.

(v) The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(vi) Any Holder of a Global Note shall, by acceptance of such Global Note, agree that transfers of beneficial interests in such Global Note may be effected only through a book-entry system maintained by (A) the Holder of such Global Note (or its agent) or (B) any holder of a beneficial interest in such Global Note, and that ownership of a beneficial interest in such Global Note shall be required to be reflected in a book entry.

(f) Definitive Notes. Except as provided below, owners of beneficial interests in Global Notes will not be entitled to receive Definitive Notes. Definitive Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Note if (A) DTC notifies the Issuer that it is unwilling or unable to continue as Depositary for such Global Note or DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depositary, and in each case a successor depositary is not appointed by the Issuer within 90 days of such notice, (B) the Issuer in its sole discretion executes and deliver to the Trustee and Registrar an Officer’s Certificate stating that such Global Note shall be so exchangeable or (C) an Event of Default has occurred and is continuing and the Registrar has received a written request from DTC. In the event of the occurrence of any of the events specified in the second preceding sentence or in clause (A), (B) or (C) of the preceding sentence, the Issuer shall promptly make available to the Registrar a reasonable supply of Definitive Notes. In addition, any Note transferred to an affiliate (as defined in Rule 405 under the Securities Act) of the Issuer or evidencing a Note that has been acquired by an affiliate in a transaction or series of transactions not involving any public offering must, until one year after the last date on which either the Issuer or any affiliate of the Issuer was an owner of the Note, be in the form of a Definitive Note and bear the legend regarding transfer restrictions in Section 2.1(d)(i). If required to do so pursuant to any applicable law or regulation, beneficial owners may also obtain Definitive Notes in exchange for their beneficial interests in a Global Note upon written request in accordance with DTC’s and the Registrar’s procedures.

(i) Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to Section 2.1(e) shall, except as otherwise provided by Section 2.6(d), bear the applicable legend regarding transfer restrictions applicable to the Global Note set forth in Section 2.1(d)(i).

(ii) If a Definitive Note is transferred or exchanged for a beneficial interest in a Global Note, the Trustee will (x) cancel such Definitive Note, (y) record an increase in the principal amount of such Global Note equal to the principal amount of such transfer or exchange and (z) in the event that such transfer or exchange involves less than the entire principal amount of the canceled Definitive Note, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to the transferring Holder a new Definitive Note representing the principal amount not so transferred.

(iii) If a Definitive Note is transferred or exchanged for another Definitive Note, (x) the Trustee will cancel the Definitive Note being transferred or exchanged, (y) the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, one or more new Definitive Notes in authorized denominations having an aggregate principal amount equal to the principal amount of such transfer or exchange to the transferee (in the case of a transfer) or the Holder of the canceled Definitive Note (in the case of an exchange), registered in the name of such transferee or Holder, as applicable, and (z) if such transfer or exchange involves less than the entire principal amount of the canceled Definitive Note, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder thereof, one or more Definitive Notes in authorized denominations having an aggregate principal amount equal to the untransferred or unexchanged portion of the canceled Definitive Notes, registered in the name of the Holder thereof.

(iv) Notwithstanding anything to the contrary in this Indenture, in no event shall a Definitive Note be delivered upon exchange or transfer of a beneficial interest in the Regulation S Global Note prior to the end of the Restricted Period.

SECTION 2.2 Execution and Authentication. One Officer of the Issuer shall sign the Notes for the Issuer by manual, facsimile or electronic signature. If the Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized officer of the Trustee, acting in all instances of authentication hereunder upon an Issuer Order (as defined below), authenticates the Note. The Trustee may authenticate the Note by manual, facsimile or electronic signature. Electronically imaged signatures such as .pdf files, faxed signatures or other electronic signatures to the Note and the authentication pages to the Note shall have the same effect as original signatures. The signature of the Trustee on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture. A Note shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery: (1) Initial Notes for original issue on the Issue Date in an aggregate principal amount of \$1,300,000,000, and (2) subject to Section 3.6, Additional Notes for original issue in an unlimited principal amount, in each case upon a written order of the Issuer signed by one Officer (the "Issuer Order"); provided that, with respect to the Initial Notes issued on the Issue Date described in clause (1) above, the Issuer Order shall be signed by one Officer of Merger Sub, requesting the authentication of the Initial Notes to be executed by the Company. Such Issuer Order shall specify whether the Notes will be in the form of Definitive Notes or Global Notes, the amount of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated, the Holder of the Notes and whether the Notes are to be Initial Notes or Additional Notes.

The Trustee may appoint an agent (the "Authenticating Agent") reasonably acceptable to the Issuer to authenticate the Notes. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

In case any of the Issuer or any Guarantor, pursuant to Article IV or Section 10.2, as applicable, shall be consolidated or merged with or into any other Person or shall convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to any Person, and the successor Person resulting from such consolidation, or surviving such merger, or into which the Issuer or any Guarantor shall have been merged, or the Person which shall have received a conveyance, transfer, lease or other disposition as aforesaid, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Notes authenticated or delivered prior to such consolidation, merger, conveyance, transfer, lease or other disposition may (but shall not be required), from time to time, at the request of the successor Person, be exchanged for other Notes executed in the name of the successor Person with such changes in phraseology and form as may be appropriate to reflect such successor Person, but otherwise in substance of like tenor as the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon the Issuer Order of the successor Person, shall authenticate and make available for delivery Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a successor Person pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Notes, such successor Person, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time outstanding for Notes authenticated and delivered in such new name.

SECTION 2.3 Registrar and Paying Agent. The Issuer shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the “Registrar”) and an office or agency where Notes may be presented for payment. The Registrar, which shall initially be the Trustee (in such capacity, the “Registrar”) (it being understood that, in acting hereunder and in connection with the Notes, the Registrar shall act solely as agent of the Company and will not thereby assume any obligations towards or relationship of agency or trust for or with any Holder), shall keep a register of the Notes and of their transfer and exchange (the “Notes Register”). The Issuer may have one or more co-registrars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent and the term “Registrar” includes any co-registrar.

The Issuer shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee in writing of the name and address of each such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.6. The Issuer or any Guarantor may act as Paying Agent, Registrar or Transfer Agent.

The Issuer initially appoints DTC to act as Depositary with respect to the Global Notes. The Issuer initially appoints the Trustee as Registrar and Paying Agent for the Notes. The Issuer may change any Registrar or Paying Agent without prior notice to the Holders, but upon written notice to such Registrar or Paying Agent and to the Trustee; *provided, however*, that no such removal shall become effective until (i) acceptance of any appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee and the passage of any waiting or notice periods required by DTC procedures or (ii) written notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuer and the Trustee.

SECTION 2.4 Paying Agent to Hold Money in Trust. By no later than 11:00 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 Issuer shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal, premium or interest when due. Any funds received after 11:00 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 shall be paid on the immediately succeeding Business Day. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of, premium, if any, or interest on the Notes (whether such assets have been distributed to it by the Issuer or other obligors on the Notes), shall notify the Trustee in writing of any default by the Issuer or any Guarantor in making any such payment and shall during the continuance of any default by the Issuer (or any other obligor upon the Notes) in the making of any payment in respect of the Notes, upon the written request of the Trustee, forthwith deliver to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Notes together with a full accounting thereof. If the Issuer or a Subsidiary of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds or assets disbursed by such Paying Agent. Upon complying with this Section 2.4, the Paying Agent (if other than the Issuer or a Subsidiary of the Issuer) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.5 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer, on its own behalf and on behalf of each of the Guarantors, shall furnish or cause the Registrar to furnish to the Trustee, in writing at least five (5) 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.

SECTION 2.6 Transfer and Exchange.

(a) A Holder may transfer a Note (or a beneficial interest therein) to another Person or exchange a Note (or a beneficial interest therein) for another Note or Notes of any authorized denomination by presenting to the Registrar a written request therefor stating the name of the proposed transferee or requesting such an exchange, accompanied by any certification, opinion or other document required by this Section 2.6. The Registrar will promptly register any transfer or exchange that meets the requirements of this Section 2.6 by noting the same in the Notes Register maintained by the Registrar for the purpose, and no transfer or exchange will be effective until it is registered in such Notes Register. The transfer or exchange of any Note (or a beneficial interest therein) may only be made in accordance with this Section 2.6 and Section 2.1(e) and 2.1(f), as applicable, and, in the case of a Global Note (or a beneficial interest therein), the applicable rules and procedures of DTC, Euroclear and Clearstream. The Registrar shall refuse to register any requested transfer or exchange that does not comply with this paragraph.

(b) Transfers of Rule 144A Notes and Institutional Accredited Investor Notes. The following provisions shall apply with respect to any proposed registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Note prior to the date that is one year after the later of the date of its original issue and the last date on which the Issuer or any Affiliate of the Issuer was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date"):

(i) a registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to a QIB shall be made upon the representation of the transferee in the form as set forth on the reverse of the Note that it is purchasing for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; *provided* that no such written representation or other written certification shall be required in connection with the transfer of a beneficial interest in the Rule 144A Global Note to a transferee in the form of a beneficial interest in that Rule 144A Global Note in accordance with this Indenture and the applicable procedures of DTC;

(ii) a registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Global Note or a beneficial interest therein to an IAI or an AI shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.7 or Section 2.9, respectively, from the proposed transferee and the delivery of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer; and

(iii) a registration of transfer of a Rule 144A Note or an Institutional Accredited Investor Note or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.8 from the proposed transferee and the delivery of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer.

(c) Transfers of Regulation S Notes. The following provisions shall apply with respect to any proposed transfer of a Regulation S Note prior to the expiration of the Restricted Period:

(i) a transfer of a Regulation S Note or a beneficial interest therein to a QIB shall be made upon the representation of the transferee, in the form of assignment on the reverse of the certificate, that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A, is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) a transfer of a Regulation S Note or a beneficial interest therein to an IAI or an AI shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.7 or Section 2.9, respectively, from the proposed transferee and the delivery of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer; and

(iii) a transfer of a Regulation S Note or a beneficial interest therein to a Non-U.S. Person shall be made upon receipt by the Registrar or its agent of a certificate substantially in the form set forth in Section 2.8 hereof from the proposed transferee and receipt by the Registrar or its agent of an Opinion of Counsel, certification and/or other information satisfactory to the Issuer.

After the expiration of the Restricted Period, interests in the Regulation S Note may be transferred in accordance with applicable law without requiring the certification set forth in Section 2.8 or any additional certification.

(d) Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes not bearing a Restricted Notes Legend, the Registrar shall deliver Notes that do not bear a Restricted Notes Legend. Upon the transfer, exchange or replacement of Notes bearing a Restricted Notes Legend, the Registrar shall deliver only Notes that bear a Restricted Notes Legend unless (i) an Initial Note is being transferred pursuant to an effective registration statement, (ii) Initial Notes are being exchanged for Notes that do not bear the Restricted Notes Legend in accordance with Section 2.6(e) or (iii) there is delivered to the Registrar an Opinion of Counsel reasonably satisfactory to the Issuer to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act. Any Additional Notes sold in a registered offering shall not be required to bear the Restricted Notes Legend.

(e) Retention of Written Communications. The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.1 or this Section 2.6. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications, at the Issuer’s expense, at any reasonable time upon the giving of reasonable prior written notice to the Registrar.

(f) Obligations with Respect to Transfers and Exchanges of Notes. To permit registrations of transfers and exchanges, the Issuer shall, subject to the other terms and conditions of this Article II, execute and the Trustee shall authenticate Definitive Notes and Global Notes at the Issuer’s and the Registrar’s written request.

No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer and the Trustee may require the Holder to pay a sum sufficient to cover any transfer tax assessments or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Sections 2.2, 2.6, 2.10, 2.12, 3.5, 5.5 or 9.4). For the avoidance of doubt, neither the Trustee, acting in any of its capacities hereunder, nor any of its agents shall have any responsibility for and shall be fully indemnified by such Holder against any such transfer taxes, assessments or similar governmental charges payable upon any exchange or transfer of any Notes.

The Issuer (and the Registrar) shall not be required to register the transfer of or exchange of any Note (A) for a period beginning (1) fifteen (15) calendar days before the mailing (or electronic delivery) of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing (or electronic delivery) or (2) fifteen (15) calendar days before an interest payment date and ending on such interest payment date or (B) called for redemption, except the unredeemed portion of any Note being redeemed in part.

Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Note is registered as the owner of such Note for the purpose of receiving payment of principal of, premium, if any, and (subject to paragraph 2 of the forms of Notes attached hereto as Exhibit A) interest on such Note and for all other purposes whatsoever, including without limitation the transfer or exchange of such Note, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to Section 2.1(f) shall, except as otherwise provided by Section 2.6(d), bear the applicable legend regarding transfer restrictions applicable to the Definitive Note set forth in Section 2.1(d)(i).

All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(g) No Obligation of the Trustee. (1) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in, DTC or other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption or purchase) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be DTC or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

Neither the Registrar nor the Trustee shall have any 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 DTC participants, members or beneficial owners in any Global Note) 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. Neither the Trustee nor any of its agents shall have any responsibility for any actions taken or not taken by DTC.

SECTION 2.7 Form of Certificate to be Delivered in Connection with Transfers to IAIs

[Date]

Macy's, Inc.
151 West 34th Street
New York, New York 10001
Attention: Chief Financial Officer
Attention: Secretary

U.S. Bank National Association, as Trustee
Global Corporate Trust
111 Fillmore Avenue, St. Paul, MN 55107
Attn: Macy's, Inc.

Re: Macy's, Inc. (the "Issuer")

Ladies and Gentlemen:

This certificate is delivered to request a transfer of \$[] principal amount of the 8.375% Senior Secured Notes due 2025 (the “Notes”) of Macy’s, Inc. (the “Issuer”).

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the “Securities Act”)) purchasing for our own account or for the account of such an institutional “accredited investor” of at least \$250,000 principal amount of the Notes, and we are acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of our investment in the Notes and we invest in or purchase securities similar to the Notes in the normal course of our business. We and any accounts for which we are acting are each able to bear the economic risk of our or its investment.
2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Issuer or any affiliate of the Issuer was the owner of such Notes (or any predecessor thereto) (the “Resale Restriction Termination Date”) only (a) to the Issuer or any Subsidiary thereof, (b) pursuant to an effective registration statement under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person we reasonably believe is a “qualified institutional buyer” under Rule 144A of the Securities Act (a “QIB”) that is purchasing for its own account or for the account of a QIB and 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 purchasing for its own account or for the account of such an institutional “accredited investor,” in each case in a minimum principal amount of Notes of \$250,000 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 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of our property or the property of such investor account or accounts be at all times within our or their control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made pursuant to clause (e) above prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuer and the Trustee, which shall provide, among other things, that the transferee is an institutional “accredited investor” (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuer and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Notes pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuer.

3. We [are][are not] an Affiliate of the Issuer.

TRANSFeree: _____

BY: _____

[Date]

Macy's, Inc.
151 West 34th Street
New York, New York 10001
Attention: Chief Financial Officer
Attention: Secretary

U.S. Bank National Association, as Trustee
Global Corporate Trust
111 Fillmore Avenue, St. Paul, MN 55107
Attn: Macy's, Inc.

Re: Macy's, Inc. (the "Issuer")

8.375% Senior Secured Notes due 2025 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of \$[] aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S ("Regulation S") under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

- (a) the offer of the Notes was not made to a person in the United States;
- (b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;
- (c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(a)(2) or Rule 904(a)(2) of Regulation S, as applicable; and
- (d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(b)(2), Rule 903(b)(3) or Rule 904(b)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(b)(2), Rule 903(b)(3) or Rule 904(b)(1), as the case may be.

We also hereby certify that we [are][are not] an Affiliate of the Issuer and, to our knowledge, the transferee of the Notes [is][is not] an Affiliate of the Issuer.

The Trustee and the Issuer are entitled to conclusively rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate and not otherwise defined herein have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____
Authorized Signature

[Date]

Macy's, Inc.
151 West 34th Street
New York, New York 10001
Attention: Chief Financial Officer
Attention: Secretary

U.S. Bank National Association, as Trustee
Global Corporate Trust
111 Fillmore Avenue, St. Paul, MN 55107
Attn: Macy's, Inc.

Re: Macy's, Inc. (the "Issuer")

Ladies and Gentlemen:

This certificate is delivered to request a transfer of \$[] principal amount of the 8.375% Senior Secured Notes due 2025 (the "Notes") of Macy's, Inc. (the "Issuer").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

4. I am an "accredited investor" (as defined in Rule 501(a)(4) under the U.S. Securities Act of 1933, as amended (the "Securities Act")) and I am acquiring the Notes not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. I have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of my investment in the Notes and I invest in or purchase securities similar to the Notes in the normal course of my business. I am able to bear the economic risk of my investment.
5. I understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. I agree on my own behalf to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Issuer or any affiliate of the Issuer was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only (a) to the Issuer or any Subsidiary thereof, (b) pursuant to an effective registration statement under the Securities Act, (c) in a transaction complying with the requirements of Rule 144A under the Securities Act, to a person I reasonably believe is a "qualified institutional buyer" under Rule 144A of the Securities Act (a "QIB") that is purchasing for its own account or for the account of a QIB and 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 purchasing for its own account or for the account of such an institutional "accredited investor," in each case in a minimum principal amount of Notes of \$200,000 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 or (f) pursuant to any other available exemption from the registration requirements of the Securities Act, subject in each of the foregoing cases to any requirement of law that the disposition of my property be at all times within my control and in compliance with any applicable state securities laws. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. Each purchaser acknowledges that the Issuer and the Trustee reserve the right prior to any offer, sale or other transfer prior to the Resale Termination Date of the Notes pursuant to clauses (d), (e) or (f) above to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuer.

6. I understand and acknowledge that upon the issuance thereof, and until such time as the same is no longer required under applicable requirements of the Securities Act or state securities laws, the Notes that I acquire will be certificated Notes that will bear, and all certificates issued in exchange therefor or in substitution thereof will bear, a restrictive legend set forth in Section 2.1(d) of the Indenture.
7. I [am][am not] an Affiliate of the Issuer.

TRANSFeree: _____

BY: _____

SECTION 2.10 Mutilated, Destroyed, Lost or Stolen Notes

If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee, upon receipt of an Issuer Order, shall authenticate a replacement Note if the requirements of Section 8-405 of the UCC are met, such that the Holder (a) satisfies the Issuer and the Trustee that such Note has been lost, destroyed or wrongfully taken within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar has not registered a transfer prior to receiving such notification, (b) makes such request to the Issuer and the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the UCC (a "protected purchaser"), (c) satisfies any other reasonable requirements of the Trustee and (d) provides an indemnity bond, as more fully described below; *provided, however*, if after the delivery of such replacement Note, a protected purchaser of the Note for which such replacement Note was issued presents for payment or registration such replaced Note, the Trustee and/or the Issuer shall be entitled to recover such replacement Note from the Person to whom it was issued and delivered or any Person taking therefrom, except a protected purchaser, and shall be entitled to recover upon the security and/or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Issuer or the Trustee in connection therewith. Such Holder shall furnish an indemnity bond sufficient in the judgment of the (i) Trustee to protect the Trustee and (ii) the Issuer and the Trustee to protect the Issuer, the Trustee, the Paying Agent and the Registrar, from any loss which any of them may suffer if a Note is replaced, including, without limitation, any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee, the Paying Agent and the Registrar and their respective counsels) in connection therewith, and, in the absence of notice to the Issuer, any Guarantor or the Trustee that such Note has been acquired by a protected purchaser, the Issuer shall execute, and upon receipt of an Issuer Order, the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.10, the Issuer may require that such Holder pay a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of counsel and of the Trustee) in connection therewith.

Subject to the proviso in the initial paragraph of this Section 2.10, every new Note issued pursuant to this Section 2.10, in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuer, any Guarantor (if applicable) and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.10 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 2.11 Outstanding Notes. Notes outstanding at any time are all Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those paid pursuant to Section 2.10 and those described in this Section 2.11 as not outstanding. A Note does not cease to be outstanding in the event the Issuer or an Affiliate of the Issuer holds the Note; *provided, however*, that (i) for purposes of determining which are outstanding for consent or voting purposes hereunder, the provisions of Section 13.4 shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the Holders of the requisite principal amount of outstanding Notes are present at a meeting of Holders of Notes for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Notes which a Trust Officer of the Trustee actually knows to be held by the Issuer or an Affiliate of the Issuer shall not be considered outstanding.

If a Note is replaced pursuant to Section 2.10 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Note is held by a protected purchaser. A mutilated Note ceases to be outstanding upon surrender of such Note and replacement pursuant to Section 2.10.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a Redemption Date or maturity date, money sufficient to pay all principal, premium, if any, and accrued interest payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.12 Temporary Notes. In the event that Definitive Notes are to be issued under the terms of this Indenture, until such Definitive Notes are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Notes. Temporary Notes shall be substantially in the form, and shall carry all rights, of Definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Notes. After the preparation of Definitive Notes, the temporary Notes shall be exchangeable for Definitive Notes upon surrender of the temporary Notes at any office or agency maintained by the Issuer for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuer shall execute, and the Trustee shall, upon receipt of an Issuer Order, authenticate and make available for delivery in exchange therefor, one or more Definitive Notes representing an equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of Definitive Notes.

SECTION 2.13 Cancellation. The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and dispose of such Notes in accordance with its internal policies and customary procedures (subject to the record retention requirements of the Exchange Act and the Trustee). If the Issuer or any Guarantor acquires any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.13. The Issuer may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, transferred, redeemed, repurchased or canceled, such Global Note shall be returned by DTC to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Notes Custodian for such Global Note) with respect to such Global Note, by the Trustee or the Notes Custodian, to reflect such reduction.

SECTION 2.14 Payment of Interest; Defaulted Interest. Interest on any Note which is payable, and is punctually paid or duly provided for, on any interest payment date shall 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 payment at the office or agency of the Issuer maintained for such purpose pursuant to Section 2.3.

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 shall forthwith cease to be payable to the Holder on the regular record date, 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") shall be paid by the Issuer, at its election, as provided in clause(a) or (b) below:

(a) The Issuer 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 shall be fixed in the following manner. The Issuer shall 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) of the proposed payment (the "Special Interest Payment Date"), and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee 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 Section 2.14(a). Thereupon the Issuer shall fix a record date (the "Special Record Date") for the payment of such Defaulted Interest, which date shall be not more than twenty (20) calendar days and not less than fifteen (15) calendar days prior to the Special Interest Payment Date and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment. The Issuer shall promptly notify the Trustee in writing of such Special Record Date, and in the name and at the expense of the Issuer, the Trustee shall 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 ten (10) calendar 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 shall 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 shall no longer be payable pursuant to the provisions in Section 2.14(b).

(b) The Issuer 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 written notice given by the Issuer to the Trustee of the proposed payment pursuant to this Section 2.14(b), such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section 2.14, each Note delivered under this Indenture upon registration of, transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.15 CUSIP and ISIN Numbers.

The Issuer in issuing the Notes may use "CUSIP" and "ISIN" numbers and, if so, the Trustee shall use "CUSIP" and "ISIN" numbers in notices of redemption or purchase as a convenience to Holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption or purchase and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption or purchase shall not be affected by any defect in or omission of such CUSIP and ISIN numbers. The Issuer shall promptly notify the Trustee in writing of any change in the CUSIP and ISIN numbers.

ARTICLE III

COVENANTS

SECTION 3.1 Payment of Notes. The Issuer shall 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 shall be considered paid on the date due if by 11:00 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 Issuer shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Issuer may, to the extent it is 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.

SECTION 3.2 Limitation on Company Restricted Payments.

(a) The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any distribution on or in respect of the Company's Capital Stock (including any such payment in connection with any merger or consolidation involving the Company) except dividends, payments or distributions payable in Capital Stock of the Company (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Company; or

(ii) purchase, repurchase, redeem, retire or otherwise acquire or retire for value any Capital Stock of the Company held by Persons other than a Subsidiary of the Company,

(any such dividend, distribution, payment, purchase, repurchase, redemption, retirement or other acquisition referred to in clauses (i) and (ii) above are referred to herein as a "Restricted Payment"), if at the time the Company makes such Restricted Payment:

(A) an Event of Default shall have occurred and be continuing (or would immediately thereafter result therefrom);

(B) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the Issue Date (and not returned or rescinded) (including Permitted Payments made pursuant to Section 3.2(b)(i) (without duplication), but excluding all other Restricted Payments permitted by Section 3.2(b)) would exceed the sum of (without duplication):

(1) 50% of Consolidated Net Income of the Company for the period (treated as one accounting period) from October 31, 2020 to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which consolidated financial statements are available (which may be internal financial statements), or in the event such Consolidated Net Income is a deficit for any fiscal quarter, minus 100% of such deficit;

(2) 100% of the aggregate amount of cash, and the fair market value of property or assets or marketable securities, received by the Company from the issue or sale of its Capital Stock or as the result of a merger or consolidation with another Person subsequent to the Issue Date or otherwise contributed to the equity (in each case other than through the issuance of Disqualified Stock or Designated Preferred Stock) of the Company or a Subsidiary of the Company (including the aggregate principal amount of any Indebtedness of the Company or a Subsidiary contributed to the Company or a Subsidiary for cancellation) or that becomes part of the capital of the Company or a Subsidiary through consolidation or merger subsequent to the Issue Date (other than (x) net cash proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock to a Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Subsidiary of the Company, (y) cash or property or assets or marketable securities to the extent that any Restricted Payment has been made from such proceeds in reliance on Section 3.2(b)(vi) and (z) Excluded Contributions); and

(3) 100% of the aggregate amount of cash, and the fair market value of property or assets or marketable securities, received by the Company or any Subsidiary of the Company from the issuance or sale (other than to the Company or a Subsidiary or an employee stock ownership plan or trust established by the Company or any Subsidiary of the Company for the benefit of their employees to the extent funded by the Company or any Subsidiary of the Company) by the Company or any Subsidiary of the Company subsequent to the Issue Date of any Indebtedness, Disqualified Stock or Designated Preferred Stock that has been converted into or exchanged for Capital Stock of the Company (other than Disqualified Stock or Designated Preferred Stock) plus, without duplication, the amount of any cash, and the fair market value of property or assets or marketable securities, received by the Company or any Subsidiary upon such conversion or exchange; or

(C) such Restricted Payment is made prior to October 31, 2020.

(b) Section 3.2(a) will not prohibit any of the following (collectively, “Permitted Payments”):

(i) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture or the redemption, repurchase or retirement of Indebtedness if, at the date of any redemption notice, such payment would have complied with the provisions of this Indenture as if it were and is deemed at such time to be a Restricted Payment at the time of such notice;

(ii) (a) any prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock, including any accrued and unpaid dividends thereon (“Treasury Capital Stock”) made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company or any Parent Entity to the extent contributed to the Company (in each case, other than Disqualified Stock or Designated Preferred Stock) (“Refunding Capital Stock”), or (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Company or to an employee stock ownership plan or any trust established by the Company or any of its Subsidiaries);

(iii) any prepayment, purchase, repurchase, exchange, redemption, defeasance, discharge, retirement or other acquisition of Preferred Stock of the Company made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Company;

(iv) a Restricted Payment to pay for the prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition of Capital Stock (other than Disqualified Stock) of the Company or any Parent Entity held by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity pursuant to any management equity plan, stock option plan, phantom equity plan or any other management, employee benefit, or other compensatory plan or agreement (and any successor plans or arrangements thereto), employment, termination or severance agreement, or any stock subscription or equityholder agreement (including, for the avoidance of doubt, any principal and interest payable on any Indebtedness issued by the Company or any Parent Entity in connection with such prepayment, purchase, repurchase, redemption, defeasance, discharge, retirement or other acquisition), including any Capital Stock rolled over, accelerated or paid out by or to any employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or any Parent Entity in connection with any transaction; *provided, however*, that the aggregate Restricted Payments made under this clause (iv) do not exceed the greater of \$50.0 million and 2.5% of LTM EBITDA in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum of the greater of \$100.0 million and 5.0% of LTM EBITDA in any calendar year); *provided, further*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock) of the Company and, to the extent contributed to the capital of the Company, the cash proceeds from the sale of Capital Stock of any Parent Entity, in each case, to any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Entity that occurred after the Issue Date, to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the payment of Restricted Payments by virtue of Section 3.2(a)(ii)(B); *plus*

(B) the cash proceeds of key man life insurance policies received by the Company or its Subsidiaries (or any Parent Entity to the extent contributed to the Company) after the Issue Date;

provided that the Company may elect to apply all or any portion of the aggregate increase contemplated by subclauses (a) and (b) of this clause in any fiscal year; *provided, further*, that (i) cancellation of Indebtedness owing to the Company or any Subsidiary of the Company from any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company or Subsidiaries of the Company or any Parent Entity in connection with a repurchase of Capital Stock of the Company or any Parent Entity and (ii) the repurchase of Capital Stock deemed to occur upon the exercise of options, warrants or similar instruments if such Capital Stock represents all or a portion of the exercise price thereof and payments, in lieu of the issuance of fractional shares of such Capital Stock or withholding to pay other taxes payable in connection therewith, in the case of each of clauses (i) and (ii), will not be deemed to constitute a Restricted Payment for purposes of this Section 3.2 or any other provision of this Indenture;

(v) payments made or expected to be made by the Company or any Subsidiary in respect of withholding or similar taxes payable in connection with the exercise or vesting of Capital Stock or any other equity award by any future, present or former employee, director, officer, manager, contractor, consultant or advisor (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any Subsidiary of the Company or any Parent Entity and purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise, conversion or exchange of stock options, warrants, equity-based awards or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof or payments in respect of withholding or similar taxes payable upon exercise or vesting thereof;

(vi) on or after October 31, 2020, other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (vi) not to exceed 6% of Market Capitalization;

(vii) payments by the Company, or loans, advances, dividends or distributions to any Parent Entity to make payments, to holders of Capital Stock of the Company or any Parent Entity in lieu of the issuance of fractional shares of such Capital Stock; *provided, however*, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this Section 3.2 or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Company);

(viii) Restricted Payments that are made (a) in an amount not to exceed the amount of Excluded Contributions or (b) in an amount equal to the amount of net cash proceeds from an asset sale or disposition in respect of property or assets acquired, if the acquisition of such property or assets was financed with Excluded Contributions;

(ix) (a) prior to October 31, 2020, Restricted Payments in an aggregate amount outstanding at the time made not to exceed \$25 million at such time; and (b) on or after October 31, 2020, Restricted Payments (i) in an aggregate amount outstanding at the time made not to exceed the greater of \$300 million and 15.0% of LTM EBITDA at such time, and (ii) so long as, immediately after giving pro forma effect to the payment of any such Restricted Payment and the incurrence of any Indebtedness on or after October 31, 2020, the net proceeds of which are used to make such Restricted Payment, the Consolidated Total Leverage Ratio shall be no greater than 1.50 to 1.00;

(x) mandatory redemptions of Disqualified Stock issued as a Restricted Payment;

(xi) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of dissenters' or appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with a merger, amalgamation, consolidation or transfer of assets that complies with Section 4.1 hereof;

(xii) other Restricted Payments in an aggregate amount not to exceed an amount equal to the aggregate amount of Declined Excess Proceeds;

(xiii) any Restricted Payment made in connection with a Permitted Intercompany Activity, Permitted Tax Restructuring or related transactions;

(xiv) any Restricted Payment for Related Taxes; and

(xv) on or after February 1, 2021, dividends or other distributions by the Company in an amount per fiscal quarter not to exceed \$0.10 per share of common stock of the Company (as such amount shall be appropriately adjusted for any dividend, distribution, stock splits, reverse stock splits, merger, consolidation, amalgamation or other similar transactions).

For purposes of determining compliance with this Section 3.2, in the event that a Restricted Payment (or portion thereof) meets the criteria of more than one of the categories of Permitted Payments described in the clauses above, or is permitted pursuant to Section 3.2(a), the Company will be entitled to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Restricted Payment (or portion thereof) in any manner that complies with this Section 3.2.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment, property or assets other than cash shall be determined conclusively by the Company acting in good faith.

If the Company or a Subsidiary makes a Restricted Payment which at the time of the making of such Restricted Payment would in the good faith determination of the Company be permitted under the provisions of this Indenture, such Restricted Payment shall be deemed to have been made in compliance with this Indenture notwithstanding any subsequent adjustments made in good faith to the Company's financial statements affecting Consolidated Net Income or Consolidated EBITDA of the Company for any period.

SECTION 3.3 Limitation on Propco Restricted Payments.

Propco will not, and will not permit any of its Subsidiaries to, directly or indirectly:

- (a) declare or pay any dividend or make any distribution on or in respect of Propco's or any Subsidiary of Propco's Capital Stock (including any such payment in connection with any merger or consolidation involving Propco or any Subsidiary of Propco) with any Collateral except (i) dividends, payments or distributions payable to Propco or a Subsidiary of Propco and (ii) that Propco may distribute to the Company or any Parent Entity Declined Excess Proceeds;
- (b) purchase, repurchase, redeem, retire or otherwise acquire or retire for value any Capital Stock of Propco held by Persons other than a Subsidiary of Propco in exchange for Collateral; or
- (c) make any Restricted Investment.

For purposes of determining compliance with this covenant, in the event that an Investment (or portion thereof) of Propco or its Subsidiaries meets the criteria of one or more of the clauses contained in the definition of "Permitted Investment," the Company will be entitled to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Investment (or portion thereof) in any manner that complies with this covenant, including as an Investment pursuant to one or more of the clauses contained in the definition of "Permitted Investment."

The amount of all Investments (other than cash) by Propco or its Subsidiaries shall be the fair market value on the date of such Investment. The fair market value of any cash Investment shall be its face amount, and the fair market value of any non-cash Investment shall be determined conclusively by the Company acting in good faith.

SECTION 3.4 Limitation on Amendments to the Master Lease

The Company will not permit any Subsidiary to, amend, modify, supplement or replace the Master Lease to the extent such amendment, modification, supplement or replacement is, in the reasonable determination of the Company, material and adverse to the Holders taken as a whole as compared to the terms of the Master Lease as in effect on the Issue Date, other than:

- (a) as contemplated by the terms of the Master Lease as in effect on the Issue Date;
- (b) to cure any ambiguity, omission, mistake, defect, error or inconsistency, conform any provision to the disclosure in the Offering Memorandum or to make other amendments, modifications, supplements or replacements that are administrative or ministerial in nature;
- (c) provide for the assumption by a successor Person of the obligations of any party to the Master Lease to the extent not prohibited by Section 4.1;

- (d) to revise the terms of the Master Lease for the benefit of Propco or any of its Subsidiaries;
- (e) if immediately after such amendment, modification, supplement or replacement and giving pro forma effect to any related transactions, the Collateral Coverage Ratio is at least 2.00 to 1.00; or
- (f) with the prior consent of Holders of a majority of the then-outstanding aggregate principal amount of the Notes.

SECTION 3.5 Limitation on Sales of Assets and Subsidiary Stock.

- (a) Propco shall not, and shall not permit any of its Subsidiaries to, make any Asset Disposition unless:
 - (i) Propco or such Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by Propco (and, in the case of an Asset Disposition of Real Property Collateral, or of Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly through one or more Subsidiaries, Real Property Collateral, in each case for consideration other than cash or Cash Equivalents, will be based on one or more broker opinions of value from a broker of national standing selected by the Company), of the securities and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap), unless such Asset Disposition occurred in connection with a governmental taking;
 - (ii) in any such Asset Disposition (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition, together with all other Asset Dispositions since the Issue Date (on a cumulative basis), (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) received by Propco or such Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that, in the case of an Asset Disposition of Real Property Collateral, or of Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly throughout one or more Subsidiaries, Real Property Collateral, any consideration that is not in the form of cash or Cash Equivalents must satisfy the requirements of a Permitted Asset Swap; and
 - (iii) within 365 days from the later of (A) the date of such Asset Disposition and (B) the receipt of the Net Available Cash from such Asset Disposition (as may be extended by an Acceptable Commitment as set forth below, the “Proceeds Application Period”), an amount equal to such Net Available Cash (the “Applicable Proceeds”) is applied, to the extent Propco or any Subsidiary, as the case may be, elects:
 - (A) for the Company or any Subsidiary of the Company (i) to reduce, prepay, repay or purchase any Parity Lien Obligations (other than the Notes); *provided* that the Company or a Subsidiary shall use a ratable amount to offer (in accordance with the procedures set forth below for an Asset Disposition Offer) to redeem a ratable amount of Notes as described in Section 5.6 or purchase a ratable amount of Notes through open-market purchases or in privately negotiated transactions, or (ii) to make an offer (in accordance with the procedures set forth below for an Asset Disposition Offer), redeem Notes as described in Section 5.6 or purchase Notes through open-market purchases or in privately negotiated transactions,

(B) other than with respect to Applicable Proceeds relating to an Asset Disposition of any Specified Real Estate Asset, by Propco or any Subsidiary of Propco (i) to invest (including capital expenditures) in Additional Assets that are or will become Collateral in accordance with the Security Documents (including by means of an investment in Additional Assets by Propco or a Subsidiary of Propco); or (ii) to invest (including capital expenditures) in any one or more properties or assets that replace the properties and/or assets that are the subject of such Asset Disposition and are or become Collateral in accordance with the Security Documents; *provided*, however, that a binding agreement shall be treated as a permitted application of Applicable Proceeds from the date of such commitment with the good faith expectation that an amount equal to Applicable Proceeds will be applied to satisfy such commitment within 180 days of such commitment (an “Acceptable Commitment”); *provided* further, that (x) any Applicable Proceeds relating to an Asset Disposition of any Distribution Center Collateral or High Store Collateral, or of Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly through one or more Subsidiaries, any Distribution Center Collateral or High Store Collateral, in each case applied (or committed to be applied) pursuant to this clause (b) must be applied (or committed to be applied) to invest in other Distribution Center Collateral or High Store Collateral or properties or assets constituting, part of or related to a distribution center or a retail store that has High Store Status and, in each case, that become Collateral in accordance with the Security Documents, and (y) any Applicable Proceeds relating to an Asset Disposition of any Non-High Store Collateral, or of Equity Collateral of any Subsidiary of Propco that owns, directly or indirectly through one or more Subsidiaries, any Non-High Store Collateral, in each case applied (or committed to be applied) pursuant to this clause (b) must be applied (or committed to be applied) to invest in (1) other Store Collateral with a rating from the Store Grader not lower than the rating assigned to such Non-High Store Collateral, (2) properties or assets constituting, part of or related to a retail store with a rating from the Store Grader not lower than the rating assigned to such Non-High Store Collateral, (3) Distribution Center Collateral or (4) properties or assets constituting, part of or related to a distribution center, in each case, that become Collateral in accordance with the Security Documents; *provided* further that the aggregate amount of Applicable Proceeds from an Asset Disposition of Distribution Center Collateral that may be applied pursuant to this clause (b) to invest in Store Collateral or properties or assets constituting, part of or related to a retail store that become Collateral in accordance with the Security Documents shall be no greater than \$180 million after the Issue Date; and *provided* further that the aggregate amount of Applicable Proceeds from an Asset Disposition of Store Collateral that may be applied pursuant to this clause (b) to invest in Store Collateral or properties or assets constituting, part of or related to a retail store that become Collateral in accordance with the Security Documents shall be no greater than \$500 million after the Issue Date when aggregated with the fair market value of any Permitted Asset Swap after the Issue Date of Store Collateral for real property that will become Store Collateral; or

(C) other than with respect to Applicable Proceeds relating to an Asset Disposition of any Specified Real Estate Asset, any combination of the foregoing;

provided that Propco (or any Subsidiary of Propco, as the case may be) may elect to invest in Additional Assets that are or become Collateral in accordance with the Security Documents and otherwise in compliance with the requirements set forth above prior to receiving the Applicable Proceeds attributable to any given Asset Disposition (*provided* that such investment shall be made no earlier than the earliest of notice to the Trustee of the relevant Asset Disposition, execution of a definitive agreement for the relevant Asset Disposition, and consummation of the relevant Asset Disposition) and deem the amount so invested to be applied pursuant to and in accordance with clause (b) above with respect to such Asset Disposition.

If, with respect to any Asset Disposition, at the expiration of the Proceeds Application Period with respect to such Asset Disposition, there remain cumulative Applicable Proceeds in excess of \$100 million (such amount, the “Excess Proceeds”), then the Company or a Subsidiary shall make an offer (an “Asset Disposition Offer”) no later than ten business days after the expiration of the Proceeds Application Period to all Holders of Notes and, if required by the terms of any Parity Lien Obligations, to all holders of such Parity Lien Obligations to purchase the maximum principal amount of such Notes and Parity Lien Obligations, on a pro rata basis, that may be purchased out of such Excess Proceeds, if any, at an offer price, in the case of the Notes, in cash in an amount equal to 100% of the principal amount thereof (or in the event such other Indebtedness was issued with original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest, if any (or such lesser price with respect to Parity Lien Obligations as may be provided by the terms of such other Indebtedness), to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture and the agreement governing the Parity Lien Obligations in minimum denominations of \$2,000 and in integral multiples of \$1,000 in excess thereof.

To the extent that any Applicable Proceeds from an Asset Disposition are from a disposition of Collateral the fair market value of which exceeds \$10.0 million in the aggregate, such Applicable Proceeds will be deposited with the Collateral Trustee and held as Collateral pending application pursuant to clause (3) above or the immediately preceding paragraph and, in the case of the immediately preceding paragraph, released to Propco or any Subsidiary of Propco if remaining after consummation of the Asset Disposition Offer (or, in the case of an Advance Offer, the Advance Portion).

Notices of an Asset Disposition Offer shall be sent by first class mail or sent electronically, at least 10 days but not more than 60 days before the purchase date to each Holder of the Notes at such Holder's registered address or otherwise in accordance with the applicable procedures of DTC. The Company or a Subsidiary may satisfy the foregoing obligation with respect to any Applicable Proceeds from an Asset Disposition by making an Asset Disposition Offer prior to the expiration of the Proceeds Application Period (the "Advance Offer") with respect to all or a part of the Applicable Proceeds (the "Advance Portion") in advance of being required to do so by this Indenture.

To the extent that the aggregate amount (or accreted value, as applicable) of Notes and, if applicable, any other Parity Lien Obligations validly tendered or otherwise surrendered in connection with an Asset Disposition Offer is less than the amount offered in an Asset Disposition Offer (or, in the case of an Advance Offer, the Advance Portion), the Company or any Subsidiary may use any remaining Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion) (the "Declined Excess Proceeds") for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount (or accreted value, as applicable) of the Notes or, if applicable, Parity Lien Obligations validly tendered pursuant to an Asset Disposition Offer exceeds the amount of Excess Proceeds (or, in the case of an Advance Offer, the Advance Portion), the Company shall allocate the Excess Proceeds among the Notes and Parity Lien Obligations to be purchased on a pro rata basis on the basis of the aggregate principal amount (or accreted value, as applicable) of tendered Notes and Parity Lien Obligations; *provided* that no Notes or Parity Lien Obligations will be selected and purchased in an unauthorized denomination. Upon completion of any Asset Disposition Offer, the amount of Excess Proceeds shall be reset at zero.

To the extent that any portion of Net Available Cash or Applicable Proceeds payable in respect of the Notes is denominated in a currency other than Dollars, the amount thereof payable in respect of the Notes shall not exceed the net amount of funds in Dollars that is actually received by Propco or a Subsidiary of Propco upon converting such portion into Dollars.

(b) For the purposes of clauses (i) and (ii) of Section 3.5(a), the following will be deemed to be cash:

(i) the assumption by the transferee of Indebtedness or other liabilities, contingent or otherwise, of Propco or a Subsidiary or the release of Propco or such Subsidiary from all liability on such Indebtedness or other liability in connection with such Asset Disposition;

(ii) securities, notes or other obligations received by Propco or any Subsidiary from the transferee that are converted by Propco or such Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash and Cash Equivalents (to the extent of the cash or Cash Equivalents received), in each case, within 180 days following the closing of such Asset Disposition;

(iii) Indebtedness of any Subsidiary of Propco that is no longer a Subsidiary of Propco as a result of such Asset Disposition, to the extent that Propco and each other Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition; and

(iv) consideration consisting of Parity Lien Debt received after the Issue Date from Persons who are not the Company or any Subsidiary of the Company; and

(v) any Designated Non-Cash Consideration received by Propco or any Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 3.5 that is at that time outstanding, not to exceed \$50 million, 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.

(c) To the extent that the provisions of any securities laws or regulations, including Rule 14e-1 under the Exchange Act, conflict with the provisions of this Indenture, the Company shall not be deemed to have breached its obligations described in this Indenture by virtue of compliance therewith. The Company may rely on any no-action letters issued by the SEC indicating that the staff of the SEC will not recommend enforcement action in the event a tender offer satisfies certain conditions.

(d) The provisions of this Indenture relative to the Company's obligation to make an offer to repurchase the Notes as a result of an Asset Disposition may be waived or modified with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

SECTION 3.6 Limitation on Liens.

(a) Propco shall not, and shall not permit any of its Subsidiaries to, create or incur any Lien (except Permitted Liens) (each, an "Initial Lien") that secures obligations under any Indebtedness or any related guarantee, on any asset or property of Propco or any of its Subsidiaries, unless:

(i) in the case of Initial Liens on any Collateral, (i) such Initial Lien expressly has Junior Lien Priority on the Collateral relative to the Notes and the Notes Guarantees or (ii) such Initial Lien is a Permitted Lien; and

(ii) in the case of any Initial Lien on any asset or property that is not Collateral, (i) the Secured Guarantee of Propco or such Subsidiary of Propco are equally and ratably secured with (or on a senior basis to, in the case such Initial Lien secures any Subordinated Indebtedness) the Obligations secured by such Initial Lien until such time as such Obligations are no longer secured by such Initial Lien or (ii) such Initial Lien is a Permitted Lien,

except that the foregoing shall not apply to Liens securing the Notes (other than any Additional Notes) and the related Secured Guarantees.

Any Lien created for the benefit of the Holders pursuant to the preceding sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

(b) The Unsecured Guarantor will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien (each, an “Initial MRH Lien”) upon any of their respective assets, other than MRH Permitted Liens, unless the Notes are equally and ratably secured with the obligations secured by such Initial MRH Lien until such time as such obligations are no longer secured by such Initial MRH Lien.

Any Lien created for the benefit of the Holders pursuant to the preceding sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial MRH Lien.

If the Unsecured Guarantor or any of its Restricted Subsidiaries is required to secure the Notes equally and ratably with any other obligations pursuant to this Section 3.6(b), (i) the Company will promptly deliver to the Trustee and the Collateral Trustee an Officer’s Certificate stating that such covenant has been complied with and an Opinion of Counsel stating that in the opinion of such counsel such covenant has been complied with and that any instruments executed by the Unsecured Guarantor or any of its Restricted Subsidiaries in the performance of such covenant comply with the requirements of such covenant, and (ii) the Trustee and the Collateral Trustee is each authorized to enter into an indenture or agreement supplemental thereto and to take such action, if any, as it may deem advisable to enable it to enforce the rights of the Holders so secured.

The terms of other existing and future Indebtedness of the Company, the Unsecured Guarantor or their respective Subsidiaries may require that such other Indebtedness be similarly secured by an equal and ratable Lien on such assets.

SECTION 3.7 Limitation on Guarantees by Subsidiaries of the Company.

(a) The Company will not permit any of its Subsidiaries, other than a Guarantor, to Guarantee the payment of (i) any Indebtedness of the Company or the Unsecured Guarantor under any syndicated Credit Facility or (ii) capital markets debt securities of the Company or the Unsecured Guarantor unless:

(i) such Subsidiary of the Company within 60 days executes and delivers a supplemental indenture to this Indenture providing for a Notes Guarantee by such Subsidiary on a senior unsecured basis, except that with respect to a guarantee of such Indebtedness of the Company or the Unsecured Guarantor, if such Indebtedness is by its express terms subordinated in right of payment to the Notes or the Unsecured Guarantor’s Guarantee, any such guarantee by such Subsidiary with respect to such Indebtedness shall be subordinated in right of payment to such Notes Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes or the Unsecured Guarantor’s Notes Guarantee; and

(ii) such Subsidiary of the Company waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Subsidiary of the Company as a result of any payment by such Subsidiary of the Company under its Notes Guarantee until payment in full of Obligations under this Indenture,

provided that this Section 3.7 shall not be applicable in the event that the Notes Guarantee of the Obligations under the Notes or this Indenture by such Subsidiary of the Company would not be permitted under applicable law.

(b) The Company may elect, in its sole discretion, to cause or allow, as the case may be, any Subsidiary or any of its Parent Entities that is not otherwise required to be a Guarantor to become a Guarantor, in which case, such Subsidiary or Parent Entity shall not be required to comply with the 60-day period described in 3.7(a) and such Guarantee may be released at any time in the Company’s sole discretion.

SECTION 3.8 Future Guarantees by Propco Subsidiaries

Propco will not, and will not permit any of its Subsidiaries to, create or acquire any Subsidiary, other than a Secured Guarantor, unless:

(a) such Subsidiary of Propco within 60 days executes and delivers a supplemental indenture to this Indenture providing for a Secured Guarantee by such Subsidiary on a senior secured basis;

(b) to the extent any assets of such Subsidiary of Propco are assets of the type which would constitute Collateral under the Security Documents, such Subsidiary of Propco will take such action, if any, as may be reasonably necessary to cause such assets to be made subject to the Lien of the applicable Security Documents in the manner and to the extent required in this Indenture or the applicable Security Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the applicable Security Documents, in each case within the time periods required by the applicable Security Documents; and

(c) such Subsidiary of Propco waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Subsidiary of the Company as a result of any payment by such Subsidiary of Propco under its Secured Guarantee until payment in full of Obligations under this Indenture,

provided that this covenant shall not be applicable in the event that the Secured Guarantee of the Obligations under the Notes or this Indenture by such Subsidiary of Propco would not be permitted under applicable law.

SECTION 3.9 Limitation on Affiliate Transactions.

(a) Propco will not, and will not permit any of its Subsidiaries to, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Propco (an "Affiliate Transaction") involving aggregate value in excess of the greater of \$25.0 million and 1.5% of LTM EBITDA unless:

(i) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to Propco or such Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate; and

(ii) in the event such Affiliate Transaction involves an aggregate value in excess of the greater of \$50.0 million and 3.0% of LTM EBITDA, the terms of such transaction have been approved by a majority of the members of the Board of Directors of Propco.

Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in clause(ii) of this Section 3.9(a) if such Affiliate Transaction is approved by a majority of the Disinterested Directors of Propco, if any.

(b) The provisions of Section 3.9(a) shall not apply to:

(i) any transfer or distribution of assets not consisting of Collateral by Propco or its Subsidiaries or any Permitted Investment;

(ii) any issuance, transfer or sale of directors' qualifying shares and shares issued to foreign nationals as required under applicable law;

(iii) any Management Advances and any waiver or transaction with respect thereto;

(iv) (a) any transaction between or among Propco and any Subsidiary of Propco (or entity that becomes a Subsidiary of Propco as a result of such transaction), or between or among Subsidiaries of Propco and (b) any merger, amalgamation or consolidation with any Affiliate, *provided* that such Affiliate shall have no material liabilities and no material assets other than cash or Cash Equivalents and such merger, amalgamation or consolidation is otherwise permitted under this Indenture;

- (v) the payment of compensation, fees, costs and expenses to, and indemnities (including under insurance policies) and reimbursements, employment and severance arrangements, and employee benefit and pension expenses provided on behalf of, or for the benefit of, future, current or former employees, directors, officers, managers, contractors, consultants, distributors or advisors (or their respective Controlled Investment Affiliates or Immediate Family Members) of Propco, any Parent Entity or any Subsidiary of Propco (whether directly or indirectly and including through their Controlled Investment Affiliates or Immediate Family Members);
- (vi) the entry into and performance of obligations of Propco or any Subsidiary of Propco under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Issue Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this Section 3.9 or to the extent not disadvantageous in any material respect in the reasonable determination of the Company to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date;
- (vii) transactions with customers, vendors, clients, joint venture partners, suppliers, contractors, distributors or purchasers or sellers of goods or services, in each case in the ordinary course of business, which are fair to Propco or its Subsidiaries, in the reasonable determination of the Company, or are on terms, taken as a whole, that are not materially less favorable as would reasonably have been obtained at such time from an unaffiliated party;
- (viii) any transaction between or among Propco or any Subsidiary of Propco and any Person (including a joint venture) that is an Affiliate of Propco solely because Propco or a Subsidiary of Propco or any Affiliate of Propco or a Subsidiary of Propco (but excluding the Company or any other Subsidiary of the Company) owns an equity interest in or otherwise controls such Affiliate;
- (ix) any issuance, sale or transfer of Capital Stock of Propco or options, warrants or other rights to acquire such Capital Stock and the granting of customary rights (and the performance of the related obligations) in connection therewith or any contribution to capital of Propco;
- (x) the Transactions and the payment of all fees, costs and expenses (including all legal, accounting and other professional fees, costs and expenses) related to the Transactions, including Transaction Expenses;
- (xi) transactions in which Propco or any Subsidiary of Propco, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to Propco or such Subsidiary from a financial point of view or meets the requirements of Section 3.9(a)(i);
- (xii) any purchases by Propco's Affiliates of Indebtedness of Propco or any of its Subsidiaries;
- (xiii) payments by Propco and its Subsidiaries for Related Taxes;
- (xiv) any transition services arrangement, supply arrangement or similar arrangement entered into in connection with or in contemplation of the disposition of assets or Capital Stock in any Subsidiary of Propco permitted under Section 3.5 or entered into with any Business Successor, in each case, that the Company determines in good faith is either fair to Propco or otherwise on customary terms for such type of arrangements in connection with similar transactions;

(xv) (i) transactions contemplated by the Master Lease and (ii) any operational services arrangement entered into between Propco or any Subsidiary of Propco and any Affiliate of Propco, in each case, which is approved by the reasonable determination of Propco;

(xvi) intellectual property licenses and research and development agreements in the ordinary course of business or consistent with past practice;

(xvii) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(xviii) Permitted Intercompany Activities, Permitted Tax Restructurings or Intercompany License Agreements and related transactions.

In addition, if Propco or any of its Subsidiaries (i) purchases or otherwise acquires assets or properties from a Person which is not an Affiliate, the purchase or acquisition by an Affiliate of Propco of an interest in all or a portion of the assets or properties acquired shall not be deemed an Affiliate Transaction (or cause such purchase or acquisition by Propco or any of its Subsidiaries to be deemed an Affiliate Transaction) or (ii) sells or otherwise disposes of assets or other properties to a Person who is not an Affiliate, the sale or other disposition by an Affiliate of Propco of an interest in all or a portion of the assets or properties sold shall not be deemed an Affiliate Transaction (or cause such sale or other disposition by Propco or any of its Subsidiaries to be deemed an Affiliate Transaction).

SECTION 3.10 Change of Control.

(a) If a Change of Control Triggering Event occurs, unless the Company has exercised its right to redeem the Notes in whole as described in Article V, Holders of the Notes will have the right to require the Company to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of their Notes pursuant to the offer described below (the "Change of Control Offer") on the terms set forth in this Indenture.

(b) In the Change of Control Offer, the Company will be required to offer payment in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to the date of purchase (the "Change of Control Payment"). Within 30 days following any Change of Control Triggering Event or, at the option of the Company, prior to any Change of Control or Change of Control Triggering Event, but after public announcement of the transaction or transactions that constitute or may constitute the Change of Control, the Issuer will be required to send a notice to Holders of the Notes describing the transaction or transactions that constitute or may constitute the Change of Control Triggering Event and offering to repurchase the Notes, with the following information:

(i) that a Change of Control Offer is being made pursuant to this Section 3.10 and that all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuer;

(ii) the purchase price and the purchase date, which will be no earlier than 10 days nor later than 60 days from the date such notice is sent (the "Change of Control Payment Date");

(iii) that any Note not properly tendered will remain outstanding and continue to accrue interest;

(iv) that unless the Issuer defaults 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;

(v) 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 applicable 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, or otherwise comply with DTC procedures;

(vi) that Holders will be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes *provided* that the applicable Paying Agent receives, not later than the close of business on the second Business Day prior to the expiration date of the Change of Control Offer, a telegram, facsimile transmission or letter setting forth the name of the Holder of the Notes, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased, or otherwise comply with DTC procedures;

(vii) that Holders whose Notes are being purchased only in part 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 at least \$2,000 or any integral multiple of \$1,000 in excess of \$2,000);

(viii) 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 Triggering Event on or prior to the applicable Change of Control Payment Date; and

(ix) the other instructions, as determined by the Issuer, consistent with this Section 3.10, that a Holder must follow.

(c) On the Change of Control Payment Date, the Company will be required, to the extent lawful, to (i) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer; (ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and (iii) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased.

(d) The Company will not be required to make a Change of Control Offer upon the occurrence of a Change of Control Triggering Event if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by the Company and the third party repurchases all Notes properly tendered and not withdrawn under its offer. In addition, the Company will not be required to repurchase any Notes if it has given written notice of a redemption in whole of the Notes as provided in Section 5.6. The applicable Paying Agent will promptly deliver to each Holder of the Notes tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a minimum principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date. If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid on the Change of Control Payment Date to the Person in whose name a Note is registered at the close of business on such record date.

(e) On the Change of Control Payment Date, the Issuer will, to the extent permitted by law,

(i) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer,

(ii) deposit with the applicable Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered, and

(iii) 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 the aggregate principal amount of such Notes or portions thereof have been tendered to and purchased by the Issuer.

(f) While the Notes are in global form and the Issuer makes 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 through the facilities of DTC, subject to its rules and regulations.

(g) The Issuer will comply, to the extent applicable, with the requirements of Rule 14c-1 under the Exchange Act and any other securities laws, rules and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws, rules or regulations conflict with the provisions of this Indenture, the Issuer shall not be deemed to have breached its obligations described in this Indenture by virtue of compliance therewith.

SECTION 3.11 Reports.

(a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or otherwise report on an annual and quarterly basis on forms provided for such annual and quarterly reporting pursuant to rules and regulations promulgated by the SEC, the Company shall file with the SEC within 15 days after the time periods specified in the SEC's rules and regulations that are then applicable to the Company (or if the Company is not then subject to the reporting requirements of the Exchange Act, then the time periods for filing applicable to a filer that is not a "large accelerated filer" or an "accelerated filer," in each case as defined in such rules and regulations) (in all cases including any extension as would be permitted by Rule 12b-25 under the Exchange Act or any rule, order, waiver or other accommodation of the SEC):

(i) all financial information that would be required to be contained in an annual report on Form 10-K, or any successor or comparable form, filed with the SEC, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and a report on the annual financial statements by the Company's independent registered public accounting firm;

(ii) all financial information that would be required to be contained in a quarterly report on Form 10-Q, or any successor or comparable form, filed with the SEC, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations," and financial statements prepared in accordance with GAAP; and

(iii) all current reports that would be required to be filed with the SEC on Form 8-K as in effect on the Issue Date (if the Company had been a reporting company under Section 15(d) of the Exchange Act); *provided*, that the foregoing shall not obligate the Company to make available (i) any information regarding the occurrence of any of the following events if the Company determines in its reasonable determination that such event that would otherwise be required to be disclosed is not material to the Holders or the business, assets, operations, financial positions or prospects of the Company and its Subsidiaries taken as a whole, (ii) an exhibit or a summary of the terms of, any employment or compensatory arrangement, agreement, plan or understanding between the Company or any of its Subsidiaries and any director, officer or manager of the Company or any of its Subsidiaries, (iii) copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K or (iv) any trade secrets, privileged or confidential information obtained from another Person and competitively sensitive information:

(A) the entry into or termination of material agreements;

- (B) significant acquisitions or dispositions (which shall only be with respect to acquisitions or dispositions that are significant pursuant to the definition of “Significant Subsidiary”);
- (C) bankruptcy;
- (D) cross-default under direct material financial obligations;
- (E) a change in the Company’s certifying independent auditor;
- (F) the appointment or departure of directors or executive officers (with respect to the principal executive officer, president, principal financial officer, principal accounting officer and principal operating officer only);
- (G) non-reliance on previously issued financial statements; and
- (H) change of control transactions,

in each case, in a manner that complies in all material respects with the requirements specified in such form, except as described above or below and subject to exceptions consistent with the presentation of information in the offering memorandum; *provided*, however, that the Company shall not be required to provide (i) segment reporting and disclosure (including any required by FASB Accounting Standards Codification Topic 280), (ii) separate financial statements or other information contemplated by Rules 3-05, 3-09, 3-10, 3-16 or 4-08 of Regulation S-X (or any successor provisions) or any schedules required by Regulation S-X, (iii) information required by Regulation G under the Exchange Act or Item 10, Item 302, Item 402 or Item 601 of Regulation S-K (or any successor provision), (iv) XBRL exhibits, (v) earnings per share information, (vi) information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A, and (vii) other information customarily excluded from an offering memorandum, including any information that is not otherwise of the type and form currently included in the offering memorandum relating to the Notes. In addition, notwithstanding the foregoing, the Company will not be required to (i) comply with Sections 302, 906 and 404 of the Sarbanes-Oxley Act of 2002, as amended, or (ii) otherwise furnish any information, certificates or reports required by Items 307 or 308 of Regulation S-K (or any successor provision). To the extent any such information is not so filed or furnished, as applicable, within the time periods specified above and such information is subsequently filed or furnished, as applicable, the Company will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto shall be deemed to have been cured; *provided* that such cure shall not otherwise affect the rights of the Holders under Section 6.1 hereof if Holders of at least 30% in aggregate principal amount of the outstanding Notes have declared the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately and such declaration shall not have been rescinded or cancelled prior to such cure. In addition, to the extent not satisfied by the foregoing, the Company shall agree that, for so long as any Notes are outstanding, it shall furnish to Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(b) If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries and such Unrestricted Subsidiaries or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Company, then the annual and quarterly financial information required by Section 3.11(a)(i) and (ii) will include a presentation of selected financial metrics, in the Company’s sole discretion, of such Unrestricted Subsidiaries as a group in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

(c) Substantially concurrently with the furnishing of or making such information available to the Trustee pursuant to Section 3.11(b), the Company shall also use its commercially reasonable efforts to post copies of such information required by Section 3.11(b) on a website (which may be nonpublic, require a confidentiality acknowledgement and may be maintained by the Company or a third party) to which access will be given to the Holders, bona fide prospective investors in the Notes (which prospective investors shall be limited to “qualified institutional buyers” within the meaning of Rule 144A of the Securities Act or non-U.S. persons (as defined in Regulation S under the Securities Act) that certify their status as such to the reasonable satisfaction of the Company), and securities analysts (to the extent providing analysis of an investment in the Notes) and market making financial institutions that are reasonably satisfactory to the Company who agree to treat such information and reports as confidential; *provided* that the Company may deny access to any competitively-sensitive information and reports otherwise to be provided pursuant to this paragraph to any Holder, bona fide prospective investors, security analyst or market maker that is a competitor of the Company and its Subsidiaries to the extent that the Company determines in good faith that the provision of such information and reports to such Person would be competitively harmful to the Company and its Subsidiaries. The Company may condition the delivery of any such reports to such Holders, prospective investors in the Notes and securities analysts and market making financial institutions on the agreement of such Persons to (i) treat all such reports (and the information contained therein) and information as confidential, (ii) not use such reports (and the information contained therein) and information for any purpose other than their investment or potential investment in the Notes and (iii) not publicly disclose any such reports (and the information contained therein) and information.

(d) The Company may satisfy its obligations pursuant to this Section 3.11 with respect to financial information relating to the Company by furnishing financial information relating to a Parent Entity; *provided* that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to such Parent Entity (and other Parent Entities included in such information, if any), on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand. For the avoidance of doubt, the consolidating information referred to in the proviso in the preceding sentence need not be audited.

(e) Notwithstanding anything to the contrary set forth in this Section 3.11, if the Company or any Parent Entity has furnished to the Holders of Notes or filed with the SEC the reports described in this Section 3.11 with respect to the Company or any Parent Entity, the Company shall be deemed to be in compliance with the provisions of this Section 3.11.

(f) The Trustee shall have no duty to determine whether any filings or postings described in this Section 3.11 have been made. The trustee shall have no duty to review or analyze reports delivered to it.

SECTION 3.12 Maintenance of Office or Agency.

The Issuer will maintain an office or agency where the Notes may be presented or surrendered for payment, where, if applicable, the Notes may be surrendered for registration of transfer or exchange. The Corporate Trust Office of the Trustee, shall be such office or agency of the Issuer, unless the Issuer shall designate and maintain some other office or agency for one or more of such purposes. The Issuer will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the Corporate Trust Office of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations and surrenders.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency. No office of the Trustee shall be an office or agency of the Issuer for the purposes of service of legal process on the Issuer or any Guarantor.

SECTION 3.13 After-Acquired Collateral.

From and after the Issue Date, if (a) any Subsidiary of Propco becomes a Secured Guarantor or (b) Propco or any Secured Guarantor acquires any property or rights which are of a type constituting Collateral under any Security Document (excluding, for the avoidance of doubt, any assets not required to be Collateral pursuant to this Indenture or the Security Documents), Propco or such Secured Guarantor will be required to execute and deliver such security instruments, mortgages, financing statements and such certificates as are required under this Indenture or any Security Document to vest in the Collateral Trustee a security interest (subject to Permitted Liens) in such after-acquired collateral and to take such actions to add such after-acquired collateral to the Collateral (and with respect to any mortgage, deliver to the Collateral Trustee such ancillary deliverables, including local counsel opinions and title insurance, similar in form to that delivered for the Real Property Collateral as of the Issue Date), and thereupon all provisions of this Indenture and the Security Documents relating to the Collateral shall be deemed to relate to such after-acquired collateral to the same extent and with the same force and effect.

SECTION 3.14 Compliance Certificate. The Issuer shall deliver to the Trustee within 120 days after the end of each fiscal year of the Issuer an Officer's Certificate, the signer of which shall be the principal executive officer, principal financial officer, principal accounting officer, principal legal officer, secretary or treasurer of the Issuer, stating that in the course of the performance by the signer of his or her duties as an Officer of the Issuer he or she would normally have knowledge of any Default or Event of Default and whether or not the signer knows of any Default or Event of Default that occurred during the previous fiscal year; *provided* that no such Officer's Certificate shall be required for any fiscal year ended prior to the Issue Date. If such Officer does have such knowledge, the certificate shall describe the Default or Event of Default, its status and the action the Issuer is taking or proposes to take with respect thereto. The Trustee will not be deemed to have knowledge of any Defaults or Events of Default unless written notice of an event, which is in fact a Default, has been delivered to the Trustee pursuant to the notice provisions in this Indenture.

SECTION 3.15 Further Instruments and Acts. Upon request of the Trustee or as necessary to comply with future developments or requirements, the Issuer will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 3.16 Statement by Officers as to Default. The Issuer shall deliver to the Trustee, as soon as possible and in any event within 30 days after the Issuer becomes aware of the occurrence of any Default or Event of Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the actions which the Issuer is taking or proposes to take with respect thereto.

SECTION 3.17 Suspension of Certain Covenants on Achievement of Investment Grade Status

Beginning on the first day (a) the Notes have achieved Investment Grade Status and (b) no Event of Default has occurred and is continuing under this Indenture, and ending on a Reversion Date (such period a "Suspension Period"), the Company and its Subsidiaries will not be subject to Section 3.2, Section 3.7, and Section 3.9 (the "Suspended Covenants").

If at any time the Notes cease to have such Investment Grade Status, then the Suspended Covenants shall thereafter be reinstated as if such covenants had never been suspended (the "Reversion Date") and be applicable pursuant to the terms of this Indenture (including in connection with performing any calculation or assessment to determine compliance with the terms of this Indenture), unless and until the Notes subsequently attain Investment Grade Status (in which event the Suspended Covenants shall no longer be in effect for such time that the Notes maintain an Investment Grade Status); provided, however, that no Default, Event of Default or breach of any kind shall be deemed to exist under this Indenture, the Notes or the Note Guarantees with respect to the Suspended Covenants based on, and none of the Company or any of its Subsidiaries shall bear any liability for, any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising prior to the Reversion Date, regardless of whether such actions or events would have been permitted if the applicable Suspended Covenants remained in effect during such period.

Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 3.2 will be made as though Section 3.2 had been in effect since the Issue Date and prior to, but not during, the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will not reduce the amount available to be made as Restricted Payments under Section 3.2(a). In addition, any future obligation to grant further Notes Guarantees shall be released. All such further obligations to grant Notes Guarantees shall be reinstated on the Reversion Date. As described above, however, no Default, Event of Default or breach of any kind shall be deemed to have occurred as a result of the Reversion Date occurring on the basis of any actions taken or the continuance of any circumstances resulting from actions taken or the performance of obligations under agreements entered into by the Company or any of the Subsidiaries during the Suspension Period (other than agreements to take actions after the Reversion Date that would not be permitted outside of the Suspension Period entered into in contemplation of the Reversion Date).

On and after each Reversion Date, the Company and its Subsidiaries will be permitted to consummate the transactions contemplated by any contract entered into during the Suspension Period, so long as such contract and such consummation would have been permitted during such Suspension Period.

The Trustee shall have no duty to monitor the ratings of the Notes, shall not be deemed to have any knowledge of the ratings of the Notes and shall have no duty to notify Holders if the Notes achieve Investment Grade Status or of the occurrence of a Reversion Date.

SECTION 3.18 Limitations on Propco

Notwithstanding anything to the contrary in this Indenture (other than as described in Section 4.1, Propco shall not have any Subsidiaries other than Real Estate Subsidiaries and may not make any Investments (other than Permitted Investments) in any Person. Propco and its Subsidiaries shall not hold any material assets other than the Collateral or assets that will become Collateral in accordance with this Indenture and the Security Documents or have any material operations other than (i) holding the Collateral (including any Collateral contributed to or acquired by Propco after the Issue Date) and leasing or licensing such Collateral to the Company, its other Subsidiaries or any other party to the Master Lease or otherwise operating, using or holding such Collateral or other assets in the ordinary course of business in accordance with the provisions of this Indenture and distributing the cash proceeds of such leasing or licensing to the Company or any other Parent Entity or otherwise utilize such proceeds in any manner not prohibited by this Indenture, (ii) incurring Indebtedness or Liens to the extent not prohibited under this Indenture and performing its obligations with respect to such Indebtedness and Liens, (iii) maintaining its legal existence, any licenses or qualifications to do business and other related matters, (iv) issuing equity interests to any Parent Entity or other Person to the extent not prohibited by this Indenture, (v) participating in tax, accounting and other administrative matters, (vi) providing indemnification to officers and directors, (vii) consummating any Asset Dispositions and applying the proceeds thereof, in each case in accordance with Section 3.5, (viii) consummating any other asset disposition not prohibited by this Indenture and (ix) activities incidental to the foregoing businesses, activities or operations, except in the cases of clauses (iii), (iv), (v), (vii), (viii) and (ix), as described in Section 4.1.

ARTICLE IV SUCCESSOR COMPANY; SUCCESSOR PERSON

SECTION 4.1 Merger and Consolidation.

(a) The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets, in one transaction or a series of related transactions, to any Person, unless:

(i) the Company is the surviving Person or the resulting, surviving or transferee Person (the "Successor Company") will be a Person organized or existing under the laws of the jurisdiction of the Company or the United States of America, any State of the United States or the District of Columbia or any territory thereof and the Successor Company (if not the Company) will expressly assume all the obligations of the Company under the Notes pursuant to supplemental indentures or other documents and instruments;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the applicable Successor Company or any Subsidiary of the applicable Successor Company as a result of such transaction as having been incurred by the applicable Successor Company or such Subsidiary at the time of such transaction), no Event of Default shall have occurred and be continuing; and

(iii) the Company shall have 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 an Opinion of Counsel stating that such supplemental indenture (if any) is a legal and binding agreement enforceable against the Successor Company; *provided* that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact, including as to satisfaction of clause (ii) above,

(b) The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under the Notes and this Indenture, and the Company will automatically and unconditionally be released and discharged from its obligations under the Notes and this Indenture.

(c) Notwithstanding any other provision of this Section 4.1, (i) the Company may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to a Guarantor, (ii) the Company may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Company, reincorporating the Company in another jurisdiction, or changing the legal form of the Company, (iii) any Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Company or a Guarantor, (iv) any Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Subsidiary and (v) the Company and its Subsidiaries may complete any Permitted Tax Restructuring.

(d) Subject to Section 10.2(b), no Guarantor may consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its assets, in one or a series of related transactions, to any Person, unless:

(i) (A) the other Person is the Company or any Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction; or either (x) the Company or a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all the obligations of the Guarantor under its Note Guarantee and this Indenture;

(B) immediately after giving effect to the transaction, no Event of Default shall have occurred and be continuing; and

(C) in the case of any Secured Guarantor, to the extent any assets of the Person which is merged, consolidated or amalgamated with or into such Guarantor are assets of the type which would constitute Collateral under the Security Documents, such Secured Guarantor or the Successor Person will take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Security Documents in the manner and to the extent required in this Indenture or the applicable Security Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the applicable Security Documents; or

(ii) the transaction constitutes a sale, disposition or transfer of the Guarantor or the conveyance, transfer or lease of all or substantially all of the assets of the Guarantor (in each case other than to the Company or a Subsidiary) otherwise permitted by this Indenture.

Notwithstanding any other provision of this Section 4.1, any Guarantor may (a) consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to another Guarantor or the Company, (b) consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Guarantor, reincorporating the Guarantor in another jurisdiction, or changing the legal form of the Guarantor, (c) 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, (d) liquidate or dissolve or change its legal form if the Company determines in good faith that such action is in the best interests of the Company and (e) complete any Permitted Tax Restructuring. Notwithstanding anything to the contrary in this Section 4.1, the Company may contribute Capital Stock of any or all of its Subsidiaries to any Guarantor.

Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Notwithstanding anything to the contrary set forth above, neither Propco nor any Subsidiary of Propco shall merge with or into, consolidate or transfer all or substantially all its assets to the Company or any Subsidiary of the Company other than Propco or one of Propco's Subsidiaries.

ARTICLE V
REDEMPTION OF SECURITIES

SECTION 5.1 Notices to Trustee. If the Issuer elects to redeem Notes pursuant to the optional redemption provisions of Section 5.6 hereof, it must furnish to the Trustee, at least 10 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

- (a) the clause of this Indenture pursuant to which the redemption shall occur;
- (b) the redemption date;
- (c) the principal amount of Notes to be redeemed; and
- (d) the redemption price.

Any optional redemption referenced in such Officer's Certificate may be cancelled by the Issuer at any time prior to notice of redemption being sent to any Holder and thereafter shall be null and void.

SECTION 5.2 Selection of Notes to Be Redeemed or Purchased If less than all of the Notes are to be redeemed pursuant to Section 5.6 or purchased in an Asset Disposition Offer pursuant to Section 3.5, the Trustee will select Notes for redemption or purchase (a) if the Notes are in global form, in accordance with the applicable procedures of DTC and (b) if the Notes are in definitive form in their entirety, by lot or on a pro rata basis (subject to adjustments to maintain the authorized Notes denomination requirements), except if otherwise required by law.

No Notes in an unauthorized denomination or of \$2,000 in aggregate principal amount or less shall be redeemed in part. In the event of partial redemption, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 10 days nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase; *provided* that the Issuer shall provide the Trustee with sufficient notice of such partial redemption to enable the Trustee to select the Notes for partial redemption.

The Trustee will promptly notify the Issuer in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in minimum principal amounts of \$2,000 and whole multiples of \$1,000 in excess of \$2,000; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not in a minimum principal amount of \$2,000 or a multiple of \$1,000 in excess thereof, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

SECTION 5.3 Notice of Redemption. At least 10 days but not more than 60 days before the redemption date, the Issuer will send or cause to be sent, by electronic delivery or by first class mail postage prepaid, a notice of redemption to each Holder (with a copy to the Trustee) whose Notes are to be redeemed at the address of such Holder appearing in the security register or otherwise in accordance with the applicable procedures of DTC, except that redemption notices may be delivered electronically or mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles VIII or XI hereto.

The notice will identify the Notes (including the CUSIP or ISIN number) to be redeemed and will state:

- (a) the redemption date;
- (b) the redemption price;
- (c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;
- (d) the name and address of the Paying Agent;
- (e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (f) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;
- (g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and
- (h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Issuer's request, the Trustee will give the notice of redemption in the Issuer's name and at its expense *provided, however*, that the Issuer has delivered to the Trustee, at least three (3) Business Days (or if any of the Notes to be redeemed are in definitive form, five (5) Business Days) prior to the date on which the Issuer instructs the Trustee to give the notice (or such shorter period as the Trustee may agree), 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.

Notice of any redemption of the Notes may, at the Issuer's discretion, be given prior to the completion of a transaction (including an Equity Offering, an incurrence of Indebtedness, a Change of Control or other transaction) and any redemption notice may, at the Issuer's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of a related transaction. If such redemption or purchase is so subject to satisfaction of one or more conditions precedent such notice shall describe each such condition, and if applicable, shall state that, in the Issuer's discretion, the redemption date may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied, or such redemption or purchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the redemption date, or by the redemption date as so delayed. In addition, the Issuer may provide in such notice that payment of the redemption price and performance of the Issuer's obligations with respect to such redemption may be performed by another Person.

SECTION 5.4 **Deposit of Redemption or Purchase Price.** Prior to 11:00 a.m. New York City Time on the redemption or purchase date, the Issuer will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return, on or following the applicable redemption or repurchase date, to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest, if any, on all Notes to be redeemed or purchased.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a record date but on or prior to the corresponding interest payment date, then any accrued and unpaid interest to, but excluding, the redemption date or purchase date shall be paid on the redemption date or purchase date to the Person in whose name such Note was registered at the close of business on such record date in accordance with the applicable procedures of DTC. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 3.1 hereof.

SECTION 5.5 Notes Redeemed or Purchased in Part. Upon surrender of a Note issued in physical form that is redeemed or purchased in part, the Issuer will issue and the Trustee will authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered; *provided*, that each such new Note will be in a minimum principal amount of \$2,000 or integral multiple of \$1,000 in excess thereof.

In the case of a Note issued as a global note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof; *provided*, that the unredeemed portion thereof will be in a minimum principal amount of \$2,000 or integral multiple of \$1,000 in excess thereof.

SECTION 5.6 Optional Redemption.

(a) At any time prior to June 15, 2022, the Company may redeem the Notes in whole or in part, at its option, upon not less than 10 nor more than 60 days' prior notice by electronic delivery or first class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, at a redemption price (expressed as a percentage of the principal amount of the Notes to be redeemed) equal to 100.000% plus the Applicable Premium as of, and accrued and unpaid interest, if any, to but excluding, the date of redemption (the "Redemption Date"), subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date.

(b) At any time and from time to time prior to June 15, 2022, the Company may, on one or more occasions, upon not less than 10 nor more than 60 days' prior notice by electronic delivery or first class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, redeem up to 40.0% of the original aggregate principal amount of Notes issued under this Indenture on the Issue Date (together with Additional Notes) at a redemption price (expressed as a percentage of the principal amount of Notes to be redeemed) equal to 108.375% plus accrued and unpaid interest, if any, to but excluding, the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, with an amount equal to the net cash proceeds received by the Company of one or more Equity Offerings of the Company; *provided* that not less than 50.0% of the original aggregate principal amount of then-outstanding Notes issued under this Indenture remains outstanding immediately after the occurrence of each such redemption (including Additional Notes but excluding Notes held by the Company or any of its Subsidiaries), unless all such Notes are redeemed substantially concurrently; *provided further* that each such redemption occurs not later than 180 days after the date of closing of the related Equity Offering. The Trustee shall select the Notes to be purchased in the manner described under Sections 5.1 through 5.5.

(c) Until 120 days after the Issue Date, the Company may redeem in the aggregate up to 40% of the aggregate principal amount of the Notes with an amount equal to the net cash proceeds of any loan received pursuant to a Regulatory Debt Facility at a redemption price of 104.188% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to, but excluding, the applicable redemption date; *provided*, however, that not less than 50% of the aggregate principal amount of the then-outstanding Notes issued under the Indenture remains outstanding immediately thereafter (including Additional Notes, but excluding Notes held by the Company or any of its Subsidiaries), unless all such Notes are redeemed substantially concurrently.

(d) Except pursuant to clauses (a), (b) and (c) of this Section 5.6, the Notes will not be redeemable at the Company's option prior to June 15, 2022.

(e) At any time and from time to time on or after June 15, 2022, the Company may redeem the Notes, in whole or in part, upon not less than 10 nor more than 60 days' prior notice by electronic delivery or first class mail, postage prepaid, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth in the table below, plus accrued and unpaid interest thereon, if any, to but excluding the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on June 15 of each of the years indicated in the table below:

Year	Percentage
2022	104.188%
2023	102.094%
2024 and thereafter	100.000%

(f) Notwithstanding the foregoing, in connection with any tender offer for the Notes, including a Change of Control Offer or Asset Disposition Offer, if Holders of not less than 90.0% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party shall have the right upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, given not more than 30 days following such purchase date to redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price offered to each other Holder (excluding any early tender or incentive fee) in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to but excluding, the date of such redemption.

(g) Unless the Company defaults 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.

(h) Any redemption pursuant to this Section 5.6 shall be made pursuant to the provisions of Sections 5.1 through 5.5.

SECTION 5.7 Mandatory Redemption. The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes; *provided*, however, that under certain circumstances, the Company may be required to offer to purchase Notes under Section 3.5 and Section 3.10.

ARTICLE VI DEFAULTS AND REMEDIES

SECTION 6.1 Events of Default.

(a) Each of the following is an "Event of Default":

- (i) default in any payment of interest on any Note when due and payable, continued for 30 days;
- (ii) default in the payment of the principal amount of or premium, if any, on any Note issued under this Indenture when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon declaration or otherwise;
- (iii) failure by the Company or any Guarantor to comply for 60 days after written notice by the Trustee on behalf of the Holders or by the Holders of at least 30% in aggregate principal amount of the outstanding Notes with any agreement or obligation contained in this Indenture; *provided* that in the case of a failure to comply with this Indenture provisions described under Section 3.11, such period of continuance of such default or breach shall be 180 days after written notice described in this clause has been given;

(iv) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries) would constitute a Significant Subsidiary) (or the payment of which is Guaranteed by the Company or any Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries) would constitute a Significant Subsidiary)) other than Indebtedness owed to the Company or a Subsidiary whether such Indebtedness or Guarantee now exists, or is created after the date hereof, which default:

(A) is caused by a failure to pay principal of such Indebtedness, at its stated final maturity (after giving effect to any applicable grace periods provided in such Indebtedness); or

(B) results in the acceleration of such Indebtedness prior to its stated final maturity;

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default of principal at its stated final maturity (after giving effect to any applicable grace periods) or the maturity of which has been so accelerated, aggregates to the greater of \$250.0 million and 11.0% of LTM EBITDA or more at any one time outstanding;

(v) an involuntary case or other proceeding is commenced against the Company or any Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements of the Company and its Subsidiaries) would constitute a Significant Subsidiary) with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding remains undismissed and unstayed for a period of 60 days; or an order for relief is entered against the Company or any Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries) would constitute a Significant Subsidiary) under the federal bankruptcy laws as now or hereafter in effect;

(vi) the Company or any Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries) would constitute a Significant Subsidiary) (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries)) or for all or substantially all of the property and assets of the Company or any of its Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries)) or (iii) effects any general assignment for the benefit of creditors;

(vii) failure by the Company or a Significant Subsidiary other than an Unrestricted Subsidiary that is a Significant Subsidiary (or group of Subsidiaries (other than any Unrestricted Subsidiary) that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of the greater of \$250.0 million and 11.0% of LTM EBITDA other than any judgments covered by indemnities provided by, or insurance policies issued by, reputable and creditworthy companies, which final judgments remain unpaid, undischarged and unstayed for a period of more than 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;

(viii) any Notes Guarantee of the Notes by a Significant Subsidiary ceases to be in full force and effect, other than in accordance with the terms of this Indenture;

(ix) (i) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on any material portion of the Collateral intended to be covered thereby (unless perfection is not required by this Indenture or the Security Documents) other than (A) in accordance with the terms of the relevant Security Document and this Indenture, (B) on the satisfaction in full of all Obligations under this Indenture or (C) any loss of perfection that results from the failure of the Collateral Trustee to maintain possession of certificates delivered to it representing securities pledged under the Security Documents and (ii) such default continues for 30 days after receipt of written notice given by the Trustee or the Holders of not less than 30% in aggregate principal amount of the then outstanding Notes; and

(x) the Company or any Guarantor that is a Significant Subsidiary (or any group of Guarantors that, taken together (as of the latest audited consolidated financial statements for the Company and its Subsidiaries) would constitute a Significant Subsidiary) shall assert, in any pleading in any court of competent jurisdiction, that any security interest in any Security Document is invalid or unenforceable;

provided that a Default under clause (iii), (iv) and (vii) above will not constitute an Event of Default until the Trustee or the Holders of at least 30% in principal amount of the outstanding Notes notify the Company of the Default and, with respect to clauses (iii) and (vii), the Company does not cure such Default within the time specified in clause (iii), or (vii) after receipt of such notice; *provided* that a notice of Default may not be given with respect to any action taken, and reported publicly or to Holders, more than two years prior to such notice of Default. Any notice of Default, notice of acceleration or instruction to the Trustee to provide a notice of Default, notice of acceleration or take any other action (a “Noteholder Direction”) provided by any one or more Holders (each a “Directing Holder”) must be accompanied by a written representation from each such Holder delivered to the Company and the Trustee that such Holder is not (or, in the case such Holder is DTC or its nominee, that such Holder is being instructed solely by beneficial owners that are not) Net Short (a “Position Representation”), which representation, in the case of a Noteholder Direction relating to the delivery of a notice of Default (a “Default Direction”) shall be deemed a continuing representation until the resulting Event of Default is cured or otherwise ceases to exist or the Notes are accelerated. In addition, each Directing Holder is deemed, at the time of providing a Noteholder Direction, to covenant to provide the Company with such other information as the Company may reasonably request from time to time in order to verify the accuracy of such Noteholder’s Position Representation within five Business Days of request therefor (a “Verification Covenant”). In any case in which the Holder is DTC or its nominee, any Position Representation or Verification Covenant required hereunder shall be provided by the beneficial owner of the Notes in lieu of DTC or its nominee and DTC shall be entitled to conclusively rely on such Position Representation and Verification Covenant in delivering its direction to the Trustee.

If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company determines in good faith that there is a reasonable basis to believe a Directing Holder was, at any relevant time, in breach of its Position Representation and provides to the Trustee an Officer's Certificate stating that the Company has initiated litigation in a court of competent jurisdiction seeking a determination that such Directing Holder was, at such time, in breach of its Position Representation, and seeking to invalidate any Default, Event of Default or acceleration (or notice thereof) that resulted from the applicable Noteholder Direction, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to such Default or Event of Default shall be automatically reinstituted and any remedy stayed pending a final and non-appealable determination of a court of competent jurisdiction on such matter. If, following the delivery of a Noteholder Direction, but prior to acceleration of the Notes, the Company provides to the Trustee an Officer's Certificate stating that a Directing Holder failed to satisfy its Verification Covenant, the cure period with respect to such Default shall be automatically stayed and the cure period with respect to any Default or Event of Default that resulted from the applicable Noteholder Direction shall be automatically reinstituted and any remedy stayed pending satisfaction of such Verification Covenant. Any breach of the Position Representation shall result in such Holder's participation in such Noteholder Direction being disregarded; and, if, without the participation of such Holder, the percentage of Notes held by the remaining Holders that provided such Noteholder Direction would have been insufficient to validly provide such Noteholder Direction, such Noteholder Direction shall be void ab initio, with the effect that such Default or Event of Default shall be deemed never to have occurred, acceleration voided and the Trustee shall be deemed not to have received such Noteholder Direction or any notice of such Default or Event of Default.

Notwithstanding anything in the preceding two paragraphs to the contrary, any Noteholder Direction delivered to the Trustee during the pendency of an Event of Default as the result of a bankruptcy or similar proceeding shall not require compliance with the foregoing paragraphs.

For the avoidance of doubt, the Trustee shall be entitled to conclusively rely on any Noteholder Direction delivered to it in accordance with this Indenture, shall have no duty to inquire as to or investigate the accuracy of any Position Representation, enforce compliance with any Verification Covenant, verify any statements in any Officer's Certificate delivered to it, or otherwise make calculations, investigations or determinations with respect to Derivative Instruments, Net Shorts, Long Derivative Instruments, Short Derivative Instruments or otherwise. The Trustee shall have no liability to the Company, any Holder or any other Person in acting in good faith on a Noteholder Direction.

(b) If a Default for a failure to report or failure to deliver a required certificate in connection with another default (the "Initial Default") occurs, then at the time such Initial Default is cured, such Default for a failure to report or failure to deliver a required certificate in connection with another default that resulted solely because of that Initial Default shall also be cured without any further action.

(c) Any Default or Event of Default for the failure to comply with the time periods prescribed in Section 3.11 hereof or otherwise to deliver any notice or certificate pursuant to any other provision of this Indenture shall be deemed to be cured upon the delivery of any such report required by such provision or such notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in this Indenture.

SECTION 6.2 Acceleration. If any Event of Default (other than an Event of Default described in clause (v) and (vi) of Section 6.1(a) with respect to the Company) occurs and is continuing, the Trustee by written notice to the Company or the Holders of at least 30% in principal amount of the outstanding Notes by written notice to the Company and the Trustee, may declare the principal of and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal and accrued and unpaid interest, will be due and payable immediately.

In the event of any Event of Default specified in clause (iv) of Section 6.1(a), such Event of Default and all consequences thereof shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 30 days after such Event of Default arose:

- (a) (x) the Indebtedness that gave rise to such Event of Default shall have been discharged in full; 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) if the default that is the basis for such Event of Default has been cured; and
- (b) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction.

If an Event of Default described in clause (v) and (vi) of Section 6.1(a) occurs and is continuing with respect to the Company, the principal of and accrued and unpaid interest, on all Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

SECTION 6.3 Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy pursuant to the terms of the Security Documents or by proceeding at law or in equity to collect the payment of principal of, or premium, if any, or interest, if any, on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 shall 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 all of the Holders, (a) waive, by their consent (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), an existing Default or Event of Default and its consequences under this Indenture and the Security Documents except (A) a Default or Event of Default in the payment of the principal of, or interest, on a Note or (B) a Default or Event of Default in respect of a provision that under Section 9.2 cannot be amended without the consent of each Holder affected and (b) rescind any acceleration with respect to the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction, (ii) all existing Events of Default have been cured or waived except nonpayment of principal, premium, if any, interest, if any, that has become due solely because of the acceleration, (iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid, (iv) the Issuer has paid the Trustee its compensation and reimbursed the Trustee for its reasonable expenses, disbursements and advances and (v) in the event of the cure or waiver of an Event of Default of the type described in clause (iv) of Section 6.1(a), the Trustee shall have received an Officer's Certificate and an Opinion of Counsel stating that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

SECTION 6.5 Control by Majority. The Holders of a majority in aggregate principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Collateral Trustee or of exercising any trust or power conferred on the Trustee or the Collateral Trustee. However, the Trustee or the Collateral Trustee, as applicable, may refuse to follow any direction that conflicts with law or this Indenture or the Notes or, subject to Sections 7.1 and 7.2, that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee or Collateral Trustee in personal liability (it being understood that the Trustee has no duty to determine whether any action is prejudicial to any Holder); *provided, however*, that the Trustee or Collateral Trustee, as applicable, may take any other action deemed proper by the Trustee or Collateral Trustee that is not inconsistent with such direction. Prior to taking any such action hereunder, the Trustee or Collateral Trustee, as applicable, shall be entitled to indemnification and/or security satisfactory to it against all fees, losses, liabilities and expenses (including attorney's fees and expenses) caused by taking or not taking such action. If the Trustee shall have proceeded to enforce any right under this Indenture, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Trustee shall be restored severally and respectively to its former position and rights hereunder, and all rights, remedies and powers of the Trustee and each Holder shall continue as though no such proceedings had been taken.

SECTION 6.6 Limitation on Suits. Subject to Section 6.7, a Holder may not 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;
- (b) Holders of at least 30% in aggregate principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;
- (c) such Holders have offered in writing and, if requested, provided to the Trustee security and/or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee has not complied with such request within 60 days after the receipt of the written request and the offer of security and/or indemnity; and
- (e) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a written direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.7 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the contractual right of any Holder to receive payment of interest on the Notes held by such Holder or to institute suit for the enforcement of any such payment on or with respect to such Holder's Notes shall not be impaired or affected without the consent of such Holder (and, for the avoidance of doubt, the amendment, supplement or modification in accordance with the terms of this Indenture of Articles III and IV and Section 6.1(a)(iii), (iv), (vii) and (viii) and the related definitions shall be deemed not to impair the contractual right of any Holder to receive payments of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any such payment on or with respect to such Holder's Note).

SECTION 6.8 Collection Suit by Trustee. If an Event of Default specified in clauses (i) or (ii) of Section 6.1(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer 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 Issuer, its Subsidiaries or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may be entitled and empowered to participate as a member of any official committee of creditors appointed in such matter and may vote on behalf of the Holders 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 shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.6.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of 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 any such proceeding.

SECTION 6.10 Priorities.

(a) Subject to the Collateral Trust Agreement and any Parity Lien Intercreditor Agreement, if the Trustee collects any money or property pursuant to this Article VI (including upon exercise of remedies with respect to the Collateral), it shall pay out the money or property in the following order:

FIRST: to the Trustee and to the Collateral Trustee, in each case for amounts due to it under Section 7.6;

SECOND: to Holders for amounts due and unpaid on the Notes for principal of, or 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 of, or premium, if any, and interest, respectively; and

THIRD: to the Issuer, or to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

(b) The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least 15 days before such record date, the Issuer shall send or cause to be sent 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 6.11 does not apply to a suit by the Trustee, a suit by the Issuer, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 20.0% in outstanding aggregate 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 shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, opinions or orders furnished to the Trustee and conforming to the requirements of this Indenture or the Notes, as the case may be. 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 shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture or the Notes, as the case may be (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

- that:
- (c) The Trustee may 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 paragraph does not limit the effect of Section 7.1(b);
 - (ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;
 - (iii) the Trustee shall 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; and
 - (iv) No provision of this Indenture or the Notes shall require the Trustee to expend or risk its own funds or otherwise incur 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 shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
 - (d) Every provision of this Indenture that in any way relates to the Trustee is subject to clauses (a), (b) and (c) of this Section 7.1.
 - (e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.
 - (f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.
 - (g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.1.

SECTION 7.2 Rights of Trustee. Subject to Section 7.1:

- (a) The Trustee may conclusively rely on and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee may make such further inquiry or investigation into such facts or matter, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer during normal business hours, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation. The Trustee shall receive and retain financial reports and statements of the Company as provided herein, but shall have no duty to review or analyze such reports or statements to determine compliance with covenants or other obligations of the Issuer. For the avoidance of doubt, delivery of any information, documents or reports to the Trustee pursuant to this Indenture for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate delivered pursuant to Section 3.14 or otherwise).
- (b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall 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 execute any of the trusts and powers hereunder or perform any duties hereunder either directly or by or through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care by it hereunder.

(d) The Trustee shall 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 conferred upon it by this Indenture.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel relating to this Indenture or the Notes shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder or under the Notes in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default or whether any entity or group of entities constitutes a Significant Subsidiary or any other matter unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or of any such Significant Subsidiary is received by the Trustee at the Corporate Trust Office of the Trustee specified in Section 3.12, and such notice references the Notes and this Indenture.

(g) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder and under the Security Documents, and to each agent, custodian and other Person employed to act hereunder and under the Security Documents, including the Collateral Trustee and the First Priority Collateral Agent (as such term is defined in any Junior Lien Intercreditor Agreement).

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or the Notes at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered and, if requested, provided to the Trustee security and/or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

(i) The Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is actually known to a Trust Officer of the Trustee.

(j) Whenever in the administration of this Indenture or the Notes the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder or thereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on its part, conclusively rely upon an Officer's Certificate.

(k) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Issuer and the Restricted Subsidiaries, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(l) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture or the Notes.

(n) In no event shall the Trustee be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage.

(o) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by one Officer of the Issuer.

(p) The grant of permissive rights or powers to the Trustee shall not be construed to impose duties to act.

(q) Notwithstanding any term herein to the contrary, it is hereby expressly agreed and acknowledged that the agreements set forth herein by the Trustee are made solely in its capacity as the Trustee hereunder, and not in its individual capacity. In the case of any reference herein to the giving of any consent, approval or direction by the Trustee, which includes for the avoidance of doubt any provision in respect of the delivery, revocation or rescission of any notice, it is understood in all cases the Trustee shall only take such action under this Indenture as directed in writing by the Holders in accordance with the terms of this Indenture.

(r) Notwithstanding anything else to the contrary herein, whenever reference is made in this Indenture, to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication form, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Trustee or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Trustee, it is understood that in all cases the Trustee shall be fully justified in failing or refusing to take any such action if it shall not have received written instruction, advice or concurrence of the Holders in respect of such action. The Trustee shall have no liability for any failure or delay in taking any actions contemplated above as a result of a failure or delay on the part of the Holders to provide such instruction, advice or concurrence.

SECTION 7.3 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, 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 Sections 7.9. In addition, the Trustee shall be permitted to engage in transactions with the Issuer and its Affiliates and Subsidiaries.

SECTION 7.4 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Notes or the Security Documents, shall not be accountable for the Issuer's use of the proceeds from the sale of the Notes, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee or any money paid to the Issuer pursuant to the terms of this Indenture and shall not be responsible for any statement of the Issuer in this Indenture, the Security Documents 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.

SECTION 7.5 Notice of Defaults. The Issuer shall inform the Trustee promptly in writing (but in no event later than thirty (30) days after such occurrence) of the occurrence of any Default or Event of Default hereunder. If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall send electronically or by first class mail to each Holder at the address set forth in the Notes Register notice of the Default or Event of Default within 60 days after it is actually known to a Trust Officer. Except in the case of a Default or Event of Default in payment of principal of or interest, if any, on any Note (including payments pursuant to the optional redemption or required repurchase provisions of such Note), the Trustee may withhold the notice if and so long it in good faith determines that withholding the notice is in the interests of Holders.

SECTION 7.6 Compensation and Indemnity. The Issuer and the Guarantors shall be jointly and severally liable to pay to the Trustee from time to time compensation for its services hereunder and under the Notes as the Issuer and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee 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 reports, certificates and other documents, costs of preparation and mailing of notices to Holders. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the agents, counsel, accountants and experts of the Trustee. The Issuer and the Guarantors shall, jointly and severally, indemnify the Trustee, in each of its capacities under the Indenture, the Collateral Trustee, and each of their respective directors, officers, employees, agents, successors and assigns, against any and all loss, liability, damages, claims or expense, including taxes (other than taxes based upon the income of the Trustee) (including reasonable attorneys' and agents' fees and expenses) incurred by it without willful misconduct or gross negligence, as determined by a final nonappealable order of a court of competent jurisdiction, on its part in connection with the administration of this trust and the performance of its duties hereunder and under the Notes, including the costs and expenses of enforcing this Indenture (including this Section 7.6) and the Notes and of defending itself against any claims (whether asserted by any Holder, the Issuer or otherwise). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity of which it has received written notice. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee shall provide reasonable cooperation at the Issuer's expense in the defense. The Trustee may have separate counsel and the Issuer and the Guarantors shall be jointly and severally liable to pay the fees and expenses of such counsel; *provided that* the Issuer and the Guarantors shall not be required to pay the fees and expenses of such separate counsel if the Issuer assumes the Trustee's defense, unless (i) in the reasonable judgment of the Trustee, there is a conflict of interest or potential conflict of interest between the Issuer and the Trustee in connection with such defense, (ii) the Issuer has not retained counsel reasonably satisfactory to the Trustee or (iii) there are defenses available to the Trustee that may not be asserted by the Company; *provided further that*, the Company shall be required to pay the reasonable fees and expenses of such counsel in evaluating such conflict. Any settlement which affects the Trustee may not be entered into without the consent of the Trustee, unless the Trustee is given a full and unconditional release from liability with respect to the claims covered thereby and such settlement does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Trustee. After the Issuer has assumed the defense of the Trustee, the Trustee may settle or compromise any suit or action without the consent of the Issuer.

To secure the Issuer's payment obligations in this Section 7.6, the Trustee shall 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. Such lien shall survive the satisfaction and discharge of this Indenture. The Trustee's respective right to receive payment of any amounts due under this Section 7.6 shall not be subordinate to any other liability or Indebtedness of the Issuer.

The Issuer's and the Guarantors' joint and several payment and indemnity obligations pursuant to this Section 7.6 shall survive the discharge of this Indenture and any resignation or removal of the Trustee under Section 7.7. Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs fees, expenses or renders services after the occurrence of a Default specified in clauses (v) and (vi) of Section 6.1(a), the fees and expenses (including the reasonable fees and expenses of its counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.7 Replacement of Trustee. The Trustee may resign at any time by so notifying the Issuer in writing not less than 30 days prior to the effective date of such resignation. The Holders of a majority in aggregate principal amount of the Notes may remove the Trustee by so notifying the removed Trustee in writing not less than 30 days prior to the effective date of such removal and may appoint a successor Trustee with the Issuer's written consent, which consent will not be unreasonably withheld. The Issuer shall remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.9 hereof;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or other public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in principal amount of the Notes and such Holders do not reasonably promptly appoint a successor Trustee as described in the preceding paragraph, or if a vacancy exists in the Corporate Trust Office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall, at the expense of the Issuer, promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.6.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of at least 10.0% in aggregate principal amount of the Notes may petition, at the Issuer's expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.9, any Holder, who has been a bona fide holder of a Note for at least six months, 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 Issuer's obligations under Section 7.6 shall continue for the benefit of the retiring Trustee. The predecessor Trustee shall have no liability for any action or inaction of any successor 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 shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall 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 shall 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; *provided* that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall only apply to its successor or successors by merger, consolidation or conversion.

SECTION 7.9 Eligibility; Disqualification. This Indenture shall always have a Trustee. The Trustee shall have a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition.

SECTION 7.10 Trustee's Application for Instruction from the Issuer. Any application by the Trustee for written instructions from the Issuer may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any Officer of the Issuer actually receives such application, unless any such Officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

SECTION 7.11 Security Documents; Intercreditor Agreements. By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and the Collateral Trustee, as the case may be, to execute and deliver the Collateral Trust Agreement, the Parity Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, and any other Security Documents in which the Trustee or the Collateral Trustee, as applicable, is named as a party, including the Security Agreement and any Security Documents, including any Junior Lien Intercreditor Agreement or Parity Lien Intercreditor Agreement, executed on or after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Collateral Trustee are not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under, the Collateral Trust Agreement, the Parity Lien Intercreditor Agreement, the Junior Lien Intercreditor Agreement, if any, or any other Security Documents, the Trustee and the Collateral Trustee each shall have all of the rights, privileges, benefits, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements). For the avoidance of doubt, the rights, privileges, protections, immunities and benefits given to the Collateral Trustee and the Trustee, including, without limitation, their rights to be indemnified, are extended to, and shall be enforceable by, the First Priority Collateral Agent in any of its capacities under any Junior Lien Intercreditor Agreement.

SECTION 7.12 Limitation on Duty of Trustee in Respect of Collateral; Indemnification

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee and the Collateral Trustee 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 and the Trustee 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 security interest in the Collateral. The Collateral Trustee shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee in good faith.

(b) The Trustee and Collateral Trustee shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Trustee and Collateral Trustee, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Issuer to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral (except with respect to certificates delivered to the Collateral Trustee representing securities pledged under the Security Documents). The Trustee and Collateral Trustee shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or the Security Documents by the Issuer, any Guarantor or any Junior Lien Representative.

ARTICLE VIII
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 8.1 Option to Effect Legal Defeasance or Covenant Defeasance; Defeasance. The Issuer may, at its option and at any time, elect to have either Section 8.2 or 8.3 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.2 Legal Defeasance and Discharge. Upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.2, the Issuer and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Guarantees) and the Security Documents with respect to such Series on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer and the Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 hereof and the other Sections of this Indenture referred to in clauses (a) and (b) below, and to have satisfied all of their other obligations under the Note Documents (and the Trustee, on written demand of and at the expense of the Issuer, shall execute such instruments reasonably requested by the Issuer acknowledging the same) and the Security Documents, and to have cured all then existing Events of Default, except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of Notes issued under this Indenture to receive payments in respect of the principal of, premium, if any, and interest, if any, on the Notes when such payments are due solely out of the trust referred to in Section 8.4 hereof;

(b) the Issuer's obligations with respect to the Notes under Article II concerning issuing temporary Notes, registration of such Notes, mutilated, destroyed, lost or stolen Notes and Section 3.12 hereof concerning the maintenance of an office or agency for payment and money for security payments held in trust;

- (c) the rights, powers, trusts, duties and immunities of the Trustee and the Issuer's or Guarantors' obligations in connection therewith; and
- (d) this Article VIII with respect to provisions relating to Legal Defeasance.

SECTION 8.3 Covenant Defeasance. Upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, the Issuer and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be released from each of their obligations under the covenants contained in Section 3.2, 3.3, 3.5, 3.6, 3.7, 3.8, 3.11, 3.10, 3.13, 3.16, 3.16, 3.17 and Section 4.1 (except Section 4.1(a)(i) and (ii)) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.4 hereof are satisfied (hereinafter, "Covenant Defeasance"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Guarantees, the Issuer and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1(a) hereof, but, except as specified above, the remainder of this Indenture and such Notes and Guarantees will be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, Sections 6.1(a)(iii) (other than with respect to Section 4.1(a)(i) and (ii)), 6.1(a)(iv), 6.1(a)(v) (with respect only to a Guarantor that is a Significant Subsidiary or any group of Guarantors that taken together would constitute a Significant Subsidiary), 6.1(a)(vi) (with respect only to a Guarantor that is a Significant Subsidiary or any group of Guarantors that taken together would constitute a Significant Subsidiary), 6.1(a)(vii), 6.1(a)(viii), 6.1(a)(ix) and 6.1(a)(x) hereof shall not constitute Events of Default.

SECTION 8.4 Conditions to Legal or Covenant Defeasance. In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.2 or 8.3 hereof:

- (a) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in Dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of and premium, if any, interest, due on the Notes issued under this Indenture on the stated maturity date or on the applicable redemption date, as the case may be, and the Issuer must specify whether such Notes are being defeased to maturity or to a particular redemption date; *provided*, that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of redemption (any such amount, the "Applicable Premium Deficit") only required to be deposited with the Trustee on or prior to the date of redemption. Any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee substantially concurrently with the deposit of such Applicable Premium Deficit that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

- (b) in the case of Legal Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, subject to customary assumptions and exclusions;

- (i) the Issuer has received from, or there has been published by, the United States Internal Revenue Service a ruling; or
- (ii) since the issuance of such Notes, 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 shall confirm that, subject to customary assumptions and exclusions, the beneficial owners of the Notes, in their capacity as beneficial owners of the Notes, will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal 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 Legal Defeasance had not occurred;

(iii) in the case of Covenant Defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, subject to customary assumptions and exclusions, the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant 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 Covenant Defeasance had not occurred;

(iv) [reserved];

(v) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Credit Facilities or any other material agreement or instrument (other than this Indenture) to which, the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(vi) the Issuer shall have delivered to the Trustee an Officer's Certificate to the effect that the deposit was not made by the Issuer with the intent of defeating, hindering, delaying, defrauding or preferring any creditors of the Issuer or any Guarantor; and

(vii) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each to the effect that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

SECTION 8.5 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions Subject to Section 8.6 hereof, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "Trustee") pursuant to Section 8.4 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Obligations deposited pursuant to Section 8.4 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article VIII to the contrary, the Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any money or U.S. Government Obligations held by it as provided in Section 8.4 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.6 Repayment to the Issuer. Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium or interest on, any Note and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Issuer on its written request unless an abandoned property law designates another Person or (if then held by the Issuer) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Issuer for payment thereof unless an abandoned property law designates another Person, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, will thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, shall at the expense of the Issuer cause to be published once, in The New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

SECTION 8.7 Reinstatement. If the Trustee or Paying Agent is unable to apply any money or Dollars or U.S. Government Obligations in accordance with Section 8.2 or 8.3 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and the Guarantors' obligations under this Indenture and the Notes and the Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.2 or 8.3 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2 or 8.3 hereof, as the case may be; *provided, however*, that, if the Issuer make any payment of principal of, premium, or interest on, any Note following the reinstatement of its obligations, the Issuer 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 of this Indenture, the Issuer, any Guarantor (with respect to its Guarantee, this Indenture or the Security Documents), the Trustee and/or the Collateral Trustee may amend, supplement or modify this Indenture, any Guarantee, the Security Documents and the Notes without the consent of any Holder:

- (a) to cure any ambiguity, omission, mistake, defect, error or inconsistency, conform any provision to any provision under the heading "Description of Secured Notes" in the Offering Memorandum or reduce the minimum denomination of the Notes;
- (b) to provide for the assumption by a successor Person of the obligations of the Issuer or a Guarantor under any Note Document or to comply with Section 4.1;
- (c) to provide for uncertificated Notes in addition to or in place of certificated Notes or to alter the provisions of this Indenture relating to the form of the Notes (including related definitions);
- (d) to add or modify the covenants or provide for a Note Guarantee for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or any Subsidiary;
- (e) to make any change (including changing the CUSIP or other identifying number on any Notes) that would provide any additional rights or benefits to the Holders or that does not materially and adversely affect the rights of any Holder in any material respect;
- (f) at the Issuer's election, comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act, if such qualification is required;
- (g) make such provisions as necessary for the issuance of Additional Notes;
- (h) provide for any Subsidiary to provide a Notes Guarantee in accordance with this Indenture, to add Guarantees with respect to the Notes, to add security to or for the benefit of the Notes, or to confirm and evidence the release, termination, discharge or retaking of any Notes Guarantee or Lien with respect to or securing the Notes when such release, termination, discharge or retaking is provided for under this Indenture;
- (i) evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee, a successor Collateral Trustee or successor Paying Agent thereunder pursuant to the requirements hereof or to provide for the accession by the Trustee to any Note Document;

- (j) secure the Notes and/or the related Guarantees or to add collateral thereto;
- (k) add an obligor or a Guarantor under this Indenture;
- (l) make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including to facilitate the issuance and administration of Notes; *provided, however*, that such amendment does not materially and adversely affect the rights of Holders to transfer the Notes;
- (m) comply with the rules and procedures of any applicable securities depositary;
- (n) make any amendment to the provisions of this Indenture, the Notes Guarantees and/or the Notes to eliminate the effect of any Accounting Change or in the application thereof as described in the last paragraph of the definition of “GAAP”;
- (o) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Trustee or the Collateral Trustee for the benefit of the Holders, as additional security for the payment and performance of all or any portion of the Parity Lien 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 Collateral Trustee pursuant to this Indenture, any of the Security Documents or otherwise;
- (p) to add Parity Lien Secured Parties to any Security Documents;
- (q) to enter into the Junior Lien Intercreditor Agreement, the Parity Lien Intercreditor Agreement, or any trust or intercreditor agreement having substantially similar terms with respect to the Holders as those set forth in the Collateral Trust Agreement, the Parity Lien Intercreditor Agreement, or the Junior Lien Intercreditor Agreement, taken as a whole, in each case, or any joinder thereto;
- (r) in the case of any Security Document, to include therein any legend required to be set forth therein pursuant to the Collateral Trust Agreement or to modify any such legend as required by the Collateral Trust Agreement; and
- (s) to provide for the succession of any parties to the Security Documents (and other amendments that are administrative or ministerial in nature) in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of any agreement that is not prohibited by this Indenture.

Subject to Section 9.2, upon the request of the Issuer and upon receipt by the Trustee and the Collateral Trustee of the documents described in Section 9.5 and 13.2 hereof, the Trustee and/or the Collateral Trustee will join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture, security documents or intercreditor agreements, unless such amended or supplemental indenture, security documents or intercreditor agreements affects the Trustee’s or Collateral Trustee’s own rights, duties, liabilities or immunities under this Indenture and the Security Documents or otherwise, in which case the Trustee or Collateral Trustee, as applicable, may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture, security documents or intercreditor agreements.

SECTION 9.2 With Consent of Holders. Except as provided below in this Section 9.2, the Issuer, the Guarantors, the Trustee and the Collateral Trustee may amend or supplement this Indenture, any Guarantee, the Security Documents and the Notes issued hereunder with the consent of the Holders of at least a majority in principal amount of all the outstanding Notes issued under this Indenture, including, without limitation, consents obtained before or after a Change of Control or in connection with a purchase of, or tender offer or exchange offer for, Notes, and any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Guarantees or the Security Documents may be waived with the consent of the Holders of at least a majority in principal amount of all the outstanding Notes issued under this Indenture (including consents obtained before or after a Change of Control or in connection with a purchase of or tender offer or exchange offer for Notes). Section 2.11 hereof and Section 13.4 hereof shall determine which Notes are considered to be “outstanding” for the purposes of this Section 9.2.

Upon the request of the Issuer, and upon delivery to the Trustee and the Collateral Trustee, as applicable, of evidence of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee and/or the Collateral Trustee of the documents described in Section 9.5 and 13.2 hereof, the Trustee and/or the Collateral Trustee will join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture, security documents or intercreditor agreements unless such amended or supplemental indenture, security documents or intercreditor agreements affect the Trustee's or the Collateral Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee or the Collateral Trustee, as applicable, may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture, security documents or intercreditor agreements.

Without the consent of each Holder of Notes affected, an amendment, supplement or waiver may not, with respect to any Notes issued thereunder and held by a nonconsenting Holder:

- (a) reduce the principal amount of such Notes whose Holders must consent to an amendment;
- (b) reduce the stated rate of or extend the stated time for payment of interest on any such Note (other than provisions relating to Section 3.5 and Section 3.10);
- (c) reduce the principal of or extend the Stated Maturity of any such Note (other than provisions relating to Section 3.5 and Section 3.10);
- (d) reduce the premium payable upon the redemption of any such Note or change the time at which any such Note may be redeemed, in each case as set forth in Section 5.6;
- (e) make any such Note payable in currency other than that stated in such Note;
- (f) impair the right of any Holder to institute suit for the enforcement of any payment of principal of and interest on such Holder's Notes on or after the due dates therefor;
- (g) waive a Default or Event of Default with respect to the nonpayment of principal, premium or interest (except pursuant to a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of such Notes outstanding and a waiver of the payment default that resulted from such acceleration); or
- (h) make any change in the amendment or waiver provisions which require the Holders' consent described in this Section 9.2.

Notwithstanding the foregoing, without the consent of the Holders of at least 66-2/3% in aggregate principal amount of the Notes then outstanding, no amendment or waiver may (A) make any change in any Security Document or the provisions in this Indenture dealing with Collateral or application of trust proceeds of the Collateral with the effect of releasing the Liens on all or substantially all of the Collateral which secure the Obligations in respect of the Notes or (B) change or alter the priority of the Liens securing the Obligations in respect of the Notes in any material portion of the Collateral in any way materially adverse, taken as a whole, to the Holders, other than, in each case, as provided under the terms of this Indenture or the Security Documents.

It shall not be necessary for the consent of the Holders under this Indenture to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment, supplement or waiver under this Indenture by any Holder of the Notes given in connection with a tender or exchange of such Holder's Notes will not be rendered invalid by such tender or exchange.

SECTION 9.3 Revocation and Effect of Consents and Waivers. Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent or waiver as to such Holder's Note or portion of its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Issuer may, but shall 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 in this Section 9.3 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, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.4 Notation on or Exchange of Notes The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Issuer Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.5 Trustee to Sign Amendments. The Trustee and the Collateral Trustee shall sign any amended or supplemental indenture, security documents or intercreditor agreements authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee or the Collateral Trustee, as applicable. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Sections 7.1 and 7.2 hereof) shall be fully protected in conclusively relying upon, in addition to the documents required by Section 13.2 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture or security documents or intercreditor agreements is authorized or permitted by this Indenture and is valid, binding and enforceable against the Issuer or any Guarantor, as the case may be, in accordance with its terms.

ARTICLE X GUARANTEE

SECTION 10.1 Guarantee. Subject to the provisions of this Article X, each Guarantor that executes this Indenture or a supplemental indenture hereto will fully, unconditionally and irrevocably guarantee, as primary obligor and not merely as surety, jointly and severally with each other Guarantor, to each Holder, the Trustee and the Collateral Trustee the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the principal of, premium, if any, and interest on the Notes and all other obligations and liabilities of the Issuer under this Indenture (including without limitation interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding and the obligations under Section 7.6), (all the foregoing being hereinafter collectively called the "Guaranteed Obligations"). Each Guarantor agrees that the Guaranteed Obligations will rank equally in right of payment with other Indebtedness of such Guarantor, except to the extent such other Indebtedness is subordinate to the Guaranteed Obligations, in which case the obligations of the Guarantors under the Guarantees will rank senior in right of payment to such other Indebtedness.

To evidence its Guarantee set forth in this Section 10.1, each Guarantor hereby agrees that this Indenture or a supplemental indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor hereby agrees that its Guarantee set forth in this Section 10.1 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee shall be valid nevertheless.

Each Guarantor further agrees (to the extent permitted by law) 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 Guaranteed Obligation.

Each Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Notes or the Guaranteed Obligations.

Each Guarantor further agrees that its 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.

Except as set forth in Section 10.2, the obligations of each Guarantor hereunder shall 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 shall not 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 Guaranteed Obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by (a) the failure of any Holder to assert any claim or demand or to enforce any right or remedy against the Issuer or any other person under this Indenture, the Notes or any other agreement or otherwise; (b) any extension or renewal of any thereof; (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (d) the release of any security held by any Holder for the Guaranteed Obligations; (e) the failure of any Holder to exercise any right or remedy against any other Guarantor; (f) any change in the ownership of the Issuer; (g) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; or (h) 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 Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.

Each Guarantor agrees that its Guarantee herein shall remain in full force and effect until payment in full of all the Guaranteed Obligations or such Guarantor is released from its Guarantee in compliance with Section 10.2, Article VIII or Article XI. Each Guarantor further agrees that its Guarantee herein shall 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, interest on any of the Guaranteed Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuer or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Guaranteed Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, each 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 Holders 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 Issuer or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

Each Guarantor further agrees that, as between such Guarantor, on the one hand, and the Holders, on the other hand, (x) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby and (y) in the event of any such declaration of acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purposes of this Guarantee.

Each Guarantor also agrees to pay any and all fees, costs and expenses (including attorneys' fees and expenses) incurred by the Trustee, the Collateral Trustee or the Holders in enforcing any rights under this Section 10.1.

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 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 Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal, foreign, state or provincial law and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

(b) Any Note Guarantee of a Guarantor shall be automatically and unconditionally released and discharged upon:

(i) a sale, exchange, transfer or other disposition (including by way of merger, amalgamation, consolidation, dividend distribution or otherwise) of the Capital Stock of such Guarantor or the sale, exchange, transfer or other disposition of all or substantially all the assets of the Guarantor to a Person other than to the Company or a Restricted Subsidiary, in each case as otherwise permitted by this Indenture;

(ii) the designation in accordance with this Indenture of any Subsidiary of the Unsecured Guarantor as an Unrestricted Subsidiary or the occurrence of any event after which a Subsidiary of the Unsecured Guarantor is no longer a Restricted Subsidiary;

(iii) in the case of a Secured Guarantee by any Subsidiary of Propco, the occurrence of any event after which the applicable Secured Guarantor is no longer a Subsidiary of Propco;

(iv) defeasance or discharge of the Notes pursuant to Article VIII or Article XI;

(v) in the case of an Unsecured Guarantee by a Subsidiary of the Unsecured Guarantor as a result of its guarantee of other Indebtedness of the Unsecured Guarantor pursuant to Section 3.7, such Subsidiary of the Company being (or being substantially concurrently) released or discharged from all of its guarantee of the relevant other Indebtedness, except a release as a result of payment under such guarantee of such other Indebtedness (it being understood that a release subject to a contingent reinstatement is still considered a release);

(vi) upon the merger, amalgamation or consolidation of any Unsecured Guarantor with and into the Company or another Guarantor, or any Secured Guarantor with and into another Secured Guarantor, or upon the liquidation of any such Guarantor, in each case, in compliance with the applicable provisions of this Indenture,

(vii) in the case of any Notes Guarantee (other than the Unsecured Guarantee by the Unsecured Guarantor or any Secured Guarantee), upon the achievement of Investment Grade Status by the Notes; and

(viii) as described in Article IX.

SECTION 10.3 Right of Contribution. Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made on the obligations under the Guarantees, such Guarantor shall be entitled to seek and receive contribution from and against the Issuer or any other Guarantor who has not paid its proportionate share of such payment. The provisions of this Section 10.3 shall in no respect limit the obligations and liabilities of each Guarantor to the Trustee and the Holders and each Guarantor shall 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 Guarantor hereunder, no Guarantor shall be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Issuer 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 shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuer 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 Issuer on account of the Guaranteed Obligations are paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Guarantor, and shall, 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.

ARTICLE XI SATISFACTION AND DISCHARGE

SECTION 11.1 Satisfaction and Discharge. This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(a) either:

(i) all Notes that have been authenticated and delivered, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust, have been delivered to the Trustee for cancellation; or

(ii) all such Notes not theretofore delivered to the Trustee for cancellation (A) have become due and payable by reason of the making of a notice of redemption or otherwise or (B) will become due and payable within one year at their Stated Maturity or (iii) 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 Issuer;

(b) the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in Dollars, U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on such Notes not previously delivered to the Trustee for cancellation, for principal, premium, if any, and interest to the date of deposit (in the case of Notes that have become due and payable), or to the Stated Maturity or redemption date, as the case may be; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, as calculated by the Company or on behalf of the Company by such Person as the Company shall designate, with any Applicable Premium Deficit only required to be deposited with the Trustee on or prior to the date of redemption, and any Applicable Premium Deficit shall be set forth in an Officer's Certificate delivered to the Trustee substantially concurrently with the deposit of such Applicable Premium Deficit that confirms that such Applicable Premium Deficit shall be applied toward such redemption;

(c) [reserved];

(d) the Issuer has paid or caused to be paid all sums payable by the Issuer under this Indenture; and

(e) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money in Dollars toward the payment of such Notes issued hereunder at maturity or the redemption date, as the case may be.

In addition, the Issuer shall deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, the Issuer's obligations to the Trustee in Section 7.6 hereof and, if money in Dollars has been deposited with the Trustee pursuant to clause (a)(ii) of this Section 11.1, the provisions of Sections 11.2 and 8.6 hereof will survive.

SECTION 11.2 Application of Trust Money. Subject to the provisions of Section 8.6 hereof, all money in Dollars or U.S. Government Obligations deposited with the Trustee pursuant to Section 11.1 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium) and interest for whose payment such money in Dollars or U.S. Government Obligations has been deposited with the Trustee; but such money in Dollars or U.S. Government Obligations need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 11.1 hereof 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 Issuer's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.1 hereof; *provided* that if the Issuer have made any payment of principal of, premium or interest on, any Notes because of the reinstatement of its obligations, the Issuer shall 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 XII COLLATERAL

SECTION 12.1 Security Documents.

(a) The due and punctual payment of the principal of, premium and interest on the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium and interest on the Notes and performance of all other Obligations of the Issuer and the Guarantors to the Holders, the Trustee or the Collateral Trustee under this Indenture, the Notes, the Note Guarantees and the Security Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Security Documents, which define the terms of the Liens that secure First Lien Notes Obligations, subject to the terms of the Collateral Trust Agreement and the Parity Lien Intercreditor Agreement. The Trustee, the Issuer and the Guarantors hereby acknowledge and agree that the Collateral Trustee holds the Collateral in trust for the benefit of the Holders, the Trustee and the Collateral Trustee (and the holders of Parity Lien Obligations as provided therein) and pursuant to the terms of the Security Documents. Each Holder, by accepting a Note, consents and agrees to the terms of the Security Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral), each as may be in effect or may be amended from time to time in accordance with their terms and this Indenture, and authorizes and directs Trustee and the Collateral Trustee to enter into the Security Documents (including the Collateral Trust Agreement) and the Access and Use Rights Agreement on the Issue Date, the Security Documents (including the Parity Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement, if any), at any time after the Issue Date, if applicable, and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuer shall deliver to the Collateral Trustee copies of all documents required to be filed pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section 12.1 to assure and confirm to the Collateral Trustee the security interest in the Collateral contemplated hereby, by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. On or following the Issue Date and subject to the Collateral Trust Agreement, the Issuer and the Guarantors shall execute, file or cause the filing of any and all further documents, financing statements (including continuation statements and amendments to financing statements), agreements and instruments, and take all further action that may be required under applicable law in order to grant, preserve, maintain, protect and perfect (or continue the perfection of) the validity and priority of the Liens and security interests created or intended to be created by the Security Documents in the Collateral. For the avoidance of doubt, subject to the Collateral Trust Agreement, the Trustee, in each of its capacities hereunder, including as Collateral Trustee, shall have no obligation to file or cause the filing of any and all further documents, financing statements (including continuation statements and amendments to financing statements), agreements and instruments, or take any further action that may be required under applicable law in order to grant, preserve, maintain, protect and perfect (or continue the perfection of) the validity and priority of the Liens and security interests created or intended to be created by this Indenture and/or the Security Documents in the Collateral.

(b) Notwithstanding anything to the contrary herein, Propco shall not be required to deliver mortgages on the Issue Date with respect to Real Property Collateral owned at such time, in which case it shall use commercially reasonable efforts to cause first-priority mortgages or deeds of trust in favor of the Collateral Trustee to be delivered and recorded with respect to the Real Property Collateral and to obtain title insurance policies insuring the first-priority mortgages on the properties comprising the Real Property Collateral in accordance with the Security Documents, in each case subject to the Permitted Liens, as promptly as reasonably practicable and in any case within 120 days following the Issue Date, as such date will be extended without further action by any Person to the extent any such actions are not or cannot be completed within such timeframe as a result of the occurrence of the COVID-19 pandemic (including, without limitation, as a result of any notary services being unavailable or recording offices not being open) after the use of commercially reasonable efforts to do so without undue burden or expense or risk to human health.

SECTION 12.2 Release of Collateral.

(a) Collateral may be released from the Lien and security interest created by the Security Documents at any time and from time to time in accordance with the provisions of the Security Documents and this Indenture, including, but not limited to, Section 7 of the Collateral Trust Agreement.

(b) The Collateral Trustee's Parity Liens upon the Collateral shall automatically and unconditionally be released, and the right of the Holders of the Notes and such Obligations to the benefits and proceeds of the Collateral Trustee's Parity Liens on the Collateral will terminate and be discharged:

- (i) upon satisfaction and discharge of the Indenture as set forth in Article XI;
- (ii) upon a Legal Defeasance or Covenant Defeasance under this Indenture as described in Section 8.2 and Section 8.3 hereof;
- (iii) upon payment in full and discharge of all Notes outstanding under this Indenture and all Obligations that are outstanding, due and payable under this Indenture at the time the Notes are paid in full and discharged;
- (iv) in whole or in part, with the consent of the holders of the requisite percentage of Notes in accordance with the provisions described in Article IX;
- (v) in part, upon the disposition of any property or assets (other than any disposition among Secured Guarantors), in connection with a disposition by the relevant Secured Guarantor to consummate a disposition of such property or assets to the extent not prohibited under, and subject to compliance with the provisions of Section 3.5;
- (vi) in part, upon the release of a Secured Guarantor from its Guarantee with respect to the Notes in accordance with this Indenture, the release of the property and assets of such Guarantor; or

(vii) in part, as to any property that is or becomes Excluded Property (as defined in the Security Agreement) pursuant to a transaction permitted by this Indenture.

(c) With respect to any release of Collateral, upon receipt of an Officer's Certificate stating that all conditions precedent under this Indenture and the Security Documents, if any, to such release have been met and that it is permitted for the Trustee and/or Collateral Trustee to execute and deliver the documents requested by the Issuer in connection with such release and any necessary or proper instruments of termination, satisfaction or release prepared by the Issuer, the Trustee and the Collateral Trustee shall, execute, deliver or acknowledge (at the Issuer's expense) such documents, instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Security Documents and shall do or cause to be done (at the Issuer's expense) all acts reasonably requested of them to release such Lien as soon as is reasonably practicable. Neither the Trustee nor the Collateral Trustee shall be liable for any such release undertaken in reliance upon any such Officer's Certificate, and notwithstanding any term hereof or in any Security Document to the contrary, the Trustee and the Collateral Trustee shall not be under any obligation to release any such Lien and security interest, or execute and deliver any such instrument of release, satisfaction or termination, unless and until it receives such Officer's Certificate, upon which it shall be entitled to conclusively rely.

SECTION 12.3 Suits to Protect the Collateral.

Subject to the provisions of Article VIII and the Security Documents, the Trustee may or may direct the Collateral Trustee to take all actions it determines in order to:

- (a) enforce any of the terms of the Security Documents; and
- (b) collect and receive any and all amounts payable in respect of the Obligations hereunder.

Subject to the provisions of the Security Documents, the Trustee and the Collateral Trustee shall have the power to institute and to maintain such suits and proceedings as the Trustee or the Collateral Trustee may determine to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Trustee or the Collateral Trustee may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 12.3 shall be considered to impose any such duty or obligation to act on the part of the Trustee or the Collateral Trustee.

SECTION 12.4 Authorization of Receipt of Funds by the Trustee Under the Security Documents

Subject to the provisions of the Collateral Trust Agreement and the Parity Lien Intercreditor Agreement, the Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Security Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

SECTION 12.5 Purchaser Protected.

In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Collateral Trustee or the Trustee to execute the applicable release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article XII to be sold be under any obligation to ascertain or inquire into the authority of the Issuer or the applicable Guarantor to make any such sale or other transfer.

SECTION 12.6 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 XII upon the Issuer or a Secured 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 Secured Guarantor or of any Officer or Officers thereof required by the provisions of this Article XII; and if the Trustee or the Collateral Trustee 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 Collateral Trustee.

SECTION 12.7 Collateral Trustee

(a) The Issuer and each of the Holders, by acceptance of the Notes, hereby designates and appoints the Collateral Trustee as its agent under this Indenture and the Security Documents (as applicable), and the Issuer and each of the Holders, by acceptance of the Notes, hereby irrevocably authorizes the Collateral Trustee to take such action on its behalf under the provisions of this Indenture and the Security Documents (as applicable), and to exercise such powers and perform such duties as are expressly delegated to the Collateral Trustee by the terms of this Indenture and the Security Documents (as applicable), and consents and agrees to the terms of each Security Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms. The Collateral Trustee agrees to act as such on the express conditions contained in this Section 12.7. Each Holder agrees that any action taken by the Collateral Trustee in accordance with the provisions of this Indenture and the Security Documents (as applicable), and the exercise by the Collateral Trustee of any rights or remedies set forth herein and therein shall be authorized and binding upon all Holders. Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Security Documents (as applicable), the duties of the Collateral Trustee shall be ministerial and administrative in nature, and the Collateral Trustee shall not have any duties or responsibilities, except those expressly set forth herein and in the Security Documents to which the Collateral Trustee is a party, nor shall the Collateral Trustee have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder or any Grantor (as defined in the Security Agreement), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture and the Security Documents or otherwise exist against the Collateral Trustee. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral Trustee is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Collateral Trustee may perform any of its duties under this Indenture or the Security Documents by or through receivers, agents, employees, attorneys-in-fact or with respect to any specified Person, such Person's Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates (a "Related Person"), and shall be entitled to advice of counsel concerning all matters pertaining to such duties, and shall be entitled to act upon, and shall be fully protected in taking action in reliance upon any advice or opinion given by legal counsel. The Collateral Trustee shall not be responsible for the negligence or misconduct of any receiver, agent, employee, attorney-in-fact or Related Person that it selects as long as such selection was made in good faith and with due care. The exculpatory provisions of this Article XII shall apply to any such sub-agent and to the affiliates of the Collateral Trustee and any such sub-agent.

(c) The Collateral Trustee shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, certification, telephone message, statement, or other communication, document or conversation (including those by telephone or e-mail) believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including, without limitation, counsel to the Issuer or any Grantor), independent accountants and other experts and advisors selected by the Collateral Trustee. The Collateral Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document. The Collateral Trustee shall be fully justified in failing or refusing to take any action under this Indenture or the Security Documents, unless it shall first receive such advice or concurrence of the Trustee or the Holders of a majority in aggregate principal amount of the Notes as it determines and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Trustee shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture or the Security Documents in accordance with a request, direction, instruction or consent of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(d) The Collateral Trustee shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Trust Officer of the Collateral Trustee shall have received written notice from the Trustee or the Issuer referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default" and such notice references the Notes, the Issuer and this Indenture. The Collateral Trustee shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with Article VI or the Holders of a majority in aggregate principal amount of the Notes (subject to this Section 12.7).

(e) The Collateral Trustee may resign at any time by 30 days' written notice to the Trustee and the Issuer, such resignation to be effective upon the acceptance of a successor agent to its appointment as Collateral Trustee. If the Collateral Trustee resigns under this Indenture, the Issuer shall appoint a successor collateral agent. If no successor collateral agent is appointed prior to the intended effective date of the resignation of the Collateral Trustee (as stated in the notice of resignation), the Trustee, at the written direction of the Holders of a majority of the aggregate principal amount of the Notes then outstanding, may appoint a successor collateral agent, subject to the consent of the Issuer (which consent shall not be unreasonably withheld and which shall not be required during a continuing Event of Default). If no successor collateral agent is appointed and consented to by the Issuer pursuant to the preceding sentence within thirty (30) days after the intended effective date of resignation (as stated in the notice of resignation) the Collateral Trustee shall be entitled to petition a court of competent jurisdiction to appoint a successor. Upon the acceptance of its appointment as successor collateral agent hereunder, such successor collateral agent shall succeed to all the rights, powers and duties of the retiring Collateral Trustee, and the term "Collateral Trustee" shall mean such successor collateral agent, and the retiring Collateral Trustee's appointment, powers and duties as the Collateral Trustee shall be terminated. After the retiring Collateral Trustee's resignation hereunder, the provisions of this Section 12.7 (and Section 7.6 hereof) shall continue to inure to its benefit and the retiring Collateral Trustee shall not by reason of such resignation be deemed to be released from liability as to any actions taken or omitted to be taken by it while it was the Collateral Trustee under this Indenture. Any removal or resignation of the Trustee shall not become effective until the acceptance of appointment by the successor Trustee; *provided*, however, that, in the event that the Trustee has resigned in accordance with this Indenture, and no successor trustee shall have been appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction, at the Company's sole costs and expense, for the appointment of a successor indenture trustee.

(f) U.S. Bank National Association shall initially act as Collateral Trustee and shall be authorized to appoint co-Collateral Trustees as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents neither the Collateral Trustee nor any of its respective officers, directors, employees or agents or other Related Persons shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Collateral Trustee shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Collateral Trustee nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment.

(g) The Collateral Trustee is authorized and directed to (i) enter into the Security Documents to which it is party, whether executed on or after the Issue Date, (ii) enter into the Collateral Trust Agreement on the Issue Date, (iii) enter into the Junior Lien Intercreditor Agreement, if any, after the Issue Date, (iv) enter into the Parity Lien Intercreditor Agreement, if any, after the Issue Date, (v) make the representations of the Holders set forth in the Security Documents, (vi) bind the Holders on the terms as set forth in the Security Documents and (vii) perform and observe its obligations under the Security Documents.

(h) If at any time or times the Trustee shall receive (i) by payment, foreclosure, set-off or otherwise, any proceeds of Collateral or any payments with respect to the Obligations arising under, or relating to, this Indenture, except for any such proceeds or payments received by the Trustee from the Collateral Trustee pursuant to the terms of this Indenture, or (ii) payments from the Collateral Trustee in excess of the amount required to be paid to the Trustee pursuant to Article VI, the Trustee shall promptly turn the same over to the Collateral Trustee, in kind, and with such endorsements as may be required to negotiate the same to the Collateral Trustee such proceeds to be applied by the Collateral Trustee pursuant to the terms of this Indenture and the Security Documents.

(i) The Collateral Trustee is each Holder's agent for the purpose of perfecting the Holders' security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession. Should the Trustee obtain possession of any such Collateral, upon a written request from the Issuer, the Trustee shall notify the Collateral Trustee thereof and promptly shall deliver such Collateral to the Collateral Trustee or otherwise deal with such Collateral in accordance with the Collateral Trustee's instructions.

(j) The Collateral Trustee shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by any Grantor or is cared for, protected, or insured or has been encumbered, or that the Collateral Trustee's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all or the Grantor's property constituting Collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Collateral Trustee pursuant to this Indenture or any Security Document, other than pursuant to the instructions of the Holders of a majority in aggregate principal amount of the Notes or as otherwise provided in the Security Documents.

(k) If the Issuer or any Guarantor (i) incurs any obligations in respect of Parity Lien Obligations or Junior Lien Obligations at any time when no applicable intercreditor agreement is in effect or at any time when Indebtedness constituting Parity Lien Obligations or Junior Lien Obligations entitled to the benefit of an existing Collateral Trust Agreement, Parity Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement is concurrently retired, and (ii) delivers to the Trustee and the Collateral Trustee an Officer's Certificate so stating and requesting the Trustee and Collateral Trustee, if applicable, to enter into an intercreditor agreement (on substantially the same terms as the applicable Collateral Trust Agreement, Parity Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement) in favor of a designated agent or representative for the holders of the Parity Lien Obligations or Junior Lien Obligations so incurred, together with an Opinion of Counsel, the Collateral Trustee and Trustee, if applicable, shall (and is hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Issuer, including legal fees and expenses of the Trustee and Collateral Trustee), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder; provided that neither an Officer's Certificate nor an Opinion of Counsel shall be required in connection with the Collateral Trust Agreement to be entered into by the Collateral Trustee and Trustee on the Issue Date.

(l) No provision of this Indenture or any Security Document shall require the Collateral Trustee (or the Trustee) 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 to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Collateral Trustee) unless it shall have received indemnity and/or security satisfactory to the Collateral Trustee and the Trustee against potential costs and liabilities incurred by the Collateral Trustee relating thereto. Notwithstanding anything to the contrary contained in this Indenture or the Security Documents, in the event the Collateral Trustee is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Trustee shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Collateral Trustee has determined that the Collateral Trustee may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Collateral Trustee shall at any time be entitled to cease taking any action described in this clause (m) if it no longer reasonably deems any indemnity, security or undertaking from the Issuer or the Holders to be sufficient.

(m) The Collateral Trustee (i) shall not be liable for any action taken or omitted to be taken by it in connection with this Indenture and the Security Documents or instrument referred to herein or therein, except to the extent that any of the foregoing are found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct, (ii) shall not be liable for interest on any money received by it except as the Collateral Trustee may agree in writing with the Issuer (and money held in trust by the Collateral Trustee need not be segregated from other funds except to the extent required by law) and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Collateral Trustee shall not be construed to impose duties to act.

(n) Neither the Collateral Trustee nor the Trustee shall be liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Neither the Collateral Trustee nor the Trustee shall be liable for any indirect, special, punitive, incidental or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(o) The Collateral Trustee does not assume any responsibility for any failure or delay in performance or any breach by the Issuer or any Grantor under this Indenture and the Security Documents. The Collateral Trustee shall not be responsible to the Holders or any other Person for any recitals, statements, information, representations or warranties contained in this Indenture or the Security Documents or in any certificate, report, statement, or other document referred to or provided for in, or received by the Collateral Trustee under or in connection with, this Indenture or any Security Document; the execution, validity, genuineness, effectiveness or enforceability of the Collateral Trust Agreement, the Parity Lien Intercreditor Agreement, if any, the Junior Lien Intercreditor Agreement, if any, and any other Security Documents of any other party thereto; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, effectiveness, enforceability, sufficiency, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any obligor; or for any failure of any obligor to perform its Obligations under this Indenture and the Security Documents or for the performance or observance of any covenants, agreements or other terms and conditions set forth under this Indenture and the Security Documents. The Collateral Trustee shall have no obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture and the Security Documents, or the satisfaction of any conditions precedent contained in this Indenture and any Security Documents. The Collateral Trustee shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture and the Security Documents unless expressly set forth hereunder or thereunder. The Collateral Trustee shall have the right at any time to seek instructions from the Holders with respect to the administration of this Indenture and the Security Documents.

(p) The parties hereto and the Holders hereby agree and acknowledge that neither the Collateral Trustee nor the Trustee shall assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture or the Security Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under this Indenture and the Security Documents, the Collateral Trustee may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Trustee in the Collateral and that any such actions taken by the Collateral Trustee shall not be construed as or otherwise constitute any participation in the management of such Collateral. In the event that the Collateral Trustee or the Trustee is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in either of the Collateral Trustee or the Trustee's sole discretion may cause the Collateral Trustee or the Trustee, as applicable, to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Collateral Trustee or the Trustee to incur liability under CERCLA or any other federal, state or local law, each of the Collateral Trustee and the Trustee reserves the right, instead of taking such action, to either resign as the Collateral Trustee or the Trustee or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Neither the Collateral Trustee nor the Trustee shall be liable to the Issuer, the Guarantors or any other Person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of either of the Collateral Trustee's or the Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time it is necessary or advisable for property to be possessed, owned, operated or managed by any Person (including the Collateral Trustee or the Trustee) other than the Issuer or the Guarantors, Holders of a majority in aggregate principal amount of the then outstanding Notes shall direct the Collateral Trustee or the Trustee to appoint an appropriately qualified Person (excluding the Collateral Trustee or the Trustee) who they shall designate to possess, own, operate or manage, as the case may be, the property.

(q) Upon the receipt by the Collateral Trustee of a written request of the Issuer signed by an Officer (a “Security Document Order”), the Collateral Trustee is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Security Document or amendment or supplement thereto to be executed after the Issue Date; provided that the Collateral Trustee shall not be required to execute or enter into any such Security Document which, in the Collateral Trustee’s reasonable opinion is reasonably likely to adversely affect the rights, duties, liabilities or immunities of the Collateral Trustee or that the Collateral Trustee determines is reasonably likely to involve the Collateral Trustee in personal liability. Such Security Document Order shall (i) state that it is being delivered to the Collateral Trustee pursuant to, and is a Security Document Order referred to in, this Section 12.7(q), and (ii) instruct the Collateral Trustee to execute and enter into such Security Document. Other than as set forth in this Indenture, any such execution of a Security Document shall be at the direction and expense of the Issuer, upon delivery to the Collateral Trustee of an Officer’s Certificate and Opinion of Counsel stating that all conditions precedent to the execution and delivery of the Security Document have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Collateral Trustee to execute such Security Documents (subject to the first sentence of this Section 12.7(q)).

(r) Subject to the provisions of the applicable Security Documents, each Holder, by acceptance of the Notes, agrees that the Collateral Trustee shall execute and deliver the Security Documents to which it is a party and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof. For the avoidance of doubt, except as discretionary rights expressly authorized hereunder or under any applicable Security Document, the Collateral Trustee shall have no discretion under this Indenture or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the Holders of a majority in aggregate principal amount of the then outstanding Notes or the Trustee, as applicable. Each Holder, by acceptance of the Notes, authorizes and directs the Trustee to execute and deliver the Collateral Trust Agreement, in its capacity as Authorized Representative (as defined therein) and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof.

(s) After the occurrence and continuance of an Event of Default, the Trustee, acting at the direction of the Holders of a majority of the aggregate principal amount of the Notes then outstanding, may direct the Collateral Trustee in connection with any action required or permitted by this Indenture or the Security Documents.

(t) The Collateral Trustee is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Security Documents and to the extent not prohibited under the Collateral Trust Agreement, the Parity Lien Intercreditor Agreement, if any, or the Junior Lien Intercreditor Agreement, if any, for turnover to the Trustee to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of Section 6.10 and the other provisions of this Indenture.

(u) In each case that the Collateral Trustee may or is required hereunder or under any Security Document to take any action (an “Action”), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Security Document, the Collateral Trustee may seek direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. The Collateral Trustee shall not be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes. If the Collateral Trustee shall request direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to any Action, the Collateral Trustee shall be entitled to refrain from such Action unless and until the Collateral Trustee shall have received direction from the Holders of a majority in aggregate principal amount of the then outstanding Notes, and the Collateral Trustee shall not incur liability to any Person by reason of so refraining.

(v) Notwithstanding anything to the contrary in this Indenture or in any Security Document in no event shall the Collateral Trustee or the Trustee be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or Liens intended to be created by this Indenture or the Security Documents (including without limitation the filing or continuation of any UCC financing or continuation statements or similar documents or instruments), nor shall the Collateral Trustee or the Trustee be responsible for, and neither the Collateral Trustee nor the Trustee makes any representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or Liens intended to be created thereby.

(w) Before the Collateral Trustee acts or refrains from acting in each case at the written request or direction of the Issuer or the Guarantors, other than as set forth in this Indenture, it may require an Officer's Certificate and an Opinion of Counsel, which shall conform to the provisions of this Section 12.7 and Section 13.2 hereof. The Collateral Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(x) Notwithstanding anything to the contrary contained herein, the Collateral Trustee shall act pursuant to the instructions of the Holders and the Trustee with respect to the Security Documents and the Collateral.

(y) The rights, privileges, benefits, immunities, indemnities and other protections given to the Trustee are extended to, and shall be enforceable by, the Collateral Trustee as if the Collateral Trustee were named as the Trustee herein and the Security Documents were named as this Indenture herein. The Collateral Trustee shall be entitled to compensation, reimbursement and indemnity as set forth in Section 7.6, as if references therein to Trustee were references to Collateral Trustee.

(z) None of the Collateral Trustee or any of its respective officers, directors, employees, agents, advisors and attorneys-in-fact and its affiliates shall be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture and/or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment) or under or in connection with this Indenture and/or any Security Document, and/or the transactions contemplated thereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and non-appealable judgment), or be responsible in any manner to any of the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Issuer or any Guarantor or affiliate of the Issuer or any Guarantor, or any officer or respective director, employee, agent, advisor and/or attorney-in-fact and/or affiliate thereof, contained in this Indenture, the Security Documents and/or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Trustee under or in connection with, this Indenture and/or the Security Documents or the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture and/or the Security Documents or for any failure of any Issuer or any other party to this Indenture and/or the Security Documents to perform its obligations hereunder and/or thereunder. None of the Collateral Trustee or any of its respective officers, directors, employees, agents, advisors and attorneys-in-fact and its affiliates shall be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture or the Security Documents, if any, or to inspect the properties, books or records of the Issuer, any Guarantor or any of the Issuer's Affiliates.

(aa) Notwithstanding any term herein to the contrary, it is hereby expressly agreed and acknowledged that the agreements set forth herein by the Collateral Trustee are made solely in its capacity as the Collateral Trustee hereunder, and not in its individual capacity. In the case of any reference herein to the giving of any consent, approval or direction by the Collateral Trustee, which includes for the avoidance of doubt any provision in respect of the delivery, revocation or rescission of any notice, it is understood in all cases that the Collateral Trustee shall only take such action under this Indenture and any Security Document as directed in writing by the Holders in accordance with the terms of this Indenture and the applicable Security Document.

(bb) Notwithstanding anything else to the contrary herein, whenever reference is made in this Indenture to any discretionary action by consent, designation, specification, requirement or approval of, notice, request or other communication form, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Trustee or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Trustee, it is understood that in all cases the Collateral Trustee shall be fully justified in failing or refusing to take any such action if it shall not have received written instruction, advice or concurrence of the Holders in respect of such action. The Collateral Trustee shall have no liability for any failure or delay in taking any actions contemplated above as a result of a failure or delay on the part of the Holders to provide such instruction, advice or concurrence.

SECTION 12.8 Disposition of Collateral: Collateral Proceeds Account

(a) Propco and its Subsidiaries shall deposit in a segregated cash collateral account under the control of the Collateral Trustee (the "Collateral Proceeds Account"):

- (1) net cash proceeds from any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) of Collateral (other than net cash proceeds from payments contemplated by the Master Lease) having an aggregate fair market value of more than \$10.0 million;
- (2) any net cash proceeds in excess of \$10.0 million of any Collateral taken by eminent domain, expropriation or other similar governmental taking; and
- (3) net cash proceeds in excess of \$10.0 million of insurance upon any part of the Collateral.

(b) Cash in the Collateral Proceeds Account may only be invested in Cash Equivalents that are denominated in Dollars and pursuant to clauses (1), (2), (3), (4), (6), (7) or (13) of the definition thereof. The Collateral Trustee shall have a perfected security interest in and control of such account for the benefit of the Trustee, the Holders and, to the extent applicable, the holders of other Parity Lien Obligations in accordance with the Security Agreement. Proceeds of the account may only be released to the Propco or its Subsidiaries for use as permitted by Section 3.5. Neither the Propco nor any of its Subsidiaries will be required to deposit any proceeds to the extent that the Company furnishes the Collateral Trustee and the Trustee with an Officer's Certificate certifying that it has invested an amount in compliance with such clauses equal to, or in excess of, the amount of such proceeds in anticipation of receipt of such funds.

(c) Propco and its Subsidiaries shall comply with the requirements of this Section 12.8 with respect to dispositions of Collateral before they may use the money in the Collateral Proceeds Account.

SECTION 12.9 Insurance.

(a) The Company and each of the Secured Guarantors will do or cause to be done all acts and things that may be required, or that the Collateral Trustee from time to time may reasonably request, to assure and confirm that the Collateral Trustee holds, for the benefit of the Parity Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral (including any property or assets that are acquired or otherwise become, or are required by any Parity Lien Debt Document to become, Collateral after the Notes are issued), in each case, as contemplated by, and with the Lien priority required under, the Parity Lien Debt Documents.

(b) Upon the reasonable request of the Collateral Trustee or any Parity Lien Representative at any time and from time to time, the Company and each of the Secured Guarantors will promptly execute, acknowledge and deliver such Security Documents, instruments, certificates, notices and other documents, and take such other actions as may be reasonably required, or that the Collateral Trustee may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Parity Lien Debt Documents for the benefit of the Parity Lien Secured Parties.

(c) The Secured Guarantors will:

- (1) keep (or cause to be kept) the Real Property Collateral adequately insured at all times, as determined in good faith by Propco;

- (2) maintain (or cause to be maintained) such other insurance, to such extent and against such risks (and with such deductibles, retentions and exclusions), including fire and other risks insured against by extended coverage and coverage for acts of terrorism, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any Real Property Collateral owned, occupied or controlled by them, as determined in good faith by Propco;
- (3) maintain (or cause to be maintained) such other insurance as may be required by law;
- (4) at their sole cost and expense, cause to be delivered to the Collateral Trustee title insurance on all Real Property Collateral insuring the Collateral Trustee's Lien on that property, subject only to exceptions to title approved by the Collateral Trustee; and
- (5) maintain (or cause to be maintained) such other insurance as may be required by the Security Documents.

The Secured Guarantors will furnish to the Collateral Trustee full information as to their property and liability insurance carriers. The Collateral Trustee, for the benefit of the Holders of Parity Lien Obligations as a class, will be named as additional insureds, with a waiver of subrogation, on all liability insurance policies of the Secured Guarantors and the Collateral Trustee will be named as loss payee, with 30 days' notice of cancellation or material change, on all property and casualty insurance policies of the Secured Guarantors.

ARTICLE XIII MISCELLANEOUS

SECTION 13.1 Notices. Any notice, request, direction, consent or communication made pursuant to the provisions of this Indenture or the Notes shall be in writing and delivered in person, sent by facsimile, sent by electronic mail in pdf format, delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Issuer or to any Guarantor:

Macy's, Inc.
151 West 34th Street
New York, New York 10001
Attention: Chief Financial Officer
Attention: Secretary

with a copy to:

Kirkland & Ellis LLP
601 Lexington Ave
New York, New York 10022
Attention: Joshua Korff, Esq.
Tim Cruickshank, Esq.
Facsimile: (212) 446-4900

and

Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Attention: Michael J. Solecki, Esq.
Facsimile: (216) 579-0212

if to the Trustee and the Collateral Trustee, at its Corporate Trust Office, which corporate trust office for purposes of Section 13.1 is at the date hereof located at:

U.S. Bank National Association, as Trustee
Global Corporate Trust
1 Federal St, Boston, Massachusetts 02110
Attn: Macy's, Inc. – Carolina D. Altomare

The Issuer, the Trustee or the Collateral Trustee, by written notice to the others, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to the Issuer or the Guarantors shall be deemed to have been given or made as of the date so delivered if personally delivered or if delivered electronically, in pdf format; when receipt is acknowledged, if telecopied; and seven (7) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee). Any notice or communication to the Trustee or Collateral Trustee shall be deemed delivered upon receipt.

Any notice or communication sent to a Holder shall be electronically delivered or mailed to the Holder at the Holder's address as it appears in the Notes Register and shall be sufficiently given if so sent within the time prescribed.

Failure to mail or deliver electronically a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee shall be effective only upon receipt.

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 shall be sufficiently given if given to DTC (or its designee) pursuant to the standing instructions from DTC or its designee.

SECTION 13.2 Certificate and Opinion as to Conditions Precedent

Other than with respect to the entry into this Indenture and any applicable Security Documents and the issuance of the Notes, in each case on the Issue Date, upon any request or application by the Issuer or any of the Guarantors to the Trustee and/or the Collateral Trustee to take or refrain from taking any action under this Indenture, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee or, if such action relates to a Security Document, the Collateral Trustee:

(a) an Officer's Certificate in form satisfactory to the Trustee or the Collateral Trustee, as applicable, (which shall include the statements set forth in Section 13.3 hereof) 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 satisfied; and

(b) an Opinion of Counsel in form satisfactory to the Trustee or the Collateral Trustee, as applicable, (which shall include the statements set forth in Section 13.3 hereof) stating that, in the opinion of such counsel, all such conditions precedent have been satisfied and all covenants 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:

- (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 such individual 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 When Notes Disregarded. In determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer, any Guarantor or any Affiliate of them shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

SECTION 13.5 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by, or at meetings of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 13.6 Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York, New York or the jurisdiction of the place of payment. If a payment date or a Redemption Date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 13.7 Governing Law. THIS INDENTURE, THE NOTES AND THE GUARANTEES AND THE RIGHTS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 13.8 Jurisdiction. The Issuer and the Guarantors agree that any suit, action or proceeding against the Issuer or any Guarantor brought by any Holder, the Trustee or the Collateral Trustee arising out of or based upon this Indenture, the Guarantee or the Notes may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and each of them irrevocably submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding. The Issuer and the Guarantors irrevocably waive, 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 Guarantee or the Notes, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether 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. The Issuer and the Guarantors agree that final judgment in any such suit, action or proceeding brought in such court shall be conclusive and binding upon the Issuer or the Guarantors, as the case may be, and may be enforced in any court to the jurisdiction of which the Issuer or the Guarantors, as the case may be, are subject by a suit upon such judgment.

SECTION 13.9 Waivers of Jury Trial. EACH OF THE ISSUER, THE GUARANTORS, THE COLLATERAL TRUSTEE AND THE TRUSTEE HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE GUARANTEES AND FOR ANY COUNTERCLAIM THEREIN.

SECTION 13.10 USA PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee and the Collateral Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is 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 Indenture agree that they will provide the Trustee and the Collateral Trustee with such information as it may request in order to satisfy the requirements of the USA PATRIOT Act.

SECTION 13.11 No Recourse Against Others. No director, officer, employee, incorporator or shareholder of the Issuer or any of its respective Subsidiaries or Affiliates, or such (other than the Issuer and the Guarantors), shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or this Indenture 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. The waiver and release are part of the consideration for issuance of the Notes. Such 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 13.12 Successors. All agreements of the Issuer and each Guarantor in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee and the Collateral Trustee in this Indenture shall bind their respective successors.

SECTION 13.13 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The words "execution," signed," "signature" and words of like import in this Indenture or in any other certificate, agreement or document related to this Indenture shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf," "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the UCC.

SECTION 13.14 Table of Contents; Headings. The table of contents, cross-reference table 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 shall not modify or restrict any of the terms or provisions hereof.

SECTION 13.15 Force Majeure. In no event shall the Trustee or the Collateral 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, without limitation, 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 and Collateral Trustee shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.16 Severability. In case any provision in this Indenture or in the Notes 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.

SECTION 13.17 Waiver of Immunities. To the extent that the Issuer or any Guarantor or any of its properties, assets or revenues may have or may hereafter become entitled to, or have attributed to them, any right of immunity, on the grounds of sovereignty, from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any court, from service of process, from attachment upon or prior to judgment, or from attachment in aid of execution of judgment, or from execution of judgment, or other legal process or proceeding for the giving of any relief or for the enforcement of any judgment, in any jurisdiction in which proceedings may at any time be commenced, with respect to their obligations, liabilities or any other matter under or arising out of or in connection with this Indenture, the Notes or the Note Guarantees, the Issuer and each Guarantor hereby irrevocably and unconditionally, to the extent permitted by applicable law, waives and agrees not to plead or claim any such immunity and consents to such relief and enforcement.

SECTION 13.18 Judgment Currency. The Issuer and each Guarantor agrees to indemnify the recipient against any loss incurred by such recipient as a result of any judgment or order being given or made against the Issuer or any Guarantor for any amount due hereunder and such judgment or order being expressed and paid in a currency (the "Judgment Currency") other than Dollars and as a result of any variation as between (i) the rate of exchange at which the Dollar amount is converted into the Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange in The City of New York at which such party on the date of payment of such judgment or order is able to purchase Dollars with the amount of the Judgment Currency actually received by such party if such party had utilized such amount of Judgment Currency to purchase Dollars as promptly as practicable upon such party's receipt thereof. The foregoing indemnity shall constitute a separate and independent obligation of the Issuer and each Guarantor and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant currency.

SECTION 13.19 Collateral Trust Agreements and Intercreditor Agreements. Reference is made to the Collateral Trust Agreement, Parity Lien Intercreditor Agreement, if any, and Junior Lien Intercreditor Agreement, if any. Each Holder, by its acceptance of a Note, (a) agrees that it will be bound by and will take no actions contrary to the provisions of the Collateral Trust Agreement, Parity Lien Intercreditor Agreement, if any, and Junior Lien Intercreditor Agreement, if any, and (b) authorizes and instructs the Trustee and the Collateral Trustee to enter into the Collateral Trust Agreement, Parity Lien Intercreditor Agreement, if any, and Junior Lien Intercreditor Agreement, if any, as Trustee and as Collateral Trustee, as the case may be, and on behalf of such Holder, including without limitation, making the representations of the Holders contained therein.

[Signature on following pages]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed all as of the date and year first written above.

MACY'S, INC.

By: /s/ Elisa D.Garcia

Name: Elisa D.Garcia

Title: Executive Vice President, Chief Legal Officer and Secretary

MACY'S RETAIL HOLDINGS, LLC

MACY'S PROPCO HOLDINGS, LLC

MACY'S STATE STREET, LLC

MACY'S BROOKLYN, LLC

MACY'S USQ, LLC

MACY'S LOGISTICS, LLC

MACY'S MALL REAL ESTATE, LLC

BLOOMINGDALES REAL ESTATE, LLC

By: /s/ Elisa D.Garcia

Name: Elisa D. Garcia

Title: President

[Signature page to this indenture]

US BANK NATIONAL ASSOCIATION,
as Trustee and Collateral Trustee

By: /s/ Carolina D. Altomare
Name: Carolina D. Altomare
Title: Vice President

[Signature page to this indenture]

[FORM OF FACE OF GLOBAL RESTRICTED NOTE]
[Applicable Restricted Notes Legend]
[Depository Legend, if applicable]
[OID Legend, if applicable]

No. []

Principal Amount \$[] [as revised by
the Schedule of Increases and Decreases in Global Note attached hereto]¹
CUSIP NO. _____

MACY'S, INC.

8.375% Senior Secured Notes due 2025

Macy's, Inc., a Delaware corporation (the "Issuer"), promises to pay to [Cede & Co.],² or its registered assigns, the principal sum of _____ U. S. dollars,
[as revised by the Schedule of Increases and Decreases in Global Note attached hereto],³ on June 15, 2025.

Interest Payment Dates: June 15 and December 15, commencing on December 15, 2020

Record Dates: June 1 and December 1

Additional provisions of this Note are set forth on the other side of this Note.

-
- 1 Insert in Global Notes only.
- 2 Insert in Global Notes only.
- 3 Insert in Global Notes only.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed.

MACY’S, INC.

By: _____
Name:
Title:

TRUSTEE CERTIFICATE OF AUTHENTICATION

This Note is one of the 8.375% Senior Secured Notes due 2025 referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated: _____

[FORM OF REVERSE SIDE OF NOTE]
MACY'S, INC.
8.375% SENIOR SECURED NOTES DUE 2025

Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture.

1. Interest

The Issuer promises to pay interest on the principal amount of this Note at 8.375% per annum from June 8, 2020 until maturity. The Issuer will pay interest semi-annually in arrears every June 15 and December 15 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an “Interest Payment Date”). Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance^{provided}, that the first Interest Payment Date shall be December 15, 2020. The Issuer shall pay interest on overdue principal at the rate specified herein, and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful. Interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. Method of Payment

By no later than 11:00 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 Issuer shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal, premium, interest when due. Interest on any Note which is payable, and is timely paid or duly provided for, on any Interest Payment Date shall 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 preceding June 1 and December 1 at the office or agency of the Issuer maintained for such purpose pursuant to Section 2.3 of the Indenture. The principal of (and premium, if any) and interest on the Notes shall be payable at the office or agency of Paying Agent or Registrar designated by the Issuer maintained for such purpose (which shall initially be the Corporate Trust Office of the Trustee maintained for such purpose), or at such other office or agency of the Issuer as may be maintained for such purpose pursuant to Section 2.3 of the Indenture; *provided, however*, that, at the option of the Paying Agent, each installment of interest may be paid by (i) check mailed to addresses of the Persons entitled thereto as such addresses shall appear on the Notes Register or (ii) wire transfer to an account located in the United States maintained by the payee, subject to the third to the last sentence of this paragraph. Payments in respect of Notes represented by a Global Note (including principal, premium, if any, and interest) will be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company or any successor depository. Payments in respect of Notes represented by Definitive Notes (including principal, premium, if any, and interest) held by a Holder of at least \$1,000,000 aggregate principal amount of Notes represented by Definitive Notes will be made in accordance with the Notes Register, or by wire transfer to a Dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion). If an Interest Payment Date or a Redemption Date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

3. Paying Agent and Registrar

The Issuer initially appoints U.S. Bank National Association (the “Trustee”) as Registrar and Paying Agent for the Notes. The Issuer may change any Registrar or Paying Agent without prior notice to the Holders. The Issuer or any Guarantor may act as Paying Agent, Registrar or transfer agent.

4. Indenture

The Issuer issued the Notes under an Indenture dated as of June 8, 2020, among the Issuer, the guarantors party thereto from time to time, the Trustee and the Collateral Trustee (as it may be further amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”). The terms of the Notes include those stated in the Indenture. The Notes are subject to all terms and provisions of the Indenture, and Holders are referred to the Indenture for a statement of those terms. In the event of a conflict between the terms of the Notes and the terms of the Indenture, the terms of the Indenture shall control.

The Notes are senior secured obligations of the Issuer. The aggregate principal amount of Notes that may be authenticated and delivered under the Indenture is unlimited. This Note is one of the 8.375% Senior Secured Notes due 2025 referred to in the Indenture. The Notes include (i) \$1,300,000,000 principal amount of the Issuer’s 8.375% Senior Secured Notes due 2025 issued under the Indenture on June 8, 2020 (the “Initial Notes”) and (ii) if and when issued, additional Notes that may be issued from time to time under the Indenture subsequent to June 8, 2020 (the “Additional Notes”) as provided in Section 2.1(a) of the Indenture. The Initial Notes and the Additional Notes shall be considered collectively as a single class for all purposes of the Indenture; *provided* that the Additional Notes will not be issued with the same CUSIP as the existing Notes unless such Additional Notes are fungible with the existing Notes for U.S. federal income tax purposes. The Indenture imposes certain limitations on the incurrence of indebtedness, the making of restricted payments, the sale of assets, the incurrence of certain liens, the making of payments for consents, the entering into of agreements that restrict distribution from restricted subsidiaries and the consummation of mergers and consolidations. The Indenture also imposes requirements with respect to the provision of financial information and the provision of guarantees of the Notes by certain subsidiaries.

5. Guarantees

From and after the Issue Date, to guarantee the due and punctual payment of the principal, premium, if any, interest (including post-filing or post-petition interest in any proceeding under Bankruptcy Law) on the Notes and all other amounts payable by the Issuer under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, each Guarantor will unconditionally guarantee (and future guarantors, jointly and severally with the Guarantors, will fully and unconditionally Guarantee) such obligations on a senior secured basis pursuant to the terms of the Indenture.

6. Redemption

(a) At any time prior to June 15, 2022, the Company may redeem the Notes in whole or in part, at its option, upon not less than 10 nor more than 60 days’ prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, at a redemption price (expressed as a percentage of the principal amount of the Notes to be redeemed) equal to 100.000% plus the Applicable Premium as of, and accrued and unpaid interest, if any, to but excluding the date of redemption (the “Redemption Date”), subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date.

(b) At any time and from time to time prior to June 15, 2022, the Company may on one or more occasions, upon not less than 10 nor more than 60 days’ prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, redeem up to 40.0% of the original principal amount of Notes issued under the Indenture on the Issue Date (together with Additional Notes) at a redemption price (expressed as a percentage of the principal amount of Notes to be redeemed) equal to 108.375% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to but excluding, the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, with an amount equal to the net cash proceeds received by the Company of one or more Equity Offerings of the Company; *provided* that not less than 50.0% of the original principal amount of the then-outstanding Notes initially issued under the Indenture remains outstanding immediately after the occurrence of each such redemption (including Additional Notes but excluding Notes held by the Company or any of its Subsidiaries), unless all such notes are redeemed substantially concurrently; *provided further* that each such redemption occurs not later than 180 days after the date of closing of the related Equity Offering. The Trustee shall select the Notes to be purchased in the manner described under Sections 5.1 through 5.5 of the Indenture.

(c) Until 120 days after the Issue Date, the Company may redeem in the aggregate up to 40% of the aggregate principal amount of the Notes with an amount equal to the net cash proceeds of any loan received pursuant to a Regulatory Debt Facility at a redemption price of 104.188% of the principal amount of such Notes, plus accrued and unpaid interest, if any, to, but excluding, the applicable redemption date; *provided*, however, that not less than 50% of the aggregate principal amount of the then-outstanding Notes issued under the Indenture remains outstanding immediately thereafter (including Additional Notes, but excluding Notes held by the Company or any of its Subsidiaries), unless all such Notes are redeemed substantially concurrently.

(d) Except pursuant to clauses (a), (b) and (c) of this paragraph 6, the Notes will not be redeemable at the Company's option prior to June 15, 2022.

(e) At any time and from time to time on or after June 15, 2022, the Company may redeem the Notes, in whole or in part, upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth in the table below, plus accrued and unpaid interest thereon, if any, to but excluding the applicable Redemption Date, subject to the right of Holders of record of the Notes on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on June 15 of each of the years indicated in the table below:

Year	Percentage
2022	104.188%
2023	102.094%
2024 and thereafter	100.000%

(f) Notwithstanding the foregoing, in connection with any tender offer for the Notes, including a Change of Control Offer, Asset Disposition Offer or Collateral Advance Offer, if Holders of not less than 90.0% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party shall have the right upon not less than 10 nor more than 60 days' prior notice, with a copy to the Trustee, to each Holder of Notes to the address of such Holder appearing in the Notes Register, given not more than 30 days following such purchase date to redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price offered to each other Holder (excluding any early tender or incentive fee) in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to but excluding, the date of such redemption.

(g) Unless the Company defaults 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.

(h) Any redemption pursuant to this paragraph 6 shall be made pursuant to the provisions of Section 5.1 through 5.5 of the Indenture.

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

7. Repurchase Provisions

If a Change of Control occurs, each Holder will have the right to require the Issuer to repurchase from each Holder all or any part (equal to a minimum denomination of \$2,000 or an integral multiple of \$1,000 in excess thereof) of such Holder's Notes at a purchase price in cash equal to 101.0% of the aggregate principal amount thereof plus accrued and unpaid interest, then Holders in whose name the Notes are registered at the close of business on such record date will receive the interest due on the repurchase date, as provided in, and subject to the terms of, the Indenture.

Upon certain Asset Dispositions, the Issuer may be required to use the Excess Proceeds from such Asset Dispositions to offer to purchase Notes and, at the Issuer's option, Pari Passu Indebtedness out of the Excess Proceeds in accordance with the procedures set forth in Section 3.5 and in Article V of the Indenture.

8. Denominations; Transfer; Exchange

The Notes shall be issuable only in fully registered form in minimum denominations of principal amount of \$2,000 and any integral multiple of \$1,000 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 a sum sufficient to cover any tax and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange of any Note (A) for a period beginning (1) fifteen (15) calendar days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) fifteen (15) calendar days before an Interest Payment Date and ending on such Interest Payment Date or (B) called for redemption, except the unredeemed portion of any Note being redeemed in part.

9. Persons Deemed Owners

The registered Holder of this Note may be treated as the owner of it for all purposes.

10. Unclaimed Money

If money for the payment of principal, premium, if any, interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its written request unless an abandoned property law designates another Person to receive such money. After any such payment, Holders entitled to the money must look only to the Issuer and not to the Trustee for payment as general creditors unless an abandoned property law designates another person for payment.

11. Discharge and Defeasance

Subject to certain exceptions and conditions set forth in the Indenture, the Issuer at any time may terminate some or all of its obligations under the Notes and the Indenture if the Issuer deposits with the Trustee money or U.S. Government Obligations for the payment of principal, premium, if any and interest on the Notes to redemption or maturity, as the case may be.

12. Amendment, Supplement, Waiver

Subject to certain exceptions contained in the Indenture, the Indenture, the Notes and the Security Documents may be amended, or a Default thereunder may be waived, with the consent of the Holders of a majority in aggregate principal amount of the outstanding Notes. Without notice to or the consent of any Holder, the Issuer, the Guarantors, the Trustee and the Collateral Trustee, as applicable, may amend or supplement the Indenture, the Notes and the Security Documents as provided in the Indenture.

13. Defaults and Remedies

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization of the Issuer or certain Guarantors) occurs and is continuing, the Trustee by notice to the Issuer, or the Holders of at least 30.0% in aggregate principal amount of the outstanding Notes by notice to the Issuer and the Trustee, may declare the principal of and accrued and unpaid interest, and any other monetary obligations on all the Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal, interest, and other monetary obligations will be due and payable immediately. If a bankruptcy, insolvency or reorganization of the Issuer or a Significant Subsidiary (or any group of Restricted Subsidiaries, that taken together as of the latest audited consolidated financial statements for the Issuer and its Restricted Subsidiaries, would constitute a Significant Subsidiary) occurs and is continuing, the principal of and accrued and unpaid interest and any other monetary obligations on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders. Under certain circumstances, the Holders of a majority in aggregate principal amount of the outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

14. Trustee Dealings with the Issuer

Subject to certain limitations set forth in the Indenture, the Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, Guarantors or their Affiliates with the same rights it would have if it were not Trustee. In addition, the Trustee shall be permitted to engage in transactions with the Issuer and its Affiliates and Subsidiaries.

15. No Recourse Against Others

No director, officer, employee, incorporator or shareholder of the Issuer or any of its Subsidiaries or Affiliates, as such (other than the Issuer and the Guarantors), shall have any liability for any obligations of the Issuer or the Guarantors under the Notes, the Guarantees or the Indenture 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. The waiver and release are part of the consideration for issuance of the Notes. Such 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.

16. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent acting on its behalf) signs the certificate of authentication on the other side of this Note by manual, facsimile or electronic signature. Electronically imaged signatures such as .pdf files, faxed signatures or other electronic signatures to this Note and the authentication pages to this Note shall have the same effect as original signatures.

17. 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).

18. CUSIP and ISIN Numbers

The Issuer has caused CUSIP and ISIN numbers, if applicable, to be printed on the Notes and has directed the Trustee to use CUSIP and ISIN numbers, if applicable, in notices of redemption or purchase as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption or purchase and reliance may be placed only on the other identification numbers placed thereon.

19. Governing Law

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

20. Security

The Notes and the related Guarantees will be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture and the Security Documents. The Trustee and the Collateral Trustee, as the case may be, hold the Collateral in trust for the benefit of the Holders of the Notes, in each case pursuant to the Security Documents. Each Holder, by accepting this Note, consents and agrees to the terms of the Security Documents (including the provisions providing for the foreclosure and release of Collateral), each as may be in effect or may be amended from time to time in accordance with their terms and the Indenture, and authorizes and directs each of the Trustee and the Collateral Trustee, as applicable, to (i) enter into the Security Documents to which it is party, whether executed on or after the Issue Date, (ii) enter into the Collateral Trust Agreement on the Issue Date, (iii) enter into the Junior Lien Intercreditor Agreement, if any, after the Issue Date, (iv) enter into the Junior Lien Intercreditor Agreement, if any, after the Issue Date and (v) perform and observe its obligations under the Security Documents.

The Issuer will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture. Requests may be made to:

Macy's, Inc.
151 West 34th Street
New York, New York 10001
Attention: Chief Financial Officer
Attention: Secretary

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 social security or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Note on the books of the Issuer. 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 Exchange Act Rule 17Ad-15.

The undersigned hereby certifies that it ☐ is / ☐ is not an Affiliate of the Issuer and that, to its knowledge, the proposed transferee ☐ is / ☐ is not an Affiliate of the Issuer.

In connection with any transfer or exchange of any of the Notes evidenced by this certificate occurring prior to the date that is one year after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Issuer or any Affiliate of the Issuer, the undersigned confirms that such Notes are being:

CHECK ONE BOX BELOW:

- (1) ☐ acquired for the undersigned's own account, without transfer; or
- (2) ☐ transferred to the Issuer; or
- (3) ☐ transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or
- (4) ☐ transferred pursuant to an effective registration statement under the Securities Act; or
- (5) ☐ transferred pursuant to and in compliance with Regulation S under the Securities Act; or
- (6) ☐ transferred to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an "accredited investor" (as defined in Rule 501(a)(4) under the Securities Act), that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter appears as Section 2.7 or 2.9 of the Indenture, respectively); or
- (7) ☐ transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; *provided, however*, that if box (5), (6) or (7) is checked, the Issuer may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Issuer may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, as amended, such as the exemption provided by Rule 144 under such Act.

Signature

Signature Guarantee:

(Signature must be guaranteed) Signature

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 Exchange Act Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTES

The following increases or decreases in this Global Note have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease or increase</u>	<u>Signature of authorized signatory of Trustee or Notes Custodian</u>
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OPTION OF HOLDER TO ELECT PURCHASE

If you elect to have this Note purchased by the Issuer pursuant to Section 3.5 or Section 3.10 of the Indenture, check either box:

Section 3.5 ☐ Section 3.10 ☐

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 3.5 or Section 3.10 of the Indenture, state the amount in principal amount (must be in minimum denominations of \$2,000 or an integral multiple of \$1,000 in excess thereof): \$_____ and specify the denomination or denominations (which shall not be less than the minimum authorized denomination) of the Notes to be issued to the Holder for the portion of the within Note not being repurchased (in the absence of any such specification, one such Note will be issued for the portion not being repurchased): _____.

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 Exchange Act Rule 17Ad-15.

Form of Supplemental Indenture to Add Guarantors

[] SUPPLEMENTAL INDENTURE, (this “Supplemental Indenture”) dated as of [], by and among the parties that are signatories hereto as Guarantors (the “Guaranteeing Entities” and each a “Guaranteeing Entity”), Macy’s, Inc., as Issuer, and U.S. Bank National Association, a national banking association, as Trustee and Collateral Trustee under the Indenture referred to below.

WITNESSETH:

WHEREAS, each of Macy’s, Inc., the Guarantors named therein, the Trustee and the Collateral Trustee have heretofore executed and delivered an indenture dated as of June 8, 2020 (as amended, supplemented, waived or otherwise modified, the “Indenture”), providing for the issuance of an aggregate principal amount of \$1,300 million of 8.375% Senior Secured Notes due 2025 of the Issuer (the “Notes”);

WHEREAS, the Indenture provides that under certain circumstances each Guaranteeing Entity shall execute and deliver to the Trustee a supplemental indenture pursuant to which such Guaranteeing Entity shall unconditionally guarantee, on a joint and several basis with the other Guarantors, all of the Issuer’s Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the “Guarantee”); and

WHEREAS, pursuant to Section 9.1 of the Indenture, the Issuer, any Guarantor, the Trustee and the Collateral Trustee are authorized to execute and deliver a supplemental indenture to add additional Guarantors, without the consent of any Holder;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Entity, the Issuer, the other Guarantors, the Trustee and the Collateral Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

ARTICLE I

DEFINITIONS

Section 1.1. *Defined Terms.* As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recitals hereto are used herein as therein defined. The words “herein,” “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular Section hereof.

ARTICLE II

AGREEMENT TO BE BOUND; GUARANTEE

Section 2.1. *Agreement to be Bound.* Each Guaranteeing Entity hereby becomes a party to the Indenture as a Guarantor and as such will have all of the rights and be subject to all of the obligations and agreements of a Guarantor under the Indenture.

Section 2.2. *Guarantee.* Each Guaranteeing Entity agrees, on a joint and several basis with all the existing Guarantors [and the other Guaranteeing Entities], to fully, unconditionally and irrevocably Guarantee to each Holder of the Notes and the Trustee the Guaranteed Obligations pursuant to Article X of the Indenture on a senior basis.

ARTICLE III

MISCELLANEOUS

Section 3.1. *Notices.* All notices and other communications to the Guaranteeing Entities shall be given as provided in the Indenture to such Guaranteeing Entities, at their addresses set forth below, with a copy to the Issuer as provided in the Indenture for notices to the Issuer.

[INSERT ADDRESS]

Section 3.2. *Merger and Consolidation.* No Guaranteeing Entity shall sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into another Person (other than the Issuer or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction) except in accordance with Section 4.1 of the Indenture.

Section 3.3. *Release of Guarantee.* This Guarantee shall be released in accordance with Section 10.2 of the Indenture.

Section 3.4. *Parties.* Nothing expressed or mentioned herein is intended or shall be construed to give any Person, firm or corporation, other than the Holders and the Trustee, any legal or equitable right, remedy or claim under or in respect of this Supplemental Indenture or the Indenture or any provision herein or therein contained.

Section 3.5. *Governing Law.* This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.6. *Severability.* In case any provision in this Supplemental Indenture 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 and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 3.7. *Benefits Acknowledged.* Each Guaranteeing Entity's Guarantee is subject to the terms and conditions set forth in the Indenture. Each Guaranteeing Entity acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

Section 3.8. *Ratification of Indenture; Supplemental Indentures 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 shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

Section 3.9. *The Trustee and the Collateral Trustee.* The Trustee and the Collateral Trustee make no representation or warranty as to the validity or sufficiency of this Supplemental Indenture or with respect to the recitals contained herein, all of which recitals are made solely by the other parties hereto.

Section 3.10. *Counterparts.* The parties hereto may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronic shall be deemed to be their original signatures for all purposes.

Section 3.11. *Execution and Delivery.* Each Guaranteeing Entity agrees that its Guarantee shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of any such Guarantee.

Section 3.12. *Headings*. The headings of the Articles and the Sections in this Supplemental Indenture are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

[GUARANTEEING ENTITY],
as a Guarantor

By: _____

Name:

Title:

MACY'S, INC.

By: _____

Name:

Title:

[Signature Page to Supplemental Indenture]

U.S. BANK NATIONAL ASSOCIATION,
as Trustee and Collateral Trustee

By: _____
Name:
Title:

[Signature Page to Supplemental Indenture]

Form of Junior Lien Intercreditor Agreement

[FORM OF] JUNIOR LIEN INTERCREDITOR AGREEMENT
MACY'S PROPCO HOLDINGS, LLC

the other Grantors party hereto,

U.S. BANK NATIONAL ASSOCIATION,
as First Lien Collateral Trustee and First Lien Trustee
for the First Lien Secured Parties and as First-Priority Collateral Agent,

and

[_____],

as Second Lien Collateral Agent and Second-Priority Collateral Agent
for the Second-Priority Secured Parties

[_____] 20[___]

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JUNIOR LIEN INTERCREDITOR AGREEMENT

JUNIOR LIEN INTERCREDITOR AGREEMENT dated as of [____], 20[___], among U.S. BANK NATIONAL ASSOCIATION (“**US Bank**”), as First Lien Collateral Trustee and [●], as Second Lien Collateral Agent [and Second Lien Trustee].

A. Reference is made to that certain Indenture, dated as of June 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Initial First Lien Indenture**”, which term shall also include and refer to any additional issuance of notes under the Indenture) by and among MACY’S, INC., a Delaware corporation (the “**Issuer**”), MACY’S PROPCO HOLDINGS, LLC, an Ohio limited liability company, MACY’S LOGISTICS, LLC, an Ohio limited liability company, MACY’S MALL REAL ESTATE, LLC, an Ohio limited liability company, BLOOMINGDALE’S REAL ESTATE, LLC, an Ohio limited liability company, MACY’S USQ, LLC, an Ohio limited liability company, MACY’S BROOKLYN, LLC, an Ohio limited liability company and MACY’S STATE STREET, LLC, an Ohio limited liability company (collectively, the “**Guarantors**”) and US Bank, as trustee and as collateral agent, pursuant to which the Issuer issued its 8.375% Senior Secured Notes due 2025 (together with any additional notes issued under the Indenture, the “**Senior Secured Notes**”).

C. The Grantors (as defined below), the guarantors identified therein, and [●], as [trustee/administrative agent] and collateral agent, are parties to that certain [indenture/credit agreement], dated as of [●] (as amended, restated, supplemented or otherwise modified, Refinanced or replaced from time to time), with respect to [●] (the “[**Initial Second Lien Indenture**]”).¹ The Obligations of the Grantors under the Initial Second Lien Indenture and the other Second Lien Documents constitute Second Lien Obligations hereunder.

Accordingly, 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 parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1 Definitions

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

“**Agreement**” shall mean this Junior Lien Intercreditor Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“**Bankruptcy Law**” shall mean Title 11 of the United States Code and any similar federal, state or foreign law for the relief of debtors.

“**Business Day**” shall mean any day other than a Saturday, a Sunday or a day that is a legal holiday under the laws of the State of New York or on which banking institutions in the State of New York are required or authorized by law or other governmental action to close.

¹ Form to be updated to reflect the form of initial second lien debt issuance.

“Collateral Trust Agreement” shall mean that certain Collateral Trust Agreement dated as of June 8, 2020, among the Guarantors and the First Lien Collateral Trustee, as amended, restated, supplemented, replaced or otherwise modified from time to time.

“Common Collateral” shall mean all of the assets of any Grantor, whether real, personal or mixed, constituting both First-Priority Collateral and Second-Priority Collateral.

“Company” shall mean Macy’s, Inc., a Delaware corporation.

“Comparable Second-Priority Collateral Document” shall mean, in relation to any Common Collateral subject to any Lien created under any First-Priority Collateral Document, those Second-Priority Collateral Documents that create a Lien on the same Common Collateral, granted by the same Grantor.

“Deposit Account” shall have the meaning set forth in the Uniform Commercial Code.

“Deposit Account Collateral” shall mean that part of the Common Collateral (if any) comprised of or contained in Deposit Accounts or Securities Accounts.

“DIP Financing” shall have the meaning set forth in Section 6.01(a).

“Discharge” shall mean, with respect to any Common Collateral and any Series (or, if applicable, all then-outstanding Series) of First-Priority Obligations or of Second-Priority Obligations, as applicable, that such Series (or, if applicable, all such Series) of First-Priority Obligations or of Second-Priority Obligations is no longer secured by such Common Collateral pursuant to the terms of the First-Priority Collateral Documents or Second-Priority Collateral Documents, as applicable.

“Discharge of First-Priority Obligations” shall mean at any applicable time, except to the extent otherwise provided in Section 5.07, the Discharge of all First-Priority Obligations then outstanding at such time; *provided* that the Discharge of First-Priority Obligations shall not be deemed to have occurred if the applicable payments are made with the proceeds of other First-Priority Obligations that constitute an exchange or replacement for or a Refinancing of such First-Priority Obligations.

“Financing Documents” shall mean the First Lien Documents, the Other First-Priority Documents, the Second Lien Documents and the Other Second-Priority Documents.

“First Lien Claimholders” shall mean the holders of any First Lien Obligations, including the First Lien Trustee and the First Lien Collateral Trustee.

“First Lien Collateral” shall mean all of the assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any First Lien Obligations. For the avoidance of doubt, “First Lien Collateral” shall not include any net cash proceeds from payments contemplated by the Master Lease.

“First Lien Collateral Agreement” shall mean (a) the Security Agreement dated as of June 8, 2020, among the Guarantors and the First Lien Collateral Trustee, as amended, restated, supplemented, replaced or otherwise modified from time to time, (b) the Collateral Trust Agreement and (c) any other collateral agreement entered into from time to time in respect of any First Lien Documents and designated by the Company as a “First Lien Collateral Agreement,” as amended, restated, supplemented or otherwise modified from time to time.

“First Lien Collateral Documents” shall mean the First Lien Collateral Agreement and any other documents now existing or entered into after the date hereof that create Liens on any assets or properties of any Grantor to secure any First Lien Obligations, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“First Lien Collateral Trustee” shall mean the collateral trustee for the First Lien Claimholders, together with its successors or co-agents in substantially the same capacity as may, from time to time, be appointed pursuant to the First Lien Indenture. As of the date hereof, US Bank shall be the First Lien Collateral Trustee.

“First Lien Documents” shall mean (a) the First Lien Indenture and the First Lien Collateral Documents and (b) any other related document or instrument executed and delivered pursuant to any First Lien Document described in clause (a) above evidencing or governing any obligations thereunder, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“First Lien Indenture” shall mean the Initial First Lien Indenture, as amended, restated, supplemented, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, Refinanced, extended or otherwise modified from time to time, including any agreement extending the maturity thereof, Refinancing, replacing or otherwise restructuring all or any portion of the indebtedness under such agreement or agreements or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof (including in this definition any Refinancing, replacement, restructuring or new debt facility designated by the Company as a “First Lien Indenture” pursuant to Section 8.03).

“First Lien Obligations” shall mean all Obligations of the Issuer and the Guarantors and other obligors under the First Lien Indenture or any of the other First Lien Documents, and all other obligations to pay principal, premium, if any, and interest (including any interest accruing after the commencement of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such proceeding) when due and payable, and all other amounts due or to become due under or in connection with the First Lien Documents and the performance of all other Obligations of the obligors thereunder to the First Lien Secured Parties under the First Lien Documents, according to the respective terms thereof (*provided* that First Lien Obligations shall exclude any such obligations the incurrence of which was not permitted under each First-Priority Document and each Second-Priority Document extant at the time of the incurrence or issuance thereof).

“First Lien Secured Parties” shall mean the holders of any First Lien Obligations, including the First Lien Trustee and the First Lien Collateral Trustee.

“First Lien Trustee” shall mean the trustee for the First Lien Claimholders, together with its successors or co-agents in substantially the same capacity as may, from time to time, be appointed pursuant to the First Lien Indenture. As of the date hereof, US Bank shall be the First Lien Trustee.

“First-Priority Collateral” shall mean the First Lien Collateral and all of the assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Other First-Priority Obligations (other than the First Lien Obligations).

“First-Priority Collateral Agent” shall mean such agent or trustee as is designated **“Collateral Trustee”** pursuant to the terms of the Collateral Trust Agreement (if then in effect) and the First-Priority Documents; it being understood that as of the date of this Agreement, the First Lien Collateral Trustee shall be so designated First-Priority Collateral Agent.

“First-Priority Collateral Documents” shall mean (a) the First Lien Collateral Documents and (b) any documents now existing or entered into after the date hereof that create Liens on any assets or properties of any Grantor to secure any Other First-Priority Obligations, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“First-Priority Documents” shall mean (a) the First Lien Documents and (b) any Other First-Priority Documents, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“First-Priority Obligations” shall mean (a) the First Lien Obligations and (b) the Other First-Priority Obligations (if any) *provided* that First-Priority Obligations shall exclude any such obligations the incurrence of which was not permitted under each First-Priority Document and each Second-Priority Document extant at the time of the incurrence or issuance thereof).

“First-Priority Representatives” shall mean (a) in the case of the First Lien Obligations, the First Lien Collateral Trustee and (b) in the case of any Series of Other First-Priority Obligations, the Other First-Priority Representative with respect thereto. The term **“First-Priority Representatives”** shall include the First-Priority Collateral Agent as the context requires.

“First-Priority Secured Parties” shall mean (a) the First Lien Secured Parties and (b) the Other First-Priority Secured Parties, including the First-Priority Representatives.

“Grantors” shall mean each Guarantor that has executed and delivered a First-Priority Collateral Document or a Second-Priority Collateral Document.

“Initial First Lien Indenture” shall have the meaning set forth in the recitals.

“Initial Second Lien Indenture” shall have the meaning set forth in the recitals.

“Insolvency or Liquidation Proceeding” shall mean that there shall be an assignment for the benefit of creditors relating to any Grantor whether or not voluntary; or any case shall be commenced by or against any Grantor under the Bankruptcy Code or any similar federal or state law for the relief of debtors, whether or not voluntary; or any proceeding shall be instituted by or against any Grantor seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, dissolution, marshalling of assets or liabilities, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency, or seeking the entry of an order for relief or the appointment of a receiver, trustee, administrator or other similar official for it or for any substantial part of its property and assets, whether or not voluntary; or any event or action analogous to or having a substantially similar effect to any of the events or actions set forth above in this definition (other than a solvent reorganization) shall occur under the law of any jurisdiction applicable to any Grantor.

“Joinder Agreement” shall mean a Joinder Agreement substantially in the form of Exhibit A.

“Lien” shall mean any mortgage, pledge, security interest, encumbrance, lien, hypothecation or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof); provided that in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

“Master Lease” shall mean that certain Master Lease Agreement, dated as of June 8, 2020, by and among Macy’s Logistics, LLC, Macy’s Mall Real Estate, LLC, Bloomingdale’s Real Estate, LLC, Macy’s USQ, LLC, Macy’s Brooklyn, LLC, and Macy’s State Street, LLC, each, an Ohio limited liability company, as landlords, and Macy’s Retail Holdings, LLC, Macy’s Corporate Services, LLC, Bloomingdale’s, LLC, and Macy’s West Stores, LLC, each, a Delaware limited liability company, as tenants, as the same may be amended, supplemented or otherwise modified from time to time in accordance with its terms.

“Non-Financing Lease Obligation” shall mean a lease obligation that is not required to be accounted for as a financing or capital lease in accordance with GAAP. For the avoidance of doubt, a straight-line or an operating lease shall be considered a Non-Financing Lease Obligation.

“Obligations” shall mean any principal, interest (including Post-Petition Interest and fees accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer or any Guarantor whether or not a claim for Post-Petition Interest or fees is allowed in such proceedings), penalties, fees, compensation, 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.

“Other First-Priority Collateral Agent” shall mean, with respect to any Series of Other First-Priority Obligations, any Other First-Priority Representative that acts in the capacity of a collateral agent with respect thereto.

“Other First-Priority Documents” shall mean each of the agreements, documents and instruments providing for, evidencing or securing any Other First-Priority Obligations and any other related document or instrument executed or delivered pursuant to any Other First-Priority Document at any time or otherwise evidencing or securing any indebtedness arising under any Other First-Priority Document, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“Other First-Priority Obligations” shall mean any indebtedness or Obligations (other than First Lien Obligations) of the Grantors that are to be secured with a Lien on the Common Collateral senior to the Liens securing the Second Lien Obligations and are designated by the Company as Other First-Priority Obligations hereunder and all other obligations to pay principal, premium, if any, and interest (including any interest accruing after the commencement of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such proceeding) when due and payable, and all other amounts due or to become due under or in connection with the Other First-Priority Documents and the performance of all other Obligations of the obligors thereunder to the Other First-Priority Secured Parties under the Other First-Priority Documents, according to the respective terms thereof (*provided* that Other First-Priority Obligations shall exclude any such obligations the incurrence of which was not permitted under each First-Priority Document and each Second-Priority Document extant at the time of the incurrence or issuance thereof); *provided further*, however that the requirements set forth in Section 8.21 shall have been satisfied.

“Other First-Priority Representative” shall mean, with respect to any Series of Other First-Priority Obligations or any separate facility within such Series, the Person elected, designated or appointed as the administrative agent, trustee, collateral agent or other representative of such Series or facility by or on behalf of the holders of such Series or facility, and its respective successors in substantially the same capacity as may from time to time be appointed.

“Other First-Priority Secured Parties” shall mean the Persons holding Other First-Priority Obligations, including the Other First-Priority Representatives.

“Other Second-Priority Collateral Agent” shall mean, with respect to any Series of Other Second-Priority Obligations, any Other Second-Priority Representative that acts in the capacity of a collateral agent with respect thereto.

“Other Second-Priority Documents” shall mean each of the agreements, documents and instruments providing for, evidencing or securing any Other Second-Priority Obligations and any other related document or instrument executed or delivered pursuant to any Other Second-Priority Document at any time or otherwise evidencing or securing any indebtedness arising under any Second-Priority Obligations, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“Other Second-Priority Obligations” shall mean any indebtedness or Obligations (other than the Second Lien Obligations) of the Grantors that are to be equally and ratably or secured on a junior basis with the Second Lien Obligations and are designated by the Company as Other Second-Priority Obligations hereunder, and all other obligations to pay principal, premium, if any, and interest (including any interest accruing after the commencement of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such proceeding) when due and payable, and all other amounts due or to become due under or in connection with the Other Second-Priority Obligations and the performance of all other Obligations of the obligors thereunder to the Other Second-Priority Secured Parties under the Other Second-Priority Documents, according to the respective terms thereof (*provided* that Other Second-Priority Obligations shall exclude any such obligations the incurrence of which was not permitted under each First-Priority Document and each Second-Priority Document extant at the time of the incurrence or issuance thereof); *provided further, however*, that the requirements set forth in Section 8.21 shall have been satisfied.

“Other Second-Priority Representative” shall mean, with respect to any Series of Other Second-Priority Obligations or any separate facility within such Series, the Person elected, designated or appointed as the administrative agent, trustee, collateral agent or other representative of such Series or facility by or on behalf of the holders of such Series or facility, and its respective successors in substantially the same capacity as may from time to time be appointed.

“Other Second-Priority Secured Parties” shall mean the Persons holding Other Second-Priority Obligations, including the Other Second-Priority Representatives.

“Person” shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

“Plan of Reorganization” shall mean any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement proposed in or in connection with any Insolvency or Liquidation Proceeding.

“Pledged Collateral” shall mean the Common Collateral in the possession or control of the First-Priority Collateral Agent (or its agents or bailees), to the extent that possession or control thereof is necessary to perfect a Lien thereon under the Uniform Commercial Code.

“Post-Petition Interest” shall have the meaning set forth in Section 6.11.

“Purchase Event” shall have the meaning set forth in Section 5.09.

“Recovery” shall have the meaning set forth in Section 6.04.

“Refinance” shall mean, in respect of any indebtedness and any agreement governing any such indebtedness, to refinance, extend, increase, renew, defease, amend, restate, amend and restate, modify, supplement, restructure, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for or refinancing of, such indebtedness in whole or in part, including by adding or replacing lenders, creditors, agents, obligors and/or guarantors, and including, in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

“Second Lien Claimholders” shall mean the holders of any Second Lien Obligations, including the Second Lien Trustee and the Second Lien Collateral Agent.

“Second Lien Collateral” shall mean all of the assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Second Lien Obligations. For the avoidance of doubt, “Second Lien Collateral” shall not include any net cash proceeds from payments contemplated by the Master Lease.

“Second Lien Collateral Agent” shall mean the collateral agent for the Second Lien Claimholders, together with its successors or co-agents in substantially the same capacity as may, from time to time, be appointed pursuant to the Initial Second Lien Indenture. As of the date hereof, [●] shall be the Second Lien Collateral Agent.

“Second Lien Collateral Agreement” shall mean (a) the “Security Agreement” as defined in the Initial Second Lien Indenture, and (b) any other collateral agreement entered into from time to time in respect of any Second Lien Indenture and designated by the Company as a “Second Lien Collateral Agreement,” as amended, restated, supplemented or other modified from time to time.

“Second Lien Collateral Documents” shall mean the Second Lien Collateral Agreement and any documents now existing or entered into after the date hereof that create Liens on any assets or properties of any Grantor to secure any Second Lien Obligations, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“Second Lien Documents” shall mean (a) the Second Lien Indenture and the Second Lien Collateral Documents and (b) any other related document or instrument executed and delivered pursuant to any Second Lien Document described in clause (a) above evidencing or governing any Obligations thereunder in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“Second Lien Indenture” shall mean the Initial Second Lien Indenture, as amended, restated, supplemented, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, refinanced, extended or otherwise modified from time to time, including any agreement extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the indebtedness under such agreement or agreements or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof, (including in this definition any refinancing, replacement, restructuring or new debt facility designated by the Company as a “Second Lien Indenture” pursuant to Section 8.03).

“Second Lien Obligations” shall mean all Obligations of the Company and other obligors under the Initial Second Lien Indenture or any of the other Second-Priority Documents, and all other obligations to pay principal, premium, if any, and interest (including any interest accruing after the commencement of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such proceeding) when due and payable, and all other amounts due or to become due under or in connection with the Second Lien Documents and the performance of all other Obligations of the obligors thereunder to the Second Lien Secured Parties under the Second Lien Documents, according to the respective terms thereof (*provided* that Second Lien Obligations shall exclude any such obligations the incurrence of which was not permitted under each First-Priority Document and each Second-Priority Document extant at the time of the incurrence or issuance thereof).

“**Second Lien Secured Parties**” shall mean the holders of any Second Lien Obligations, including the Second Lien Trustee and the Second Lien Collateral Agent.

“**Second Lien Trustee**” shall mean shall mean [●], in its capacity as indenture trustee under the Second Lien Indenture and the Second Lien Collateral Documents, and its permitted successors in such capacity.

“**Second-Priority Collateral**” shall mean the Second Lien Collateral and all of the assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Other Second-Priority Obligations.

“**Second-Priority Collateral Agent**” shall mean such agent or trustee as is designated “**Second-Priority Collateral Agent**” by Second-Priority Secured Parties holding a majority in principal amount of the Second-Priority Obligations then outstanding; it being understood that as of the date of this Agreement, the Second Lien Collateral Agent shall be so designated Second-Priority Collateral Agent.

“**Second-Priority Collateral Documents**” shall mean (a) the Second Lien Collateral Documents and (b) any documents now existing or entered into after the date hereof that create Liens on any assets or properties of any Grantor to secure any Other Second-Priority Obligations, in each case, as Refinanced from time to time in accordance with the terms thereof and subject to the terms hereof.

“**Second-Priority Documents**” shall mean (a) the Second Lien Documents and (b) the Other Second-Priority Documents.

“**Second-Priority Obligations**” shall mean (a) the Second Lien Obligations, (b) the Other Second-Priority Obligations and (c) all other Obligations in respect of, or arising under, the Second-Priority Documents, including all fees and expenses of the collateral agent for any Other Second-Priority Obligations and shall include all interest and fees, which but for the filing of a petition in bankruptcy with respect to the Company or any Grantor, would have accrued on such obligations, whether or not a claim for such interest or fees is allowed in such proceeding (*provided* that Second-Priority Obligations shall exclude any such obligations the incurrence of which was not permitted under each First-Priority Document and each Second-Priority Document extant at the time of the incurrence or issuance thereof).

“**Second-Priority Representatives**” shall mean (a) in the case of the Second Lien Obligations, the Second Lien Collateral Agent and (b) in the case of any Series of Other Second-Priority Obligations, the Other Second-Priority Representative with respect thereto. The term “**Second-Priority Representatives**” shall include the Second-Priority Collateral Agent as the context requires. For purposes of this definition, no Discharge of Second Lien Obligations with respect to the Second Lien Obligations under the Second Lien Indenture and the Second Lien Documents relating thereto shall be deemed to have occurred if any of the Company or any other Grantor enters into any Refinancing of the Second Lien Indenture, and, in the case of any such Refinancing, the Second Lien Collateral Agent under such Second Lien Indenture shall continue as the Second-Priority Representative for all purposes hereof.

“**Second-Priority Secured Parties**” shall mean (a) the Second Lien Secured Parties and (b) the Other Second-Priority Secured Parties, including the Second-Priority Representatives.

“**Secured Parties**” shall mean the First-Priority Secured Parties and the Second-Priority Secured Parties.

“**Securities Account**” shall have the meaning set forth in the Uniform Commercial Code.

“**Series**” shall mean (a) the First Lien Obligations and each series of Other First-Priority Obligations, each of which shall constitute a separate Series of First-Priority Obligations, except that to the extent that the First Lien Obligations and/or any one or more series of such Other First-Priority Obligations (i) are secured by identical collateral held by a common collateral agent and (ii) have their security interests documented by a single set of security documents, such First Lien Obligations and/or each such series of Other First-Priority Obligations shall collectively constitute a single Series, and (b) the Second Lien Obligations and each series of Other Second-Priority Obligations, each of which shall constitute a separate Series of Second-Priority Obligations, except that to the extent that the Second Lien Obligations and/or any one or more series of such Other Second-Priority Obligations (i) are secured by identical collateral held by a common collateral agent and (ii) have their security interests documented by a single set of security documents, such Second Lien Obligations and/or each such series of Other Second-Priority Obligations shall collectively constitute a single Series.

“**Standstill Period**” shall have the meaning set forth in Section 3.01(f).

“**Subsidiary**” shall mean, with respect to any person (herein referred to as the “**parent**”), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, controlled or held, or (b) that is, at the time any determination is made, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

“**US Bank**” shall have the meaning set forth in the preamble.

Section 1.02 *Terms Generally.* The definitions of terms herein 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, otherwise modified or permitted to be Refinanced or replaced in accordance with the terms hereof, in each case to the extent so Refinanced or replaced, in accordance with this Agreement, (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.

ARTICLE 2
Lien Priorities

Section 2.01 *Subordination of Liens.* Notwithstanding the date, time, manner or order of filing or recordation of any document or instrument or grant, attachment or perfection of any Liens granted to the Second-Priority Secured Parties on the Common Collateral or of any Liens granted to the First-Priority Secured Parties on the Common Collateral (or any actual or alleged defect in any of the foregoing), and notwithstanding any provision of the UCC, or any applicable law or the Second-Priority Documents or the First-Priority Documents or any other circumstance whatsoever (including any non-perfection of any Lien purporting to secure the First-Priority Obligations and/or the Second-Priority Obligations), each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, hereby agrees that: (a) any Lien on the Common Collateral securing any First-Priority Obligations now or hereafter held by or on behalf of the any First-Priority Secured Parties or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall have priority over and be senior in all respects and prior to any Lien on the Common Collateral securing any Second-Priority Obligations and (b) any Lien on the Common Collateral securing any Second-Priority Obligations now or hereafter held by or on behalf of any Second-Priority Secured Parties or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Common Collateral securing any First-Priority Obligations. All Liens on the Common Collateral securing any First-Priority Obligations shall be and remain senior in all respects and prior to all Liens on the Common Collateral securing any Second-Priority Obligations for all purposes, whether or not such Liens securing any First-Priority Obligations are subordinated to any Lien securing any other obligation of the Company, any other Grantor or any other Person.

Section 2.02 *Prohibition on Contesting Liens.* Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, and each First-Priority Representative, for itself and on behalf of each applicable First-Priority Secured Party, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, perfection, priority, validity or enforceability of (a) a Lien securing any First-Priority Obligations held (or purported to be held) by or on behalf of any of the First-Priority Secured Parties or any agent or trustee therefor in any First-Priority Collateral or (b) a Lien securing any Second-Priority Obligations held (or purported to be held) by or on behalf of any Second-Priority Secured Party in the Common Collateral, as the case may be; *provided, however*, that nothing in this Agreement shall be construed to prevent or impair the rights of any First-Priority Secured Party or any agent or trustee therefor to enforce this Agreement (including the priority of the Liens securing the First-Priority Obligations as provided in Section 2.01) or any of the First-Priority Documents.

Section 2.03 *No New Liens.* So long as the Discharge of First-Priority Obligations has not occurred, the parties hereto agree that if any Second-Priority Representative shall hold any Lien on any assets of the Company or any other Grantor securing any Second-Priority Obligations that are not also subject to the senior and prior Lien in respect of the First-Priority Obligations under the First-Priority Documents, such Second-Priority Representative shall notify the First-Priority Collateral Agent promptly upon becoming aware thereof and, upon demand by the First-Priority Collateral Agent or the Company, will either (i) release such Lien or (ii) assign such Lien to the First-Priority Collateral Agent (and/or its designee) as security for the applicable First-Priority Obligations (and, in the case of an assignment, each Second-Priority Representative may retain a junior lien on such assets subject to the terms hereof). Each Second-Priority Representative agrees that, after the date hereof, if it shall hold any Lien on any assets of the Company or any other Grantor securing any Second-Priority Obligations that are not also subject to the Lien in favor of each other Second-Priority Representative, such Second-Priority Representative shall notify any other Second-Priority Representative promptly upon becoming aware thereof.

Section 2.04 *Perfection of Liens.* Subject to Section 5.05, none of the First-Priority Secured Parties shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Common Collateral for the benefit of the Second-Priority Secured Parties. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the First-Priority Secured Parties and the Second-Priority Secured Parties and shall not impose on the First-Priority Secured Parties or the Second-Priority Secured Parties or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Common 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 2.05 *Nature of Obligations.* The priorities of the Liens provided in Section 2.01 shall not be altered or otherwise affected by (a) any Refinancing of the First-Priority Obligations or the Second-Priority Obligations or (b) any action or inaction which any of the First-Priority Secured Parties or the Second-Priority Secured Parties may take or fail to take in respect of the Common Collateral. Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Parties, agrees and acknowledges that (i) a portion of the First-Priority Obligations may be revolving in nature and that the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, (ii) the terms of the First-Priority Collateral Documents and the First-Priority Obligations may be amended, restated, supplemented or otherwise modified, and the First-Priority Obligations, or a portion thereof, may be Refinanced from time to time and (iii) the aggregate amount of the First-Priority Obligations may be increased, in each case, without notice to or consent by the Second-Priority Collateral Agents or the Second-Priority Secured Parties and without affecting the provisions hereof, except as otherwise expressly set forth herein. As between the Company and the Grantors, the foregoing provisions will not limit or otherwise affect the obligations of the Company and the Grantors contained in any Second-Priority Document with respect to the incurrence of additional First-Priority Obligations.

ARTICLE 3 Enforcement

Section 3.01 *Exercise of Remedies.*

(a) So long as the Discharge of First-Priority Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, (i) no Second-Priority Representative or any Second-Priority Secured Party will (x) exercise or seek to exercise any rights or remedies (including setoff) with respect to any Common Collateral in respect of any applicable Second-Priority Obligations, institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (y) contest, protest or object to any foreclosure proceeding or action brought with respect to the Common Collateral by the First-Priority Collateral Agent or any First-Priority Secured Party in respect of the First-Priority Obligations, the exercise of any right by the First-Priority Collateral Agent or any First-Priority Secured Party (or any agent or sub-agent on their behalf) in respect of the First-Priority Obligations under any lockbox agreement, control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any Second-Priority Representative or any Second-Priority Secured Party either is a party or may have rights as a third party beneficiary, or any other exercise by any such party, of any rights and remedies relating to the Common Collateral under the First-Priority Documents or otherwise in respect of First-Priority Obligations, or (z) object to the forbearance by the First-Priority Secured Parties from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Common Collateral in respect of First-Priority Obligations and (ii) except as otherwise provided herein, the First-Priority Collateral Agent and the First-Priority Secured Parties shall have the exclusive right to enforce rights, exercise remedies (including setoff and the right to credit bid their debt) and make determinations regarding the release, disposition or restrictions with respect to the Common Collateral without any consultation with or the consent of any Second-Priority Representative or any Second-Priority Secured Party; *provided, however*, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor, each Second-Priority Representative may file a claim or statement of interest with respect to the applicable Second-Priority Obligations and (B) each Second-Priority Representative may take any action (not adverse to the prior Liens on the Common Collateral securing the First-Priority Obligations, or the rights of the First-Priority Collateral Agent or the First-Priority Secured Parties to exercise remedies in respect thereof) in order to create, prove, perfect, preserve or protect (but not enforce) its rights in, and perfection and priority of its Lien on, the Common Collateral. In exercising rights and remedies with respect to the First-Priority Collateral, the First-Priority Collateral Agent and the First-Priority Secured Parties may enforce the provisions of the First-Priority Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Common Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured lender under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) So long as the Discharge of First-Priority Obligations has not occurred, each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, agrees that it will not, in its capacity as a Secured Party, take or receive any Common Collateral or any proceeds of Common Collateral in connection with the exercise of any right or remedy (including setoff) with respect to any Common Collateral in respect of the applicable Second-Priority Obligations. Without limiting the generality of the foregoing, unless and until the Discharge of First-Priority Obligations has occurred, except as expressly provided in the proviso in clause (ii) of Section 3.01(a), the sole right of the Second-Priority Representatives and the Second-Priority Secured Parties with respect to the Common Collateral is to hold a Lien on the Common Collateral in respect of the applicable Second-Priority Obligations pursuant to the Second-Priority Documents, as applicable, 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-Priority Obligations has occurred.

(c) Subject to the proviso in clause (ii) of Section 3.01(a), (i) each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, agrees that no Second-Priority Representative or Second-Priority Secured Party will take any action that would hinder any exercise of remedies undertaken by the First-Priority Collateral Agent or the First-Priority Secured Parties with respect to the Common Collateral under the First-Priority Documents, including any sale, lease, exchange, transfer or other disposition of the Common Collateral, whether by foreclosure or otherwise, and (ii) each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, hereby waives any and all rights it or any Second-Priority Secured Party may have as a junior lien creditor or otherwise to object to the manner in which the First-Priority Collateral Agent or the First-Priority Secured Parties seek to enforce or collect the First-Priority Obligations or the Liens granted in any of the First-Priority Collateral, regardless of whether any action or failure to act by or on behalf of the First-Priority Collateral Agent or First-Priority Secured Parties is adverse to the interests of the Second-Priority Secured Parties.

(d) Each Second-Priority Representative hereby acknowledges and agrees that no covenant, agreement or restriction contained in any applicable Second-Priority Document shall be deemed to restrict in any way the rights and remedies of the First-Priority Collateral Agent or the First-Priority Secured Parties with respect to the First-Priority Collateral as set forth in this Agreement and the First-Priority Documents.

(e) Subject to the proviso appearing in the first sentence of Section 3.01(a) and the following Section 3.01(f), until the Discharge of the First-Priority Obligations, the First-Priority Collateral Agent shall have the exclusive right to exercise any right or remedy with respect to the Common Collateral and shall have the exclusive right to determine and direct the time, method and place for exercising such right or remedy or conducting any proceeding with respect thereto.

(f) Notwithstanding the provisions of Section 3.01 above but subject in all cases to Section 4.02, the Second-Priority Collateral Agent may enforce any of its rights and exercise any of its remedies (subject to the limitations set forth in this clause (f) with respect to such actions) with respect to the Second Lien Collateral after a period of 180 consecutive days has elapsed since the date on which the Second-Priority Collateral Agent has delivered to the First-Priority Collateral Agent written notice of the acceleration or non-payment at the final stated maturity of the indebtedness then outstanding under any Second Lien Documents (the “**Standstill Period**”); *provided, however*, that (i) notwithstanding the expiration of the Standstill Period or anything herein to the contrary, in no event shall the Second-Priority Collateral Agent or any other Second-Priority Secured Party enforce or exercise any rights or remedies with respect to any Common Collateral if the First-Priority Collateral Agent or any other First-Priority Secured Party shall have commenced, and shall be diligently pursuing (or shall have sought or requested relief from or modification of the automatic stay or any other stay in any insolvency or liquidation proceeding to enable the commencement and pursuit thereof) the enforcement or exercise of any rights or remedies with respect to all or a material portion of such Collateral (prompt written notice thereof to be given to the Second-Priority Collateral Agent by the applicable First-Priority Representative) and (ii) after the expiration of the Standstill Period, so long as no First-Priority Representative has commenced any action to enforce the Liens securing the First-Priority Obligations on all or any material portion of the Collateral, the Second-Priority Secured Parties (or the Second-Priority Collateral Agent on their behalf) may, subject to the provisions of Article 7, enforce the Liens securing the Second-Priority Obligations with respect to all or any portion of the Common Collateral to the extent permitted hereunder. If the Second-Priority Collateral Agent or any other Second-Priority Secured Party exercises any rights or remedies with respect to the Collateral in accordance with the immediately preceding sentence of this paragraph and thereafter the First-Priority Collateral Agent or any other First-Priority Secured Party commences (or attempts to commence or give notice of its intent to commence) the exercise of any of its rights or remedies with respect to the Collateral (including seeking relief from the automatic stay or any other stay in any proceeding under Bankruptcy Law), the Standstill Period shall recommence and the Second-Priority Collateral Agent and each other Second-Priority Secured Party shall rescind any such rights or remedies already exercised with respect to the Common Collateral.

Section 3.02 *Cooperation.* Subject to the proviso in clause (ii) of Section 3.01(a), each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, agrees that, unless and until the Discharge of First-Priority Obligations has occurred, it will not commence, or join with any Person (other than the First-Priority Secured Parties and the First-Priority Collateral Agent upon the request thereof) in commencing, any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Lien held by it in the Common Collateral under any of the applicable Second-Priority Documents or otherwise in respect of the applicable Second-Priority Obligations.

Section 3.03 *Second-Priority Collateral Agent and Second-Priority Secured Parties Waiver.* The Second-Priority Collateral Agent and the Second-Priority Secured Parties hereby waive any claim they may now or hereafter have against the First-Priority Collateral Agent or any First-Priority Secured Parties arising out of (i) any actions which the First-Priority Collateral Agent (or any of its representatives) takes or omits to take (including actions with respect to the creation, perfection or continuation of Liens on any Collateral, actions with respect to the foreclosure upon, disposition, release or depreciation of, or failure to realize upon, any of the Collateral and actions with respect to the collection of any claim for all or any part of the Obligations from any account debtor, guarantor or any other party) in accordance with any relevant First-Priority Collateral Documents or any other agreement related thereto, or to the collection of the Obligations or the valuation, use, protection or release of any security for the Obligations, (ii) any election by the First-Priority Collateral Agent (or any of its agents), in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code, or (iii) subject to Article 6, any borrowing by, or grant of a security interest or administrative expense priority under Section 364 of the Bankruptcy Code by, the Company or any of its Subsidiaries, as debtor-in-possession.

Section 3.04 *Actions upon Breach.* Should any Second-Priority Representative or any Second-Priority Secured Party, contrary to this Agreement, in any way, take, attempt to take or threaten to take any action with respect to the Common Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement) or fail to take any action required by this Agreement, the First-Priority Collateral Agent or any First-Priority Representative or any other First-Priority Secured Party (in its or their own name or in the name of the Company or any other Grantor) may obtain relief against such Second-Priority Representative or such Second-Priority Secured Party by injunction, specific performance or other appropriate equitable relief. Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, hereby (i) agrees that the First-Priority Secured Parties' damages from the actions of the Second-Priority Representatives or any Second-Priority Secured Party may at that time be difficult to ascertain and may be irreparable and waives any defense that the First-Priority Secured Parties cannot demonstrate damage or be made whole by the awarding of damages and (ii) irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action that may be brought by the First-Priority Collateral Agent, any First-Priority Representative or any other First-Priority Secured Party.

ARTICLE 4 Payments

Section 4.01 *Application of Proceeds.* After an Event of Default under (and as defined in) any First-Priority Document has occurred, and until such Event of Default is cured or waived, so long as the Discharge of First-Priority Obligations has not occurred, the Common Collateral or proceeds thereof received in connection with the sale or other disposition of, or collection on, such Common Collateral upon the exercise of remedies, shall be applied by the First-Priority Collateral Agent to the First-Priority Obligations in such order as specified in the relevant First-Priority Document (subject to the Collateral Trust Agreement) until the Discharge of First-Priority Obligations has occurred. Upon the Discharge of First-Priority Obligations, the First-Priority Collateral Agent shall deliver promptly to the Second-Priority Collateral Agent any Common Collateral or proceeds thereof held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct to be applied by the Second-Priority Collateral Agent, in such order as specified in the relevant Second-Priority Documents (and subject to any other applicable intercreditor agreement among the Second-Priority Secured Parties).

Section 4.02 *Payments Over.* Any Common Collateral or proceeds thereof received by any Second-Priority Representative or any Second-Priority Secured Party in connection with the exercise of any right or remedy (including setoff) relating to the Common Collateral (or any distribution in respect of the Common Collateral, whether or not expressly characterized as such) prior to the Discharge of the First-Priority Obligations shall be segregated and held in trust for the benefit of and forthwith paid over to the First-Priority Collateral Agent (and/or its designees) for the benefit of the applicable First-Priority Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First-Priority Collateral Agent is hereby authorized to make any such endorsements as agent for any Second-Priority Representative or any such Second-Priority Secured Party. This authorization is coupled with an interest and is irrevocable.

ARTICLE 5
Other Agreements

Section 5.01 *Releases.*

(a) If, at any time any Grantor, the First-Priority Collateral Agent or the holder of any First-Priority Obligation delivers notice to each Second-Priority Representative that any specified Common Collateral (including all or substantially all of the equity interests of a Grantor or any of its Subsidiaries) is sold, transferred or otherwise disposed of (x) by the owner of such Common Collateral in a transaction not prohibited by any First-Priority Document or (y) otherwise to the extent the First-Priority Collateral Agent has consented to such sale, transfer or disposition, then (whether or not any Insolvency or Liquidation Proceeding is pending at the time) the Liens in favor of the Second-Priority Secured Parties upon such Common Collateral will automatically be released and discharged as and when, but only to the extent, such Liens on such Common Collateral securing First-Priority Obligations are released and discharged. Upon delivery to each Second-Priority Representative of a notice from the First-Priority Collateral Agent or the Company stating that any release of Liens securing or supporting the First-Priority Obligations has become effective (or shall become effective upon each First-Priority Representative's release), whether in connection with a sale of such assets by the relevant owner pursuant to the preceding clauses or otherwise, each Second-Priority Representative will promptly execute and deliver such instruments, releases, termination statements or other documents confirming such release on customary terms (and the Company hereby agrees to deliver any such documents reasonably requested by the First-Priority Collateral Agent in connection therewith). In the case of the sale of all or substantially all of the equity interests of a Grantor or any of its Subsidiaries, the guarantee in favor of the Second-Priority Secured Parties, if any, made by such Grantor or Subsidiary will automatically be released and discharged as and when, but only to the extent, the guarantee by such Grantor or Subsidiary of First-Priority Obligations is released and discharged.

(b) Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, hereby irrevocably constitutes and appoints the First-Priority Collateral Agent and any officer or agent of the First-Priority 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 each Second-Priority Representative or such holder or in the First-Priority Collateral Agent's own name, from time to time in the First-Priority Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.01, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Section 5.01, including any termination statements, endorsements or other instruments of transfer or release.

(c) Unless and until the Discharge of First-Priority Obligations has occurred, each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, hereby consents to the application, whether prior to or after a default, of proceeds of Common Collateral to the repayment of First-Priority Obligations pursuant to the First-Priority Documents; *provided* that nothing in this Section 5.01(c) shall be construed to prevent or impair the rights of the Second-Priority Representatives or the Second-Priority Secured Parties to receive proceeds in connection with the Second-Priority Obligations not otherwise in contravention of this Agreement.

(d) Notwithstanding anything to the contrary in any Second-Priority Collateral Document, in the event the terms of a First-Priority Collateral Document and a Second-Priority Collateral Document each require any Grantor (i) to make payment in respect of any item of Common Collateral, (ii) to deliver or afford control over any item of Common Collateral to (to the extent such control can be afforded only to one person under applicable law), or deposit any item of Common Collateral with, (iii) to register ownership of any item of Common Collateral in the name of or make an assignment of ownership of any Common Collateral or the rights thereunder to, (iv) cause any securities intermediary, commodity intermediary or other Person acting in a similar capacity to agree to comply, in respect of any item of Common Collateral, with instructions or orders from, or to treat, in respect of any item of Common Collateral, as the entitlement holder, (v) hold any item of Common Collateral in trust for (to the extent such item of Common Collateral cannot be held in trust for multiple parties under applicable law), (vi) obtain the agreement of a bailee or other third party to hold any item of Common Collateral for the benefit of or subject to the control of or, in respect of any item of Common Collateral, to follow the instructions of or (vii) obtain the agreement of a landlord with respect to access to leased premises where any item of Common Collateral is located or waivers or subordination of rights with respect to any item of Common Collateral in favor of, in any case, both the First-Priority Collateral Agent and any Second-Priority Representative or Second-Priority Secured Party, such Grantor may, until the applicable Discharge of First-Priority Obligations has occurred, comply with such requirement under the applicable Second-Priority Collateral Document as it relates to such Common Collateral by taking any of the actions set forth above only with respect to, or in favor of, the First-Priority Collateral Agent.

Section 5.02 *Insurance.* Unless and until the Discharge of First-Priority Obligations has occurred, the First-Priority Collateral Agent and the First-Priority Secured Parties shall have the sole and exclusive right, subject to the rights of the Grantors under the First-Priority Documents, to adjust settlement for any insurance policy covering the Common Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Common Collateral. Unless and until the Discharge of First-Priority Obligations has occurred, all proceeds of any such policy and any such award if in respect of the Common Collateral shall be paid, subject to the rights of the Grantors under the First-Priority Documents, (a) first, prior to the occurrence of the Discharge of First-Priority Obligations, to the First-Priority Collateral Agent for the benefit of First-Priority Secured Parties pursuant to the terms of the First-Priority Documents, (b) second, after the occurrence of the Discharge of First-Priority Obligations, to the Second-Priority Collateral Agent for the benefit of the Second-Priority Secured Parties pursuant to the terms of the applicable Second-Priority Documents (subject to any applicable intercreditor agreement among the Second-Priority Secured Parties) and (c) third, if no Second-Priority Obligations are outstanding, 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. If any Second-Priority Representative or any Second-Priority Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the First-Priority Collateral Agent in accordance with the terms of Section 4.02.

Section 5.03 *Amendments to Second-Priority Documents.*

(a) So long as the Discharge of the First-Priority Obligations has not occurred, without the prior written consent of the First-Priority Collateral Agent, no Second-Priority Document may be amended, restated, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Second-Priority Document, would (1) require any scheduled payment of principal (including pursuant to a sinking fund obligation) prior to the maturity date thereof or accelerate any date upon which a scheduled payment of principal or interest is due, in each case with respect to any indebtedness outstanding thereunder, (2) shorten the maturity date applicable to any indebtedness incurred thereunder, (3) add or modify (or have the effect of a modification of) any mandatory prepayment or mandatory redemption provision or redemption at the option of the holders thereof in a manner that is more favorable to the holders of the applicable indebtedness, (3) reduce the capacity to incur First-Priority Obligations to an amount less than the aggregate principal amount of indebtedness (including revolving commitments) under the First-Priority Documents on the day of any such amendment, restatement, supplement, modification or Refinancing, (4) restrict the ability of the Grantors to grant liens consistent with the terms of the First-Priority Documents or (5) be prohibited by or inconsistent with any of the terms of this Agreement or any other First-Priority Document or cause the applicable indebtedness thereunder to not constitute Junior Lien Obligations (as defined in the First Lien Indenture as in effect on the date thereof). Unless otherwise agreed to by the First-Priority Collateral Agent, each Grantor agrees that each applicable Second-Priority Collateral Document shall include language substantially the same as the following paragraph (or language to similar effect approved by the First-Priority Collateral Agent, such approval not to be unreasonably withheld):

“Notwithstanding anything herein to the contrary, (i) the liens and security interests granted to the [insert the relevant Second-Priority Representative] for the benefit of the [Second-Priority Secured Parties] pursuant to this Agreement are expressly subject and subordinate to the liens and security interests granted to (a) U.S. Bank National Association, as collateral trustee (and its permitted successors), pursuant to the Security Agreement dated June 8, 2020 (as amended, restated, supplemented or otherwise modified from time to time), by and among Macy’s Propco Holdings, LLC, the other guarantors party thereto and U.S. Bank National Association, as collateral trustee or (b) any agent or trustee for any Other First-Priority Secured Parties and (ii) the exercise of any right or remedy by the [insert the relevant Second-Priority Representative] hereunder or the application of proceeds (including insurance proceeds and condemnation proceeds) of any Common Collateral is subject to the limitations and provisions of the Junior Lien Intercreditor Agreement dated as of [●] (as amended, restated, supplemented or otherwise modified from time to time, the “**Junior Lien Intercreditor Agreement**”), by and among U.S. Bank National Association, in its capacity as the First Lien Collateral Trustee and First Lien Trustee and [●], in its capacity as the Second Lien Collateral Agent. In the event of any conflict between the terms of the Junior Lien Intercreditor Agreement and the terms of this Agreement, the terms of the Junior Lien Intercreditor Agreement shall govern.”

(b) In the event that the First-Priority Collateral Agent or the First-Priority Secured Parties enter into any amendment, waiver or consent in respect of or replace any of the First-Priority Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any First-Priority Collateral Document or changing in any manner the rights of the First-Priority Collateral Agent, the First-Priority Secured Parties, the Company or any other Grantor thereunder (including the release of any Liens in First-Priority Collateral), then such amendment, waiver or consent shall apply automatically to any comparable provision of each Comparable Second-Priority Collateral Document without the consent of any Second-Priority Representative or any Second-Priority Secured Party and without any action by any Second-Priority Representative, Second-Priority Secured Party, the Company or any other Grantor; *provided, however*, that (x) no such amendment, waiver or consent shall have the effect of removing assets subject to the Lien of any Second Priority Collateral Document, except to the extent that a release of such Lien is provided for in Section 5.01 hereof and (y) written notice of such amendment, waiver or consent shall have been given to each Second-Priority Representative within 10 Business Days after the effectiveness of such amendment, waiver or consent.

(c) Notwithstanding the foregoing, without the consent of any Secured Party, any First-Priority Representative and any Second-Priority Representative may become a party hereto by execution and delivery of a Joinder Agreement in accordance with and compliance with Section 8.21 of this Agreement and, upon such execution and delivery, such First-Priority Representative, the First-Priority Secured Parties and the First-Priority Obligations and/or such Second-Priority Representative, the Second-Priority Secured Parties and the Second-Priority Obligations, as applicable, shall be subject to the terms hereof.

Section 5.04 *Rights As Unsecured Creditors.* Notwithstanding anything to the contrary in this Agreement, the Second-Priority Representatives and the Second-Priority Secured Parties may exercise rights and remedies as an unsecured creditor against the Company or any Subsidiary of the Company that has guaranteed the Second-Priority Obligations in accordance with the terms of the applicable Second-Priority Documents and applicable law, so long as such rights and remedies do not violate (or are otherwise not prohibited by) this Agreement. Nothing in this Agreement shall prohibit the receipt by any Second-Priority Representative or any Second-Priority Secured Party of the required payments of interest and principal so long as such receipt is not the direct or indirect result of the exercise by any Second-Priority Representative or any Second-Priority Secured Party of rights or remedies as a secured creditor in respect of Common Collateral or enforcement in contravention of this Agreement of any Lien in respect of Second-Priority Obligations held by any of them. In the event any Second-Priority Representative or any Second-Priority Secured Party becomes a judgment lien creditor in respect of Common Collateral as a result of its enforcement of its rights as an unsecured creditor in respect of Second-Priority Obligations, such judgment lien shall be subordinated to the Liens securing First-Priority Obligations on the same basis as the other Liens securing the Second-Priority Obligations are so subordinated to such Liens securing First-Priority Obligations under this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the First-Priority Collateral Agent or the First-Priority Secured Parties may have with respect to the First-Priority Collateral.

Section 5.05 *First-Priority Collateral Agent as Gratuitous Bailee/Agent for Perfection*

(a) The First-Priority Collateral Agent agrees to hold the Pledged Collateral that is part of the Common Collateral in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee and/or gratuitous agent for the benefit of each Second-Priority Representative and any assignee solely for the purpose of perfecting the security interest granted in such Pledged Collateral pursuant to the Second-Priority Collateral Documents, subject to the terms and conditions of this Section 5.05.

(b) The First-Priority Collateral Agent agrees to hold the Deposit Account Collateral (if any) that is part of the Common Collateral and controlled by the First-Priority Collateral Agent as gratuitous bailee and/or gratuitous agent for the benefit of each Second-Priority Representative and any assignee solely for the purpose of perfecting the security interest granted in such Deposit Account Collateral pursuant to the Second-Priority Collateral Documents, subject to the terms and conditions of this Section 5.05.

(c) In the event that the First-Priority Collateral Agent (or its agent or bailees) has Lien filings against intellectual property that is part of the Common Collateral that are necessary for the perfection of Liens in such Common Collateral, the First-Priority Collateral Agent agrees to hold such Liens as gratuitous bailee and/or gratuitous agent for the benefit of each Second-Priority Representative and any assignee solely for the purpose of perfecting the security interest granted in such Liens pursuant to the Second-Priority Collateral Documents, subject to the terms and conditions of this Section 5.05.

(d) Except as otherwise specifically provided herein (including Sections 3.01 and 4.01), until the Discharge of First-Priority Obligations has occurred, the First-Priority Collateral Agent shall be entitled to deal with the Pledged Collateral in accordance with the terms of the First-Priority Documents as if the Liens under the Second-Priority Collateral Documents did not exist. The rights of the Second-Priority Representatives and the Second-Priority Secured Parties with respect to such Pledged Collateral shall at all times be subject to the terms of this Agreement.

(e) The First-Priority Collateral Agent shall have no obligation whatsoever to any Second-Priority Representative or any Second-Priority Secured Party to assure that the Pledged Collateral is genuine or owned by the Grantors or to protect or preserve rights or benefits of any Person or any rights pertaining to the Common Collateral except as expressly set forth in this Section 5.05. The duties or responsibilities of the First-Priority Collateral Agent under this Section 5.05 shall be limited solely to holding the Pledged Collateral as gratuitous bailee and/or gratuitous agent for the benefit of each Second-Priority Representative for purposes of perfecting the Lien held by the Second-Priority Secured Parties.

(f) The First-Priority Collateral Agent shall not have by reason of the Second-Priority Collateral Documents or this Agreement or any other document a fiduciary relationship in respect of any Second-Priority Representative or any Second-Priority Secured Party and the Second-Priority Representatives and the Second-Priority Secured Parties hereby waive and release the First-Priority Collateral Agent from all claims and liabilities arising pursuant to the First-Priority Collateral Agent's role under this Section 5.05, as gratuitous bailee and/or gratuitous agent with respect to the Common Collateral.

(g) Upon the Discharge of First-Priority Obligations, the First-Priority Collateral Agent shall deliver to the Second-Priority Collateral Agent, at the Company's reasonable expense, to the extent that it is legally permitted to do so, the Pledged Collateral (if any) and the Deposit Account Collateral (if any) that is part of the Common Collateral together with any necessary endorsements (or otherwise allow the Second-Priority Collateral Agent to obtain control of such Pledged Collateral and Deposit Account Collateral) or as a court of competent jurisdiction may otherwise direct. The Company shall take such further action as is required to effectuate the transfer contemplated hereby (or, in the case of the Deposit Account Collateral, use commercially reasonable efforts to effectuate the transfer contemplated hereby) and shall indemnify and/or secure the First-Priority Collateral Agent for any loss or damage suffered by the First-Priority Collateral Agent as a result of such transfer except for any loss or damage suffered by the First-Priority Collateral Agent as a result of its own willful misconduct or gross negligence (in each case as determined in a final nonappealable judgment by a court of competent jurisdiction). The First-Priority Collateral Agent has no obligation to follow instructions from any Second-Priority Representative in contravention of this Agreement.

(h) Neither the First-Priority Collateral Agent nor the First-Priority Secured Parties shall be required to marshal any present or future collateral security for the Company's or its Subsidiaries' obligations to the First-Priority Collateral Agent or the First-Priority Secured Parties under the First-Priority Documents or the First-Priority Collateral Documents or any assurance of payment in respect thereof or to resort to such collateral security or other assurances of payment in any particular order, and all of their rights in respect of such collateral security or any assurance of payment in respect thereof shall be cumulative and in addition to all other rights, however existing or arising.

(i) The agreement of the First-Priority Collateral Agent to act as gratuitous bailee and/or gratuitous agent pursuant to this Section 5.05 is intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2), 9-104(a)(2) and 9-313(c) of the UCC.

Section 5.06 *Second-Priority Collateral Agent as Gratuitous Bailee/Agent for Perfection*

(a) Upon the Discharge of First-Priority Obligations, the Second-Priority Collateral Agent agrees to hold the Pledged Collateral that is part of the Common Collateral in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee and/or gratuitous agent for the benefit of the other Second-Priority Representatives and any assignee solely for the purpose of perfecting the security interest granted in such Pledged Collateral pursuant to the applicable Second-Priority Collateral Document, subject to the terms and conditions of this Section 5.06.

(b) Upon the Discharge of First-Priority Obligations, the Second-Priority Collateral Agent agrees to hold the Deposit Account Collateral (if any) that is part of the Common Collateral and controlled by the Second-Priority Collateral Agent as gratuitous bailee and/or gratuitous agent for the benefit of other Second-Priority Representatives and any assignee solely for the purpose of perfecting the security interest granted in such Deposit Account Collateral pursuant to the applicable Second-Priority Collateral Document, subject to the terms and conditions of this Section 5.06.

(c) In the event that the Second-Priority Collateral Agent (or its agent or bailees) has Lien filings against intellectual property that is part of the Common Collateral that are necessary for the perfection of Liens in such Common Collateral, upon the Discharge of First-Priority Obligations, the Second-Priority Collateral Agent agrees to hold such Liens as gratuitous bailee and/or gratuitous agent for the benefit of other Second-Priority Representatives and any assignee solely for the purpose of perfecting the security interest granted in such Liens pursuant to the applicable Second-Priority Collateral Document, subject to the terms and conditions of this Section 5.06.

(d) The Second-Priority Collateral Agent, in its capacity as gratuitous bailee and/or gratuitous agent, shall have no obligation whatsoever to the other Second-Priority Representatives to assure that the Pledged Collateral is genuine or owned by the Grantors or to protect or preserve rights or benefits of any Person or any rights pertaining to the Common Collateral except as expressly set forth in this Section 5.06. The duties or responsibilities of the Second-Priority Collateral Agent under this Section 5.06 upon the Discharge of First-Priority Obligations shall be limited solely to holding the Pledged Collateral as gratuitous bailee and/or gratuitous agent for the benefit of other Second-Priority Representatives for purposes of perfecting the Lien held by the applicable Second-Priority Secured Parties.

(e) The Second-Priority Collateral Agent shall not have by reason of the Second-Priority Collateral Documents or this Agreement or any other document a fiduciary relationship in respect of the other Second-Priority Representatives (or the Second-Priority Secured Parties for which such other Second-Priority Representatives are agent) and the other Second-Priority Representatives hereby waive and release the Second-Priority Collateral Agent from all claims and liabilities arising pursuant to the Second-Priority Collateral Agent's role under this Section 5.06, as gratuitous bailee and/or gratuitous agent with respect to the Common Collateral.

(f) In the event that the Second-Priority Collateral Agent shall cease to be so designated the Second-Priority Collateral Agent pursuant to the definition of such term, the then Second-Priority Collateral Agent shall deliver to the successor Second-Priority Collateral Agent, to the extent that it is legally permitted to do so, the Pledged Collateral (if any) and the Deposit Account Collateral (if any) together with any necessary endorsements (or otherwise allow the successor Second-Priority Collateral Agent to obtain control of such Pledged Collateral and Deposit Account Collateral) or as a court of competent jurisdiction may otherwise direct, and such successor Second-Priority Collateral Agent shall perform all duties of the Second-Priority Collateral Agent as set forth herein. The Company shall take such further action as is required to effectuate the transfer contemplated hereby (or, in the case of the Deposit Account Collateral, use commercially reasonable efforts to effectuate the transfer contemplated hereby) and shall indemnify the Second-Priority Collateral Agent for any loss or damage suffered by the Second-Priority Collateral Agent as a result of such transfer except for any loss or damage suffered by the Second-Priority Collateral Agent as a result of its own willful misconduct or gross negligence (in each case as determined in a final nonappealable judgment by a court of competent jurisdiction). The Second-Priority Collateral Agent has no obligation to follow instructions from the successor Second-Priority Collateral Agent in contravention of this Agreement

(g) The agreement of the Second-Priority Collateral Agent to act as gratuitous bailee and/or gratuitous agent pursuant to this Section 5.06 is intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2), 9-104(a)(2) and 9-313(c) of the UCC.

Section 5.07 *When Discharge of First-Priority Obligations Deemed to Not Have Occurred.* If, at any time after the Discharge of First-Priority Obligations has occurred, the Company incurs and designates any other First-Priority Obligations, or the Company or any Grantor enters into any Refinancing of any First-Priority Document evidencing a First-Priority Obligation, which Refinancing is permitted hereby and by the terms of the Second-Priority Documents, then such Discharge of First-Priority Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such designation as a result of the occurrence of such first Discharge of First-Priority Obligations), and the obligations under such Refinancing of the First-Priority Document shall automatically be treated as First-Priority Obligations for all purposes of this Agreement, and the applicable agreement governing such Other First-Priority Obligations shall automatically be treated as a First-Priority Document (and, upon designation by the Company thereof, the “**First Lien Indenture**” hereunder) for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein and the granting by the First-Priority Collateral Agent of amendments, waivers and consents hereunder. Upon receipt of notice of such designation or Refinancing (including the identity of the new First-Priority Collateral Agent), each Second-Priority Representative shall promptly (i) enter into such documents and agreements (at the expense of the Company), including amendments or supplements to this Agreement, as the Company or such new First-Priority Collateral Agent shall reasonably request in writing in order to provide the new First-Priority Representative the rights of the First-Priority Collateral Agent contemplated hereby and (ii) to the extent then held by any Second-Priority Representative, deliver to the First-Priority Collateral Agent the Pledged Collateral that is Common Collateral together with any necessary endorsements (or otherwise allow such First-Priority Collateral Agent to obtain possession or control of such Pledged Collateral).

Section 5.08 *No Release Upon Discharge of First-Priority Obligations* Notwithstanding any other provisions contained in this Agreement, if a Discharge of First-Priority Obligations occurs, the second-priority Liens on the Second-Priority Collateral securing the Second-Priority Obligations will not be released, except to the extent such Second-Priority Collateral or any portion thereof was disposed of in order to repay the First-Priority Obligations secured by such Second-Priority Collateral (including as contemplated under Section 6.09 below) or otherwise as permitted under the First-Priority Documents and the Second-Priority Documents, as applicable.

Section 5.09 *Purchase Option.* Without prejudice to the enforcement of the First-Priority Secured Parties’ remedies, the First-Priority Secured Parties agree that following (a) the acceleration of the First-Priority Obligations in accordance with the terms of all First-Priority Documents or (b) the commencement of an Insolvency or Liquidation Proceeding (each, a “**Purchase Event**”), within thirty (30) days of the Purchase Event, one or more of the Second-Priority Secured Parties may request, and the First-Priority Secured Parties hereby offer the Second-Priority Secured Parties the option, to purchase all, but not less than all, of the aggregate amount of outstanding First-Priority Obligations outstanding at the time of purchase at par, plus any premium that would be applicable upon prepayment of the First-Priority Obligations and including all accrued and unpaid interest and fees and expenses as of the date of closing of such purchase, in accordance with the relevant First-Priority Documents, without warranty or representation or recourse (except for customary representations and warranties required to be made by assigning lenders pursuant to any assignment agreement required under any of the First Lien Documents and Other First-Priority Documents). In connection with such purchase, all issued and undrawn letters of credit constituting First-Priority Obligations shall be cancelled, replaced or cash collateralized in an amount not less than 105% of the face amount thereof by the purchasing Second-Priority Secured Parties, or the purchasing Second-Priority Secured Parties shall have provided other similar credit support satisfactory to each relevant issuer; provided that at such time as all such letters of credit have been cancelled, expired or been fully drawn, as the case may be, and after all applications described above have been made, any excess cash collateral deposited as described above shall be returned to the respective purchasers. If such right is exercised, the parties shall endeavor to close promptly thereafter but in any event within ten (10) Business Days of the request. If one or more of the Second-Priority Secured Parties exercise such purchase right, it shall be exercised pursuant to documentation mutually acceptable to each of the applicable First-Priority Representatives and the applicable Second-Priority Representative. If none of the Second-Priority Secured Parties exercise such right within the time periods set forth above, the First-Priority Secured Parties shall have no further obligations pursuant to this Section 5.09 for such Purchase Event and may take any further actions in their sole discretion in accordance with the First-Priority Documents and this Agreement. The Issuer and each First-Priority Representative hereby consents to any assignment pursuant to this Section 5.09 to the extent it has a consent or similar approval right under the assignment provisions of the relevant First-Priority Documents.

ARTICLE 6
Insolvency or Liquidation Proceedings

Section 6.01 *Financing Issues.*

(a) If the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the First-Priority Collateral Agent shall desire to permit (or not object to) the use of cash collateral or to permit (or not object to) the Company or any other Grantor to obtain financing under Section 363 or Section 364 of Title 11 of the United States Code or any similar provision in any Bankruptcy Law ("**DIP Financing**"), then each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, agrees that it will raise no (i) objection to (and will not otherwise contest or join with or support any third party opposing, objecting to or contesting) such use of cash collateral or DIP Financing and will not request adequate protection or any other relief in connection therewith (except to the extent expressly permitted by the proviso in clause (ii) of Section 3.01(a) and Section 6.03) and, to the extent the Liens securing the First-Priority Obligations under the First-Priority Documents are subordinated or pari passu with such DIP Financing, will subordinate (and will be deemed to have subordinated) its Liens on the Common Collateral to (x) such DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Second-Priority Obligations are so subordinated to Liens securing First-Priority Obligations under this Agreement, subject to clause (b) of this Section 6.01, (y) any "carve-out" or administrative charge for professional and United States trustee fees agreed to by the First-Priority Representatives and (z) all adequate protection liens granted to the First-Priority Secured Parties with respect to any Common Collateral, (ii) objection to (and will not otherwise contest or join with or support any third party opposing, objecting to or contesting) any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement in respect of First-Priority Obligations made by the First-Priority Collateral Agent or any holder of First-Priority Obligations, (iii) objection to (and will not otherwise contest or join with or support any third party opposing, objecting to or contesting) any lawful exercise by any holder of First-Priority Obligations of the right to credit bid First-Priority Obligations at any sale in foreclosure of First-Priority Collateral, (iv) objection to (and will not otherwise contest or join with or support any third party opposing, objecting to or contesting) any other request for judicial relief made in any court by any holder of First-Priority Obligations relating to the lawful enforcement of any Lien on First-Priority Collateral or (v) objection to (and will not otherwise contest or join with or support any third party opposing, objecting to or contesting) any order relating to a sale of assets of any Grantor for which the First-Priority Collateral Agent has consented that provides, to the extent the sale is to be free and clear of Liens, that the Liens securing the First-Priority Obligations and the Second-Priority Obligations will attach to the proceeds of the sale (to the extent such proceeds are not applied to repay the First-Priority Obligations) on the same basis of priority as the Liens securing the First-Priority Collateral rank to the Liens securing the Second-Priority Collateral in accordance with this Agreement.

(b) Notwithstanding the foregoing, the provisions of clause (i) of Section 6.01(a) shall only be applicable as to the Second-Priority Secured Parties with respect to any use of cash collateral or DIP Financing to the extent that: (i) the Second-Priority Representatives retain their Liens with respect to the Common Collateral that existed as of the date of the commencement of the applicable Insolvency or Liquidation Proceeding (including proceeds thereof arising after the commencement of such Insolvency or Liquidation Proceeding (to the extent such proceeds are not applied to repay the First-Priority Obligations)) and (ii) such DIP Financing is secured by Lien equal or senior to Liens securing First Lien Obligations.

(c) Until the Discharge of First-Priority Obligations has occurred, each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, agrees that none of them shall assert a claim under section 507(b) of the Bankruptcy Code.

Section 6.02 *Relief from the Automatic Stay.* Until the Discharge of First-Priority Obligations has occurred, each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, agrees that none of them shall seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding or take any action in respect of the Common Collateral, without the prior written consent of the First-Priority Collateral Agent.

Section 6.03 *Adequate Protection.* Each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, agrees that none of them shall object or contest (or support any other Person objecting to or contesting) (a) any request by the First-Priority Collateral Agent or the First-Priority Secured Parties for adequate protection, (b) any objection by the First-Priority Collateral Agent or the First-Priority Secured Parties to any motion, relief, action or proceeding based on the First-Priority Collateral Agent's or the First-Priority Secured Parties' claiming a lack of adequate protection or (c) the payment of interest, fees, expenses or other amounts of the First-Priority Collateral Agent, any First-Priority Representative or any other First-Priority Secured Party under Section 506(b) or 506(c) of Title 11 of the United States Code or any similar provisions of any other Bankruptcy Law. Notwithstanding the foregoing, in any Insolvency or Liquidation Proceeding, (i) if the First-Priority Secured Parties (or any subset thereof) are granted adequate protection in the form of additional collateral in connection with any DIP Financing or use of cash collateral under Section 363 or Section 364 of Title 11 of the United States Code or any similar Bankruptcy Law, then each Second-Priority Representative, on behalf of itself and any applicable Second-Priority Secured Party, may seek or request adequate protection in the form of a replacement Lien on such additional collateral, which Lien is subordinated to the Liens securing the First-Priority Obligations and such DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Second-Priority Obligations are so subordinated to the Liens securing First-Priority Obligations under this Agreement and (ii) in the event any Second-Priority Representative, on behalf of itself or any applicable Second-Priority Secured Party, seeks or requests adequate protection and such adequate protection is granted in the form of additional collateral, then such Second-Priority Representative, on behalf of itself or each such Second-Priority Secured Party, agrees that the First-Priority Representatives shall also be granted a senior Lien on such additional collateral as security for the applicable First-Priority Obligations and any such DIP Financing and that any Lien on such additional collateral securing the Second-Priority Obligations shall be subordinated to the Liens on such collateral securing the First-Priority Obligations and any such DIP Financing (and all Obligations relating thereto) and any other Liens granted to the First-Priority Secured Parties as adequate protection on the same basis as the other Liens securing the Second-Priority Obligations are so subordinated to such Liens securing First-Priority Obligations under this Agreement.

Section 6.04 *Preference Issues.* If any First-Priority 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 (or any trustee, receiver or similar person therefor), because the payment of such amount was declared to be fraudulent or preferential in any respect or for any other reason, any amount (a “**Recovery**”), whether received as proceeds of security, enforcement of any right of setoff or otherwise, then the First-Priority Obligations shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred and the First-Priority Secured Parties shall remain entitled to the benefits of this Agreement until a Discharge of First-Priority Obligations with respect to all such recovered amounts and shall have all rights hereunder until such time. 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. Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, hereby agrees that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

Section 6.05 *Application.* This Agreement shall be applicable prior to and after the commencement of any Insolvency or Liquidation Proceeding. All references herein to any Grantor shall apply to any trustee for such Person and such Person as debtor in possession. The relative rights as to the Common Collateral and proceeds thereof shall continue after the filing thereof on the same basis as prior to the date of the petition, subject to any court order approving the financing of, or use of cash collateral by, any Grantor.

Section 6.06 *506(c) Claims.* Until the Discharge of First-Priority Obligations has occurred, each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, will not assert or enforce any claim under Section 506(c) of the United States Bankruptcy Code senior to or on a parity with the Liens securing the First-Priority Obligations for costs or expenses of preserving or disposing of any Common Collateral.

Section 6.07 *Separate Grants of Security and Separate Classifications; Plans of Reorganization.*

(a) Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, acknowledges and agrees that (i) the grants of Liens pursuant to the First-Priority Collateral Documents and the Second-Priority Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Common Collateral, the Second-Priority Obligations are fundamentally different from the First-Priority 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-Priority Secured Parties and the Second-Priority Secured Parties in respect of the Common Collateral constitute a single class of claims (rather than separate classes of senior and junior secured claims), then each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, 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 Common Collateral (with the effect being that, to the extent that the aggregate value of the Common Collateral is sufficient (for this purpose ignoring all claims held by the Second-Priority Secured Parties), the First-Priority 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 in respect of post-petition interest, fees and expenses (whether or not allowed or allowable) before any distribution is made in respect of the Second-Priority Obligations, with each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party, hereby acknowledging and agreeing to turn over to the First-Priority Collateral Agent amounts 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-Priority Secured Parties.

(b) Each Second-Priority Representative, for itself and on behalf of each applicable Second-Priority Secured Party (whether in the capacity of a secured creditor or an unsecured creditor) shall not propose, vote in favor of, or otherwise directly or indirectly support any plan of reorganization that is inconsistent with the priorities or other provisions of this Agreement other than with the prior written consent of the First-Priority Collateral Agent.

Section 6.08 *Section 1111(b)(2) Waiver.* Each Second-Priority Representative, for itself and on behalf of the other Second-Priority Secured Parties, waives any claim it may hereafter have against any First-Priority Secured Party arising out of the election by any First-Priority Secured Party of the application to the claims of any First-Priority Secured Party of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any sale, use or lease, cash collateral or DIP Financing arrangement or out of any grant of a security interest in connection with the Common Collateral in any Insolvency or Liquidation Proceeding.

Section 6.09 *Asset Sales.* Each Second-Priority Representative agrees, for and on behalf of itself and the applicable Second-Priority Secured Parties represented thereby, that it (i) will not oppose any sale consented to by the First-Priority Collateral Agent or any First-Priority Representative of any Collateral pursuant to Section 363(f) of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency or Liquidation Proceeding), so long as the Second-Priority Representative, for the benefit of the Second-Priority Secured Parties, shall retain a Lien on the proceeds of such sale (to the extent such proceeds of such sale are not applied to repay the First-Priority Obligations or otherwise in accordance with this Agreement) and (ii) shall not have any right to credit bid in any disposition of Collateral in accordance with sections 363(k) or 1129(b)(2)(A)(ii) of the Bankruptcy Code or otherwise, unless such credit bid contemplates the payment in full in cash of all First-Priority Obligations on the closing of such disposition.

Section 6.10 *Reorganization Securities; Voting.* 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, on account of both the First-Priority Obligations and the Second-Priority Obligations, then, to the extent the debt obligations distributed on account of the First-Priority Obligations and on account of the Second-Priority Obligations are secured by Liens upon the same assets or 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. Any such reorganization debt obligations distributed on account of the Second-Priority Obligations must provide (i) for the payment of interest thereon in kind until such time as the reorganization debt obligations distributed on account of the First-Priority Obligations are paid in full and Discharged in accordance with the terms thereof and (ii) for a maturity date and weighted average life to maturity that is later than the maturity date, or longer than the weighted average life to maturity, as the case may be, of the reorganization debt obligations distributed on account of the First-Priority Obligations.

Section 6.11 *Post-Petition Interest.* Each Second-Priority Secured Party shall not oppose or seek to challenge any claim by any First-Priority Secured Party for allowance in any Insolvency or Liquidation Proceeding of First-Priority Obligations consisting of claims for post-petition interest, fees, costs, expenses, and/or other charges, under Section 506(b) of the Bankruptcy Code (or any similar provision of any other Bankruptcy Law) ("**Post-Petition Interest**") or otherwise, to the extent of the value of the Lien of the First-Priority Representative on behalf of the First-Priority Secured Parties on the First-Priority Collateral (for this purpose ignoring all claims and Liens held by the Second-Priority Secured Parties on the Common Collateral).

ARTICLE 7

Reliance; Waivers; etc.

Section 7.01 *Reliance.* Other than any reliance on the terms of this Agreement, each First-Priority Representative, on behalf of itself and each applicable First-Priority Secured Party (other than the First Lien Trustee and the First Lien Collateral Trustee), acknowledges that it and the applicable First-Priority Secured Parties (other than the First Lien Trustee and the First Lien Collateral Trustee) have, independently and without reliance on the Second-Priority Collateral Agent or any Second-Priority Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the applicable First-Priority Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the applicable First-Priority Documents or this Agreement. Each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party (other than the Second Lien Trustee and the Second Lien Collateral Agent), acknowledges that it and the applicable Second-Priority Secured Parties (other than the Second Lien Trustee and the Second Lien Collateral Agent) have, independently and without reliance on the First-Priority Collateral Agent or any First-Priority Secured Party, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the applicable Second-Priority Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the applicable Second-Priority Documents or this Agreement.

Section 7.02 *No Warranties or Liability.* Each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, acknowledges and agrees that neither the First-Priority Collateral Agent nor any First-Priority Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the First-Priority Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. Neither the First-Priority Collateral Agent nor any First-Priority Secured Party shall have any duty to any Second-Priority Representative or any Second-Priority Secured Party to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any Subsidiary thereof (including the Second-Priority Documents), regardless of any knowledge thereof that they may have or be charged with. Except as expressly set forth in this Junior Lien Intercreditor Agreement, the First-Priority Collateral Agent, the First-Priority Secured Parties, the Second-Priority Representatives and the Second-Priority Secured Parties have not otherwise made to each other, nor do they hereby make to each other, any warranties, express or implied, nor do they assume any liability to each other with respect to (a) the enforceability, validity, value or collectibility of any of the Second-Priority Obligations, the First-Priority Obligations or any guarantee or security which may have been granted to any of them in connection therewith, (b) the Company's or any other Grantor's title to or right to transfer any of the Common Collateral or (c) any other matter except as expressly set forth in this Agreement.

Section 7.03 *Obligations Unconditional.* All rights, interests, agreements and obligations of the First-Priority Collateral Agent and the First-Priority Secured Parties, and the Second-Priority Representatives and the Second-Priority Secured Parties, respectively, hereunder shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any First-Priority Documents or any Second-Priority Documents;
- (b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the First-Priority Obligations or Second-Priority 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 the First Lien Trustee or any other First-Priority Document or of the terms of the Second Lien Indenture or any other Second-Priority Document;
- (c) any exchange of any security interest in any Common 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-Priority Obligations or Second-Priority Obligations or any guarantee thereof;
- (d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or
- (e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the First-Priority Obligations, or of any Second-Priority Representative or any Second-Priority Secured Party in respect of this Agreement.

ARTICLE 8
Miscellaneous

Section 8.01 *Conflicts.* Subject to Section 8.19, in the event of any conflict between the terms of this Agreement and the terms of any First-Priority Document or any Second-Priority Document, the terms of this Agreement shall govern. Notwithstanding any other term or provision set forth in this Agreement, nothing herein shall require the First-Priority Collateral Agent or any of the First-Priority Secured Parties to take any action that would violate any applicable laws.

Section 8.02 *Continuing Nature of this Agreement; Severability.* Subject to Section 5.07 and Section 6.04, this Agreement shall continue to be effective until the Discharge of First-Priority Obligations shall have occurred. This is a continuing agreement of lien subordination and the First-Priority Secured Parties may continue, at any time and without notice to each Second-Priority Representative or any Second-Priority Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any other Grantor constituting First-Priority Obligations in reliance hereon. 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 not invalidate 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.

Section 8.03 *Amendments; Waivers.* 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 Second-Priority Representative (or its authorized agent), each First-Priority Representative (or its authorized agent) and, in the case of any amendment that increases the obligations, or otherwise adversely affects any right, of the Company hereunder, the Company, 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 anything in this Section 8.03 to the contrary, this Agreement may be amended from time to time at the request of the Company, at the Company's expense, and without the consent of any First-Priority Representative, any Second-Priority Representative, any First-Priority Secured Party or any Second-Priority Secured Party or any other Person then party thereto, but in each case subject to Section 8.21, to (i) add other parties holding Other First-Priority Obligations (or any agent or trustee therefor) and Other Second-Priority Obligations (or any agent or trustee therefor) in each case to the extent such Obligations are not prohibited by any First-Priority Document or any Second-Priority Document, (ii) in the case of Other Second-Priority Obligations, (a) establish that the Lien on the Common Collateral securing such Other Second-Priority Obligations shall be junior and subordinate in all respects to all Liens on the Common Collateral securing any First-Priority Obligations and shall share in the benefits of the Common Collateral equally and ratably with or junior to all Liens on the Common Collateral securing any Second-Priority Obligations (subject to the terms of the applicable Second-Priority Documents and the Collateral Trust Agreement), and (b) provide to the holders of such Other Second-Priority Obligations (or any agent or trustee thereof) the comparable rights and benefits (including any improved rights and benefits that have been consented to by the First-Priority Collateral Agent) as are provided to the holders of Second-Priority Obligations under this Agreement (subject to the terms of the applicable Second-Priority Documents), (iii) in the case of Other First-Priority Obligations, (a) establish that the Lien on the Common Collateral securing such Other First-Priority Obligations shall be superior in all respects to all Liens on the Common Collateral securing any Second-Priority Obligations and shall share in the benefits of the Common Collateral equally and ratably with all Liens on the Common Collateral securing any First-Priority Obligations (subject to the terms of the applicable First-Priority Documents), and (b) provide to the holders of such Other First-Priority Obligations (or any agent or trustee thereof) the comparable rights and benefits as are provided to the holders of First-Priority Obligations under this Agreement (subject to the terms of the applicable First-Priority Documents), in each case so long as such modifications are not prohibited by any First-Priority Document or any Second-Priority Document and (iv) give effect to any Refinancing of any Obligations. In furtherance thereof, the Company may designate hereunder in writing obligations as a First Lien Indenture (and any Person operating in such capacity thereunder as a First Lien Trustee or First Lien Collateral Trustee), a Second Lien Document (and any Person operating in such capacity thereunder as a Second Lien Collateral Agent), Other First-Priority Obligations (and any Person operating in such capacity thereunder as an Other First-Priority Representative) or Other Second-Priority Obligations (and any Person operating in such capacity thereunder as an Other Second-Priority Representative), and may specify that any such obligations constitute a Refinancing of any existing series of Obligations, if the incurrence of such obligations and related Liens (including the priority thereof) is not prohibited under each of the Financing Documents and this Agreement. Any such additional party and each First-Priority Representative and Second-Priority Representative shall be entitled to rely on the determination of an officer of the Company that such modifications are not prohibited by any First-Priority Document or any Second-Priority Document if such determination is set forth in an officer's certificate delivered to such party, the First-Priority Collateral Agent and each Second-Priority Representative. At the request (and sole expense) of the Company, without the consent of any First-Priority Secured Party or Second-Priority Secured Party, each of the First-Priority Collateral Agent, the Second-Priority Collateral Agent and each other First-Priority Representative and Second-Priority Representative shall execute and deliver an acknowledgment and confirmation of such permitted modifications and/or enter into an amendment, a restatement or a supplement of this Agreement to facilitate such permitted modifications (it being understood that such actions shall not be required for the effectiveness of any such modifications).

Section 8.04 *Information Concerning Financial Condition of the Company and the Subsidiaries.* The First-Priority Secured Parties, each Second-Priority Representative and the Second-Priority Secured Parties shall each be responsible for keeping themselves informed of (a) the financial condition of the Company and the Subsidiaries of the Company and all endorers and/or guarantors of the Second-Priority Obligations or the First-Priority Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Second-Priority Obligations or the First-Priority Obligations. The First-Priority Collateral Agent, the First-Priority Secured Parties, each Second-Priority Representative and the Second-Priority Secured Parties shall have no duty to advise any other party hereunder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that the First-Priority Collateral Agent, any First-Priority Secured Party, any Second-Priority Representative or any Second-Priority Secured Party, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other party, it or they shall be under no obligation (w) to make, and the First-Priority Collateral Agent, the First-Priority Secured Parties, the Second-Priority Representatives and the Second-Priority 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, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information that, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

Section 8.05 *Subrogation.* Each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, hereby waives any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of First-Priority Obligations has occurred.

Section 8.06 *Application of Payments.* Except as otherwise provided herein, all payments received by the First-Priority Secured Parties may be applied, reversed and reapplied, in whole or in part, to such part of the First-Priority Obligations as the First-Priority Secured Parties, in their sole discretion, deem appropriate, consistent with the terms of the First-Priority Documents and the Collateral Trust Agreement. Except as otherwise provided herein, each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, assents to any such extension or postponement of the time of payment of the First-Priority Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security that may at any time secure any part of the First-Priority Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

Section 8.07 *Consent to Jurisdiction; Waivers.* The parties hereto irrevocably and unconditionally agree that 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 party hereto, or any affiliate of thereof, in any way relating to this Agreement or the transactions relating hereto, shall be tried and litigated only in the courts of the State of New York sitting in Borough of Manhattan, and in the United States District Court of the Southern District of New York, and any appellate court from any thereof. The parties hereto irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court located in the Borough of Manhattan, New York, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and consent that all service of process may be made by registered mail directed to such party as provided in Section 8.08 for such party. Service so made shall be deemed to be completed three days after the same shall be posted as aforesaid. The parties hereto waive any objection to any action instituted hereunder in any such court based on forum non conveniens, and any objection to the venue of any action instituted hereunder in any such court. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO IN CONNECTION WITH THE SUBJECT MATTER HEREOF.

Section 8.08 *Notices.* All notices to the First-Priority Secured Parties and the Second-Priority Secured Parties permitted or required under this Agreement may be sent to the First-Priority Collateral Agent, the Second-Priority Collateral Agent, or any other First-Priority Representative or Second-Priority Representative as provided in the First Lien Indenture, the Second Lien Indenture, the relevant First-Priority Document or the relevant Second-Priority Document, as applicable. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or electronic mail or upon receipt via U.S. mail (registered or certified, 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, 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. Each First-Priority Representative hereby agrees to promptly notify each Second-Priority Representative upon payment in full in cash of all indebtedness under the applicable First-Priority Documents (except for contingent indemnities and cost and reimbursement obligations to the extent no claim therefor has been made).

Section 8.09 *Further Assurances.* Each of the Second-Priority Representatives, on behalf of itself and each applicable Second-Priority Secured Party, and each of the First-Priority Representatives, on behalf of itself and each applicable First-Priority Secured Party, agrees that each of them shall take such further action and shall execute and deliver to the First-Priority Collateral Agent and the First-Priority Secured Parties such additional documents and instruments (in recordable form, if requested) as the First-Priority Collateral Agent or the First-Priority Secured Parties may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

Section 8.10 *Governing Law.* THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR 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 AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLE OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF ANY OTHER LAW.

Section 8.11 *Binding on Successors and Assigns.* This Agreement shall be binding upon the First-Priority Collateral Agent, the other First-Priority Representatives, the First-Priority Secured Parties, the Second-Priority Representatives, the Second-Priority Secured Parties, the Company, the Company's Subsidiaries party hereto and their respective permitted successors and assigns.

Section 8.12 *Specific Performance.* The First-Priority Collateral Agent may demand specific performance of this Agreement. Each Second-Priority Representative, on behalf of itself and each applicable Second-Priority Secured Party, hereby irrevocably (x) waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action that may be brought by the First-Priority Collateral Agent and (y) agrees that, in connection with the forgoing, the First-Priority Collateral Agent may seek an affirmative injunction to enforce the Agreement without a requirement to post a bond in connection therewith.

Section 8.13 *Section Titles.* The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement.

Section 8.14 *Counterparts.* This Agreement may be executed in one or more counterparts, including by means of facsimile or in portable document format (pdf), each of which shall be an original and all of which shall together constitute one and the same document.

Section 8.15 *Authorization.* By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement. Each First-Priority Representative represents and warrants that this Agreement is binding upon the applicable First-Priority Secured Parties for which such First-Priority Representative is acting. Each Second-Priority Representative represents and warrants that this Agreement is binding upon the applicable Second-Priority Secured Parties for which such Second-Priority Representative is acting.

Section 8.16 *No Third Party Beneficiaries; Successors and Assigns.* This Agreement and the rights and benefits hereof shall inure to the benefit of, and be binding upon, each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of, and be binding upon, the holders of First-Priority Obligations and Second-Priority Obligations. No other Person shall have or be entitled to assert rights or benefits hereunder.

Section 8.17 *Effectiveness.* This Agreement shall become effective when executed and delivered by the parties hereto. This Agreement shall be effective both before and after the commencement of any Insolvency or Liquidation Proceeding. All references to the Company or any other Grantor shall include the Company or any other Grantor as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding.

Section 8.18 *First-Priority Representatives and Second-Priority Representatives.* It is understood and agreed that (a) US Bank is entering into this Agreement in its capacity as First Lien Collateral Trustee under the First Lien Collateral Agreement, and the provisions of Section 6 of the Collateral Trust Agreement applicable to the First Lien Collateral Trustee thereunder shall also apply to it as First-Priority Collateral Agent and First Lien Collateral Trustee hereunder and (b) [●] is entering into this Agreement in its capacity as Second Lien Collateral Agent under the Second Lien Indenture, and the provisions of Article [●] of the Second Lien Indenture applicable to the Second Lien Collateral Agent thereunder shall also apply to it as Second-Priority Collateral Agent and Second Lien Collateral Agent hereunder. Notwithstanding any term herein to the contrary, it is hereby expressly agreed and acknowledged that the agreements set forth herein by the First-Priority Collateral Agent (including in its capacity as First-Priority Representative) are made solely in its capacity as the First-Priority Collateral Agent hereunder, and not in its individual capacity. In the case of any reference herein to the giving of any consent, approval or direction by the First-Priority Collateral Agent (including in its capacity as First-Priority Representative), which includes for the avoidance of doubt any provision in respect of the delivery, revocation or rescission of any notice delivered under Section 3.01 hereof, it is understood in all cases the First-Priority Collateral Agent (including in its capacity as First-Priority Representative) shall only take such action under this Agreement as directed in writing by the First Priority Secured Parties in accordance with the terms of the Collateral Trust Agreement (if then in effect) and the First-Priority Documents.

Section 8.19 *Relative Rights.* Notwithstanding anything in this Agreement to the contrary (except to the extent contemplated by Sections 5.01 and 5.03(b)), nothing in this Agreement is intended to or will (a) amend, waive or otherwise modify the provisions of the First Lien Indenture, the Second Lien Indenture or any other First-Priority Document or Second-Priority Document entered into in connection with the First Lien Indenture, the Second Lien Indenture or any other First-Priority Document or Second-Priority Document or permit the Company or any Subsidiary of the Company to take any action, or fail to take any action, to the extent such action or failure would otherwise constitute a breach of, or default under, the First Lien Indenture, the Second Lien Indenture or any other First-Priority Document or Second-Priority Document entered into in connection with the First Lien Indenture, the Second Lien Indenture or any other First-Priority Document or Second-Priority Document, (b) change the relative priorities of the First-Priority Obligations or the Liens granted under the First-Priority Documents on the Common Collateral (or any other assets) as among the First-Priority Secured Parties or (c) otherwise change the relative rights of the First-Priority Secured Parties in respect of the Common Collateral as among such First-Priority Secured Parties as set forth in the Collateral Trust Agreement and the First-Priority Documents or (d) obligate the Company or any Subsidiary of the Company to take any action, or fail to take any action, that would otherwise constitute a breach of, or default under, the First Lien Indenture, the Second Lien Indenture or any other First-Priority Document or Second-Priority Document entered into in connection with the First Lien Indenture, the Second Lien Indenture or any other First-Priority Document or Second-Priority Document. Notwithstanding anything in this Agreement to the contrary, (i) the First Lien Collateral Trustee and the First Lien Trustee shall be entitled to all of the rights, protections, immunities and indemnities set forth in the Collateral Trust Agreement (if then in effect) and the First-Priority Documents as if specifically set forth herein, and (ii) the First Lien Collateral Agent (including in its capacity as First-Priority Representative) shall be entitled to all of the rights, protections, immunities and indemnities of the First Lien Collateral Trustee as set forth in the Collateral Trust Agreement (if then in effect) and the First-Priority Documents as if specifically set forth herein.

Section 8.20 *Second-Priority Collateral Agent.* The Second-Priority Collateral Agent is executing and delivering this Agreement solely in its capacity as such and pursuant to directions set forth in the Second Lien Indenture; and in so doing, the Second-Priority Collateral Agent shall not be responsible for the terms or sufficiency of this Agreement for any purpose. The Second-Priority Collateral Agent shall not have duties or obligations under or pursuant to this Agreement other than such duties expressly set forth in this Agreement as duties on its part to be performed or observed. In entering into this Agreement, or in taking (or forbearing from) any action under or pursuant to this Agreement, the Second-Priority Collateral Agent shall have and be protected by all of the rights, immunities, indemnities and other protections granted to it under the Second Lien Indenture and, as applicable, the Second Lien Collateral Agreement.

Section 8.21 *Joinder Requirements.* The Company may designate additional obligations as Other First-Priority Obligations or Other Second-Priority Obligations pursuant to this Section 8.21 if (x) the incurrence of such obligations is not prohibited by any First-Priority Document or Second-Priority Document then in effect and (y) the Company shall have delivered an officer's certificate to each First-Priority Representative and each Second-Priority Representative certifying the same. If not so prohibited, the Company shall (i) notify each of the First-Priority Representative and the Second-Priority Representative in writing of such designation and (ii) cause the applicable new First-Priority Representative or Second-Priority Representative to execute and deliver to each other First-Priority Representative and Second-Priority Representative, a Joinder Agreement substantially in the form of Exhibit A or Exhibit B, as applicable, hereto.

(a) Each party hereto agrees that the First-Priority Secured Parties (as among themselves) and the Second-Priority Secured Parties (as among themselves) may each enter into intercreditor agreements (or similar arrangements, including, in the case of the First-Priority Secured Parties, the Collateral Trust Agreement) with the applicable First-Priority Representatives or Second-Priority Representatives, as the case may be, governing the rights, benefits and privileges as among the First-Priority Secured Parties or as among the Second-Priority Secured Parties, as the case may be, in respect of any or all of the Common Collateral, this Agreement and the other First-Priority Collateral Documents or the other Second-Priority Collateral Documents, as the case may be, including as to application of proceeds of any Common Collateral, voting rights, control of any Common Collateral and waivers with respect to any Common Collateral, in each case so long as the terms thereof do not violate or conflict with the provisions of this Agreement or the other First-Priority Collateral Documents or Second-Priority Collateral Documents, as the case may be. In any event, if a respective intercreditor agreement (or similar arrangement) exists, the provisions thereof shall not be (or be construed to be) an amendment, modification or other change to this Agreement or any other First-Priority Collateral Document or Second-Priority Collateral Document, and the provisions of this Agreement and the other First-Priority Collateral Documents and Second-Priority Collateral Documents shall remain in full force and effect in accordance with the terms hereof and thereof (as such provisions may be amended, modified or otherwise supplemented from time to time in accordance with the terms thereof, including to give effect to any intercreditor agreement (or similar arrangement)).

(b) In addition, in the event that the Company or any Subsidiary thereof incurs any Obligations secured by a Lien on any Common Collateral that is junior to Liens thereon securing any First-Priority Obligations or Second-Priority Obligations, as the case may be, and such Obligations are not designated by the Company as Second-Priority Obligations, then the First-Priority Collateral Agent and/or Second-Priority Collateral Agent shall upon the request of the Company enter into an intercreditor agreement with the agent or trustee for the creditors with respect to such secured Obligations to reflect the relative Lien priorities of such parties with respect to the relevant portion of the Common Collateral and governing the relative rights, benefits and privileges as among such parties in respect of such Common Collateral, including as to application of the proceeds of such Common Collateral, voting rights, control of such Common Collateral and waivers with respect to such Common Collateral, in each case, so long as such secured Obligations are not prohibited by, and the terms of such intercreditor agreement do not violate or conflict with, the provisions of this Agreement or any of the First-Priority Documents or Second-Priority Documents, as the case may be. If any such intercreditor agreement (or similar arrangement) is entered into, the provisions thereof shall not be (or be construed to be) an amendment, modification or other change to this Agreement or any First-Priority Documents, and the provisions of this Agreement, the First-Priority Documents and the Second-Priority Documents shall remain in full force and effect in accordance with the terms hereof and thereof (as such provisions may be amended, modified or otherwise supplemented from time to time in accordance with the respective terms thereof, including to give effect to any intercreditor agreement (or similar arrangement)).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**U.S. BANK NATIONAL
ASSOCIATION,**
as First Lien Collateral Trustee, First Lien
Trustee and First-Priority Collateral Agent

By: _____
Name:
Title:

[_____] ,
as Second Lien Collateral Agent and
Second-Priority Collateral Agent

By: _____
Name:
Title:

ACKNOWLEDGMENT

The Grantors each hereby acknowledge that they have received a copy of the foregoing Junior Lien Intercreditor Agreement and consent thereto, agree to recognize all rights granted thereby to the First Lien Collateral Trustee, and the other First-Priority Secured Parties, and the Second Lien Collateral Agent, and the other Second-Priority Secured Parties, and waive the provisions of Section 9-615(a) of the UCC in connection with the application of proceeds of Collateral in accordance with the provisions of the Junior Lien Intercreditor Agreement; *provided, however*, that the foregoing shall not, without the consent of Company, impair the rights of any Grantor under the First-Priority Documents or the Second-Priority Documents. The Grantors each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the foregoing Junior Lien Intercreditor Agreement, as amended, restated, supplemented or otherwise modified from time to time.

[Signatures on following pages]

Acknowledged as of the date first written above:

Grantors:

MACY’S PROPCO HOLDINGS, LLC

By: _____
Name:
Title:

[GUARANTORS]

By: _____
Name:
Title:

THE GRANTORS LISTED ON ANNEX I HERETO

By: _____
Name:
Title:

[To be Attached]

JOINDER AGREEMENT
(Other First-Priority Obligations)

JOINDER AGREEMENT (this “**Agreement**”) dated as of [____], [____], delivered by [____] (the “**New Representative**”), as an Other First-Priority Representative, and [[____] (the “**New Collateral Agent**”)]², as an Other First-Priority Collateral Agent.

This Agreement is supplemental to that certain Junior Lien Intercreditor Agreement, dated as of [●], 2020 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Junior Lien Intercreditor Agreement**”), by and among the parties (other than the New Representative and the New Collateral Agent) referred to above. This Agreement has been entered into to record the accession of the New Representative[s] as Other First-Priority Representative[s] under the Junior Lien Intercreditor Agreement [and to record the accession of the New Collateral Agent as an Other First-Priority Collateral Agent under the Junior Lien Intercreditor Agreement].

ARTICLE I
Definitions

SECTION 1.01 Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Junior Lien Intercreditor Agreement.

ARTICLE II
Accession

SECTION 2.01 [The]/[Each] New Representative agrees to become, with immediate effect, a party to and agrees to be bound by the terms of, the Junior Lien Intercreditor Agreement as an Other First-Priority Representative as if it had originally been party to the Junior Lien Intercreditor Agreement as an Other First-Priority Representative.

SECTION 2.02 [The New Collateral Agent agrees to become, with immediate effect, a party to and agrees to be bound by the terms of, the Junior Lien Intercreditor Agreement as an Other First-Priority Collateral Agent as if it had originally been party to the Junior Lien Intercreditor Agreement as an Other First-Priority Collateral Agent.]

SECTION 2.03 The New Representative[s] and the New Collateral Agent confirm[s] that their address details for notices pursuant to the Junior Lien Intercreditor Agreement [is]/[are] as follows: [_____].

SECTION 2.04 [_____] [is]/[are] acting in the capacities of Other First-Priority Representative[s] and [_____] is acting in its capacity as Other First-Priority Collateral Agent solely for the Secured Parties under [_____].

² To be included if applicable.

ARTICLE III
Miscellaneous

SECTION 3.01 This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 3.02 This 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 Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

[INSERT SIGNATURE BLOCKS, INCLUDING
ACKNOWLEDGEMENT BY GRANTORS]

JOINDER AGREEMENT
(Other Second-Priority Obligations)

JOINDER AGREEMENT (this “**Agreement**”) dated as of [____], [____], delivered by [____] (the “**New Representative**”), as an Other Second-Priority Representative, [and [____] (the “**New Collateral Agent**”)]³.

This Agreement is supplemental to that certain Junior Lien Intercreditor Agreement, dated as of [●], 2020 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Junior Lien Intercreditor Agreement**”), by and among the parties (other than the New Representative and the New Collateral Agent) referred to above. This Agreement has been entered into to record the accession of the New Representative[s] as Other Second-Priority Representative[s] under the Junior Lien Intercreditor Agreement [and to record the accession of the New Collateral Agent as an Other Second-Priority Collateral Agent under the Junior Lien Intercreditor Agreement].

ARTICLE I
Definitions

SECTION 1.01 Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Junior Lien Intercreditor Agreement.

ARTICLE II
Accession

SECTION 2.01 [The]/[Each] New Representative agrees to become, with immediate effect, a party to and agrees to be bound by the terms of, the Junior Lien Intercreditor Agreement as an Other Second-Priority Representative as if it had originally been party to the Junior Lien Intercreditor Agreement as an Other Second-Priority Representative.

SECTION 2.02 [The New Collateral Agent agrees to become, with immediate effect, a party to and agrees to be bound by the terms of, the Junior Lien Intercreditor Agreement as an Other Second-Priority Collateral Agent as if it had originally been party to the Junior Lien Intercreditor Agreement as an Other Second-Priority Collateral Agent.]

SECTION 2.03 The New Representative[s] and the New Collateral Agent confirm[s] that their address details for notices pursuant to the Junior Lien Intercreditor Agreement [is]/[are] as follows: [_____].

SECTION 2.04 [_____] [is]/[are] acting in the capacities of Other Second-Priority Representative[s] and [_____] is acting in its capacity as Other Second-Priority Collateral Agent solely for the Secured Parties under [_____].

³ To be included if applicable.

ARTICLE III
Miscellaneous

SECTION 3.01 This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 3.02 This 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 Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

[INSERT SIGNATURE BLOCKS, INCLUDING ACKNOWLEDGEMENT
BY GRANTORS]

Form of Parity Lien Intercreditor Agreement

[FORM OF]

PARI PASSU INTERCREDITOR AGREEMENT

dated as of

[·]

among

U.S. BANK NATIONAL ASSOCIATION,
as the Initial Senior Representative and the Collateral Trustee,

[____],
as the Initial Additional Representative,

and

each Additional Parity Lien Representative from time to time party hereto

and acknowledged and agreed to by

the Grantors referred to herein

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This PARI PASSU INTERCREDITOR AGREEMENT (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Agreement") dated as of [·], among U.S. BANK NATIONAL ASSOCIATION, as trustee under the Secured Indenture (in such capacity and together with its successors from time to time in such capacity, the "Initial Senior Representative") and as collateral trustee for the Secured Parties (as defined in the Collateral Trust Agreement (as defined below)) (in such capacity and together with its successors from time to time in such capacity, the "Collateral Trustee"), [·], as Additional Parity Lien Representative for the Additional Secured Parties (in such capacity and together with its successors from time to time in such capacity, the "Initial Additional Representative"), and each Additional Parity Lien Representative from time to time party hereto for the Additional Secured Parties of the Series with respect to which it is acting in such capacity, and acknowledged and agreed to by Grantors party hereto from time to time. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in the Collateral Trust Agreement (as defined below).

Reference is made to the Secured Indenture, dated as of June 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Secured Indenture") by and among MACY'S, INC., a Delaware corporation (the "Issuer"), MACY'S PROPCO HOLDINGS, LLC, an Ohio limited liability company, MACY'S LOGISTICS, LLC, an Ohio limited liability company, MACY'S MALL REAL ESTATE, LLC, an Ohio limited liability company, BLOOMINGDALE'S REAL ESTATE, LLC, an Ohio limited liability company, MACY'S USQ, LLC, an Ohio limited liability company, MACY'S BROOKLYN, LLC, an Ohio limited liability company and MACY'S STATE STREET, LLC, an Ohio limited liability company (collectively, the "Grantors") and U.S. BANK NATIONAL ASSOCIATION, as trustee and as collateral trustee, pursuant to which the Issuer issued its 8.375% Senior Secured Notes due 2025 (together with any additional notes issued under the Secured Indenture, the "Secured Notes").

In connection with the Secured Indenture, the Grantors, the Initial Senior Representative and the Collateral Trustee entered into that certain Collateral Trust Agreement, dated as of June 8, 2020, by and among the Grantors from time to time party thereto, the Initial Senior Representative and each Additional Parity Lien Representative from time to time party thereto, if any (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Collateral Trust Agreement").

The obligations of the Issuer and the Grantors under the Secured Indenture and the other Secured Note Documents are secured on a first-priority basis by liens on certain of the assets of the Grantors pursuant to the terms of the Security Documents.

The Secured Note Documents and the Additional Secured Debt Documents provide, among other things, that the parties thereto shall set forth in this Agreement certain rights and remedies with respect to the Collateral.

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, each of the Initial Senior Representative (for itself and on behalf of each other Senior Secured Note Secured Party), the Collateral Trustee (for itself and on behalf of each Secured Party), the Initial Additional Representative (for itself and on behalf of each other Additional Secured Party) and each Additional Parity Lien Representative, intending to be legally bound, hereby agrees as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.1 Certain Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Collateral Trust Agreement (whether or not then in effect):

“Bankruptcy Case” has the meaning set forth in Section 2.1(b).

“Bankruptcy Code” means Title 11 of the United States Code, as amended, or any successor statute.

“Bankruptcy Law” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, examinership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Declined Liens” means, with respect to a particular Series, any Lien which the Collateral Trustee expressly declines to accept on an asset or property.

“DIP Financing” has the meaning set forth in Section 2.1(b).

“DIP Financing Liens” has the meaning set forth in Section 2.1(b).

“DIP Lenders” has the meaning set forth in Section 2.1(b).

“Grantors” has the meaning set forth in the recitals hereto.

“Initial Senior Representative” has the meaning set forth in the introductory paragraph to this Agreement.

“Joinder Agreement” means a document in the form of Exhibit A to this Agreement required to be delivered by a Parity Lien Representative to the Collateral Trustee and each other Parity Lien Representative in order to create an additional Series of Additional Secured Obligations or a Refinancing of any Series of Secured Obligations (including the Secured Indenture) and bind the Secured Parties hereunder.

“Secured Indenture” has the meaning set forth in the second paragraph of this Agreement.

SECTION 1.2 Rules of Interpretation. The definitions in Section 1.1 shall apply equally to both 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”; and the words “asset” and “property” shall be construed as having 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. All references herein to Sections, Exhibits and Schedules shall be deemed references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All references herein to any Person shall be construed to include such Person’s successors and permitted assigns. Unless otherwise indicated, any reference to any agreement or instrument will be deemed to include a reference to that agreement or instrument as assigned, amended, supplemented, amended and restated, or otherwise modified from time to time or replaced in accordance with the terms of this Agreement.

AGREEMENTS WITH RESPECT TO BANKRUPTCY OR INSOLVENCY PROCEEDINGS

SECTION 2.1 Certain Agreements with Respect to Bankruptcy or Insolvency Proceedings. (a) This Agreement and the Collateral Trust Agreement shall continue in full force and effect notwithstanding the commencement of any Bankruptcy Proceeding under the Bankruptcy Code, any other Bankruptcy Law or any other federal, state or foreign bankruptcy, insolvency or receivership law or other Bankruptcy Law by or against any Grantor or any of its subsidiaries.

(b) If any Grantor shall become subject to a case (a "Bankruptcy Case") under the Bankruptcy Code and shall, as debtor-in-possession, move for approval of financing ("DIP Financing") to be provided by one or more lenders (the "DIP Lenders") under Section 364 of the Bankruptcy Code or the use of cash collateral under Section 363 of the Bankruptcy Code, each Secured Party agrees that it will not raise any objection to any such DIP Financing or to the Liens on the Collateral securing such DIP Financing (and all obligations relating thereto, including any "carve-out" from the Collateral granting administrative priority status or Lien priority to secure the payment of fees and expenses of the United States Trustee or professionals retained by any debtor or creditors' committee agreed to by the Collateral Trustee or by an Act of Required Parity Lien Secured Parties) ("DIP Financing Liens") or to any use of cash collateral that constitutes Collateral, unless an Act of Required Parity Lien Secured Parties shall then oppose or object to such DIP Financing or such DIP Financing Liens or use of cash collateral, in each case so long as (A) the Secured Parties of each Series retain the benefit of their Liens on all such Collateral pledged to the DIP Lenders, including proceeds thereof arising after the commencement of such proceeding, with the same priority vis-à-vis all the other Secured Parties (other than any Liens of the Secured Parties constituting DIP Financing Liens) as existed prior to the commencement of the Bankruptcy Case, (B) the Secured Parties of each Series are granted Liens on any additional collateral pledged to any Secured Parties as adequate protection or otherwise in connection with such DIP Financing or use of cash collateral, with the same priority vis-à-vis all the other Secured Parties as set forth in this Agreement (other than any Liens of any Secured Parties constituting DIP Financing Liens), (C) if any amount of such DIP Financing or cash collateral is applied to repay any of the Secured Obligations, such amount is applied pursuant to Section 4(d) of the Collateral Trust Agreement, and (D) if any Secured Parties are granted adequate protection with respect to the Secured Obligations subject hereto, including in the form of periodic payments, in connection with such use of cash collateral, the proceeds of such adequate protection are applied pursuant to Section 4(d) of the Collateral Trust Agreement; provided that the Secured Parties of each Series shall have a right to object to the grant of a Lien to secure the DIP Financing over any Collateral subject to Liens in favor of the Secured Parties of such Series or its Parity Lien Representative that shall not constitute Collateral (unless the Lien in respect thereof constitutes a Declined Lien with respect to such Secured Parties or their Parity Lien Representative); provided, further, that the Secured Parties receiving adequate protection shall not object to any other Secured Party receiving adequate protection comparable to any adequate protection granted to such Secured Parties in connection with a DIP Financing or use of cash collateral, so long as the proceeds of such adequate protection are applied pursuant to Section 4(d) of the Collateral Trust Agreement. Nothing herein shall prohibit the Collateral Trustee or any Controlling Claimholder from offering to provide a DIP Financing that does not otherwise violate the terms and conditions of this Agreement.

(c) If any Secured Party is granted adequate protection (A) in the form of Liens on any additional collateral, then each other Secured Party shall be entitled to seek, and each Secured Party will consent and not object to, adequate protection in the form of Liens on such additional collateral with the same priority vis-à-vis all the other Secured Parties as set forth in this Agreement, (B) in the form of a superpriority or other administrative claim, then each other Secured Party shall be entitled to seek, and each Secured Party will consent and not object to, adequate protection in the form of a pari passu superpriority or administrative claim or (C) in the form of periodic or other cash payments, then the proceeds of such adequate protection must be applied to all Secured Obligations pursuant to Section 4(d) of the Collateral Trust Agreement.

SECTION 2.2 Reinstatement. In the event that any of the Secured Obligations shall be paid in full and such payment or any part thereof shall subsequently, for whatever reason (including an order or judgment for disgorgement of a preference under Title 11 of the Bankruptcy Code, or any other Bankruptcy Law, or the settlement of any claim in respect thereof), be required to be returned or repaid, the terms and conditions of this Agreement shall be fully applicable thereto until all such Secured Obligations shall again have been paid in full in cash. This Section 2.2 shall survive termination of this Agreement.

SECTION 2.3 Contesting Liens. Each of the Secured Parties agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Bankruptcy Proceeding), the perfection, priority, validity or enforceability of a Lien held by or on behalf of any of the Secured Parties in all or any part of the Collateral or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair (i) the rights of the Collateral Trustee or any Parity Lien Representative to enforce this Agreement or (ii) the rights of any Secured Party to contest or support any other Person in contesting the enforceability of any Lien purporting to secure obligations not constituting Secured Obligations.

ARTICLE III.

MISCELLANEOUS

SECTION 3.1 Integration/Conflicts. This Agreement, together with the other Secured Debt Documents, represents the entire agreement of each of the Grantors and the Secured Parties with respect to the subject matter hereof and thereof and supersedes 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 any Parity Lien Representative, Collateral Trustee or Secured Party 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 Collateral Trust Agreement, the provisions of the Collateral Trust Agreement shall govern and control.

SECTION 3.2 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 and the Secured Parties of any Series may continue, at any time and without notice to any Secured Party of any other Series, to extend credit and other financial accommodations and lend monies to or for the benefit of any Grantor constituting Secured Obligations in reliance hereon. Each Parity Lien Representative and the Collateral Trustee, on behalf of itself and each other Secured Party 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 Bankruptcy 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 any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver, trustee or similar person for the Issuer or any other Grantor (as the case may be) in any Bankruptcy Proceeding. This Agreement shall terminate and be of no further force and effect with respect to the Collateral Trustee, any Parity Lien Representative and the Secured Parties represented by such Parity Lien Representative and their Secured Obligations, in accordance with Sections 7 and 21 (as applicable) of the Collateral Trust Agreement; provided, however, that such termination shall not relieve any such party of its obligations incurred hereunder prior to the date of such termination.

SECTION 3.3 Amendments; Waivers.(a) The provisions of Section 8 of the Collateral Trust Agreement are set forth herein*mutatis mutandus*.

(b) Notwithstanding the foregoing, without the consent of any Secured Party, any Parity Lien Representative may become a party hereto by execution and delivery of a Joinder Agreement in accordance with Section 3.10 of this Agreement and upon such execution and delivery, such Parity Lien Representative, the Collateral Trustee and the Other Secured Parties and Additional Secured Obligations of the Series for which such Parity Lien Representative and Collateral Trustee is acting shall be subject to the terms hereof.

(c) Notwithstanding the foregoing, without the consent of any other Parity Lien Representative or Secured Party, the Collateral Trustee may effect amendments and modifications to this Agreement to the extent necessary to reflect any incurrence of any Additional Secured Obligations in compliance with the Secured Indenture, the Collateral Trust Agreement and the other Secured Debt Documents.

SECTION 3.4 Governing Law; Jurisdiction; Certain Waivers.The provisions of Sections 16, 17, 18 and 20 of the Collateral Trust Agreement are set forth herein *mutatis mutandus*.

SECTION 3.5 Notices.The provisions of Section 9 of the Collateral Trust Agreement are set forth herein*mutatis mutandus*.

SECTION 3.6 Further Assurances. Each Parity Lien Representative and Collateral Trustee, on behalf of itself and each other Secured Party represented by it, and the Grantors 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 Parity Lien Representative and Collateral Trustee may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

SECTION 3.7 Binding on Successors and Assigns.This Agreement shall be binding upon each Additional Parity Lien Representative, the Collateral Trustee, the Secured Parties, the Grantors, and their respective successors and assigns from time to time. If any of the Additional Parity Lien Representatives and/or the Collateral Trustee resigns or is replaced pursuant to the applicable Secured Debt Documents, 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.

SECTION 3.8 Section Headings.Section headings and the Table of Contents used in this Agreement are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 3.9 Counterparts. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed signature page to this Agreement by telecopy or electronic transmission (including Adobe pdf file) shall be as effective as delivery of a manually executed counterpart of this Agreement.

SECTION 3.10 Additional Secured Obligations. To the extent that the Issuer incurs Additional Secured Obligations in accordance with the provisions of the Secured Indenture, the Collateral Trust Agreement and the Additional Secured Debt Documents, the Additional Parity Lien Representative of any such Additional Secured Obligations, acting on behalf of the holders of such Additional Secured Obligations and the holders of such Additional Secured Obligations (such Additional Parity Lien Representative, the holders in respect of such Additional Secured Obligations and the holders of such Additional Secured Obligations being referred to as "Additional Secured Parties"), shall become a party to this Agreement.

(b) In order for any Additional Parity Lien Representative to become a party to this Agreement such Additional Parity Lien Representative shall have executed and delivered an instrument substantially in the form of Exhibit A (with such changes as may be reasonably approved by the Collateral Trustee and such Additional Parity Lien Representative) pursuant to which such Additional Parity Lien Representative becomes a Parity Lien Representative hereunder, and such Additional Secured Obligations and such Series of Additional Secured Obligations and the Additional Secured Parties of such Series become subject hereto and bound hereby.

SECTION 3.11 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.

SECTION 3.12 No Third Party Beneficiaries; Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the Secured Parties in relation to one another. None of the Issuer, any other Grantor nor any other creditor thereof shall have any rights or obligations hereunder, and no such Person is an intended beneficiary or third party beneficiary hereof, except, in each case, as expressly provided in this Agreement, and no Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of any Grantor, which are absolute and unconditional, to pay the Secured Obligations as and when the same shall become due and payable in accordance with their terms. Without limitation of any other provisions of this Agreement, each Grantor hereby (a) acknowledges that it has read this Agreement and consents hereto, (b) agrees that it will not take any action that would be contrary to the express provisions of this Agreement and (c) agrees to abide by the requirements expressly applicable to it under this Agreement.

SECTION 3.13 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.

SECTION 3.14 Additional Grantors. Each Grantor agrees that it shall ensure that each of its Subsidiaries that is or is to become a party to any Secured Debt Document and which grants or purports to grant a Lien on any of its assets shall either execute this Agreement on the date hereof or shall confirm that it is a Grantor hereunder pursuant to a joinder agreement substantially in the form attached hereto as Exhibit B that is executed and delivered by such Subsidiary prior to or concurrently with its execution and delivery of such Secured Debt Document.

SECTION 3.15 Concerning the Initial Senior Representative and Collateral Trustee.

(a) Notwithstanding any term herein to the contrary, it is hereby expressly agreed and acknowledged that the agreements set forth herein by the Initial Senior Representative and/or the Collateral Trustee are made solely in each of their capacities as the Initial Senior Representative or the Collateral Trustee hereunder, and not in their individual capacities.

(b) Notwithstanding any term herein to the contrary, in the case of any reference herein to the giving of any consent, approval or direction by the Initial Senior Representative and/or the Collateral Trustee, which includes for the avoidance of doubt any provision in respect of the delivery, revocation or rescission of any notice delivered hereunder, it is understood in all cases the Initial Senior Representative and/or the Collateral Trustee shall only take such action under this Agreement as directed in writing by the Secured Parties in accordance with the terms of the Collateral Trust Agreement (if then in effect), the other Security Documents, and the Secured Debt Documents.

(c) Notwithstanding anything in this Agreement to the contrary, (i) the Initial Senior Representative and the Collateral Trustee shall be entitled to all of the rights, protections, immunities and indemnities set forth in the Collateral Trust Agreement (if then in effect), the other Security Documents, and the Secured Debt Documents as if specifically set forth herein.

(d) In connection with its execution and acting hereunder, each of the Collateral Trustee and the Initial Senior Representative are entitled to all rights, privileges, protections, immunities, benefits and indemnities provided to them under the Security Documents and any other applicable Secured Debt Documents.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

U.S. BANK NATIONAL ASSOCIATION,
as Initial Senior Representative and Collateral Trustee

By: _____
Name:
Title:

Notice Address:

[_____]

[_____,]
as Initial Additional Representative

By: _____
Name:
Title:

Notice Address:

[_____]

[Signature Page to Pari Passu Intercreditor]

Acknowledged and Agreed to by:

[],
a []

By: _____
Name:
Title:

[],
a []

By: _____
Name:
Title:

Notice Address:

[]

[Signature Page to Pari Passu Intercreditor]

JOINDER AGREEMENT

JOINDER NO. [] dated as of [] (this "Joinder Agreement") to the PARI PASSU INTERCREDITOR AGREEMENT, dated as of [] (as amended, restated, supplemented or otherwise modified from time to time, the "Pari Passu Intercreditor Agreement"), among [], as Initial Senior Representative, [], as Collateral Trustee, [], as Initial Additional Representative and the additional Parity Lien Representatives from time to time party thereto, and acknowledged and agreed to by the Grantors party thereto from time to time.

A. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Pari Passu Intercreditor Agreement.

B. As a condition to the ability of the Issuer to incur [Additional Secured Obligations] and to secure such [Additional Secured Obligations] with the liens and security interests created by the [Additional Secured Debt Documents], the undersigned Additional Parity Lien Representative (the "New Representative") are executing this Joinder Agreement in accordance with the requirements of the Pari Passu Intercreditor Agreement.

Accordingly, the New Representative agrees as follows:

SECTION 1. In accordance with Section 3.10 of the Pari Passu Intercreditor Agreement, the New Representative by their signatures below become a Parity Lien Representative and a Collateral Trustee, respectively, under, and the related Additional Secured Obligations and Additional Secured Parties become subject to and bound by, the Pari Passu Intercreditor Agreement with the same force and effect as if the New Representative had originally been named therein as a Parity Lien Representative, and hereby agree to all the terms and provisions of the Pari Passu Intercreditor Agreement applicable to them as Additional Parity Lien Representative and Additional Secured Parties, respectively.

SECTION 2. Each of the New Representative represent and warrant to the Collateral Trustee, each other Parity Lien Representative and the other Secured Parties, individually, 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, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability, and (iii) the Additional Secured Debt Documents relating to such Additional Secured Obligations provide that, upon the New Representative's entry into this Joinder Agreement, the Additional Secured Parties represented by them will be subject to and bound by the provisions of the Pari Passu Intercreditor Agreement.

SECTION 3. This Joinder Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, but all such counterparts together shall constitute but one and the same instrument. This Joinder Agreement shall become effective when the Collateral Trustee shall have received a counterpart of this Joinder Agreement that bears the signatures of the New Representative. Delivery of an executed signature page to this Joinder Agreement by telecopy or electronic transmission (including Adobe pdf file) shall be as effective as delivery of a manually executed counterpart of this Joinder Agreement.

SECTION 4. Except as expressly supplemented hereby, the Pari Passu Intercreditor Agreement shall remain in full force and effect.

SECTION 5. **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 WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

SECTION 6. Any provision of this Joinder Agreement that is held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof and of the Pari Passu Intercreditor Agreement, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate 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.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 3.5 of the Pari Passu Intercreditor Agreement. All communications and notices hereunder to the New Representative shall be given to them at their respective addresses set forth below their signatures hereto.

SECTION 8. Section 3.6 of the Pari Passu Intercreditor Agreement is hereby incorporated herein by reference.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the New Representative have duly executed this Joinder Agreement to the Pari Passu 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: _____

Receipt acknowledged by:

U.S. BANK NATIONAL ASSOCIATION,
as Initial Senior Representative and Collateral Trustee

By: _____

Name:

Title:

GRANTOR JOINDER AGREEMENT

GRANTOR JOINDER AGREEMENT NO. [] (this "Grantor Joinder Agreement") dated as of [] to the PARI PASSU INTERCREDITOR AGREEMENT dated as of [] (as amended, restated, supplemented or otherwise modified from time to time, the "Pari Passu Intercreditor Agreement"), among [], as Initial Senior Representative and as Collateral Trustee, [], as Initial Additional Representative and the additional Parity Lien Representatives from time to time party thereto, and acknowledged and agreed to by the Grantors party thereto from time to time.

Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Pari Passu Intercreditor Agreement.

The undersigned, [], a [] (the "New Grantor"), wishes to acknowledge and agree to the Pari Passu Intercreditor Agreement and become a party thereto to the limited extent contemplated by Section 3.14 thereof and to acquire and undertake the rights and obligations of a Grantor thereunder.

Accordingly, the New Grantor agrees as follows for the benefit of the Parity Lien Representatives, the Collateral Trustee and the other Secured Parties:

Section 1. Accession to the Pari Passu Intercreditor Agreement. The New Grantor (a) acknowledges and agrees to, and becomes a party to, the Pari Passu Intercreditor Agreement as a Grantor to the limited extent contemplated by Section 3.12 thereof, (b) agrees to all the terms and provisions of the Pari Passu Intercreditor Agreement and (c) shall have all the rights and obligations of a Grantor under the Pari Passu Intercreditor Agreement. This Grantor Joinder Agreement supplements the Pari Passu Intercreditor Agreement and is being executed and delivered by the New Grantor pursuant to Section 3.14 of the Pari Passu Intercreditor Agreement.

Section 2. Representations, Warranties and Acknowledgement of the New Grantor. The New Grantor represents and warrants to each Additional Parity Lien Representative, the Collateral Trustee and the other Secured Parties that (a) it has full power and authority to enter into this Grantor Joinder Agreement, in its capacity as Grantor, and (b) this Grantor 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 this Grantor Joinder Agreement.

Section 3. Counterparts. This Grantor Joinder Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Grantor Joinder Agreement or any document or instrument delivered in connection herewith by telecopy or electronic transmission (including Adobe pdf file) shall be effective as delivery of a manually executed counterpart of this Grantor Joinder Agreement or such other document or instrument, as applicable.

Section 4. Section Headings. Section headings used in this Grantor Joinder Agreement are for convenience of reference only, are not part of this Grantor Joinder Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Grantor Joinder Agreement.

Section 5. Benefit of Agreement. The agreements set forth herein or undertaken pursuant hereto are for the benefit of, and may be enforced by, any party to the Pari Passu Intercreditor Agreement subject to any limitations set forth in the Pari Passu Intercreditor Agreement with respect to the Grantors.

Section 6. Governing Law. **THIS GRANTOR JOINDER AGREEMENT, AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS GRANTOR 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 WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS).**

Section 7. Severability. Any provision of this Grantor Joinder Agreement that is held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof and of the Pari Passu Intercreditor Agreement, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties hereto 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 8. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 3.5 of the Pari Passu Intercreditor Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature hereto, which information supplements Section 3.5 of the Pari Passu Intercreditor Agreement.

IN WITNESS WHEREOF, the New Grantor has duly executed this Grantor Joinder Agreement to the Pari Passu Intercreditor Agreement as of the day and year first above written.

[NAME OF NEW GRANTOR]

By: _____
Name: _____
Title: _____

Address for notices: _____

Attention of: _____
Telecopy: _____

CREDIT AGREEMENT
dated as of June 8, 2020
among

MACY'S INVENTORY FUNDING LLC,
as the Borrower,

MACY'S INVENTORY HOLDINGS LLC,
as Parent,

BANK OF AMERICA, N.A.,
as Agent, L/C Issuer and Swing Line Lender,

The Other Lenders Party Hereto,

**BOFA SECURITIES, INC., CREDIT SUISSE LOAN FUNDING LLC, JPMORGAN CHASE BANK, N.A., FIFTH THIRD BANK, NATIONAL ASSOCIATION,
MUFG UNION BANK, N.A., PNC CAPITAL MARKETS LLC and WELLS FARGO BANK, NATIONAL ASSOCIATION,**
as Joint Lead Arrangers and Joint Bookrunners,

CREDIT SUISSE LOAN FUNDING LLC and JPMORGAN CHASE BANK, N.A.,
as Co-Syndication Agents

and

**FIFTH THIRD BANK, NATIONAL ASSOCIATION, MUFG UNION BANK, N.A., PNC BANK, NATIONAL ASSOCIATION and WELLS FARGO BANK,
NATIONAL ASSOCIATION,**
as Co-Documentation Agents

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CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of June 8, 2020, among MACY'S INVENTORY FUNDING LLC, a Delaware limited liability company (the "Borrower"); MACY'S INVENTORY HOLDINGS LLC, a Delaware limited liability company ("Parent"); each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"); and BANK OF AMERICA, N.A., as Agent, L/C Issuer and Swing Line Lender.

The Borrower has requested that the Revolving Lenders (as defined below) provide a revolving credit facility, and the Revolving Lenders have indicated their willingness to lend and the L/C Issuers have indicated their willingness to issue Letters of Credit, in each case on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Accelerated Borrowing Base Delivery Event" means either (a) the occurrence and continuance of any Specified Event of Default, or (b) the failure of the Borrower to maintain Availability plus Suppressed Availability equal to at least 12.5% of the Loan Cap. An Accelerated Borrowing Base Delivery Event shall be deemed continuing (I) so long as such Specified Event of Default shall be continuing, and/or (II) if the Accelerated Borrowing Base Delivery Event arises under clause (b) above, until Availability plus Suppressed Availability has exceeded 12.5% of the Loan Cap for twenty (20) consecutive Business Days, in which case such Accelerated Borrowing Base Delivery Event shall be terminated. The termination of an Accelerated Borrowing Base Delivery Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Accelerated Borrowing Base Delivery Event in the event that the conditions set forth in clause (a) or (b) above again arise.

"Accommodation Payment" as defined in Section 10.21(d).

"Account" means (a) "accounts" as defined in the UCC, and (b) to the extent not included in clause (a), a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered or (iii) arising out of the use of a credit or charge card or information contained on or for use with the card.

"ACH" means automated clearing house transfers.

"Act" has the meaning provided in Section 10.17.

"Additional Agreement" has the meaning provided in Section 10.25.

“Additional Commitment Lender” has the meaning provided in Section 2.15(a)(v).

“Adjustment” has the meaning provided in Section 3.03(a).

“Adjustment Date” means the first day of each Fiscal Month, commencing with the first day of the second full Fiscal Month ending after the Closing Date.

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

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to any 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; provided, that for the avoidance of doubt, none of the Arrangers, the Agent or their respective lending affiliates shall be deemed to be an Affiliate of the Borrower, Parent, Pubco or any of their respective Subsidiaries.

“Agent” means Bank of America in its capacity as administrative and collateral agent, with all of the powers given to it hereunder and under the other Loan Documents, including administrative powers and powers to hold and maintain security interests in the Collateral, or any successor thereto appointed in accordance with Section 9.06.

“Agent Parties” has the meaning specified in Section 10.02(c).

“Agent Payment Account” means the account of the Agent set forth on Schedule 10.02 maintained by the Agent at Bank of America, N.A., and designated as the “Agent Payment Account” for purposes of this Agreement by the Agent in writing to the Borrower and the Lenders.

“Agent Professionals” means attorneys, appraisers, auditors, business valuation experts, consultants, turnaround consultants and other professionals and experts retained by the Agent, including, for the avoidance of doubt, Tiger Capital Group and any other advisor.

“Agent’s Office” means the Agent’s address and account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders in writing.

“Aggregate Bridge Commitments” means the sum of the Bridge Commitments of all Revolving Lenders with Bridge Commitments. As of the Closing Date, the Aggregate Bridge Commitments are \$300,000,000.

“Aggregate Revolving Commitments” means the sum of the Revolving Commitments (including the Aggregate Bridge Commitments) of all Revolving Lenders. As of the Closing Date, the Aggregate Revolving Commitments are \$3,151,000,000. For the avoidance of doubt, on the Bridge Commitment Termination Date the Aggregate Revolving Commitments shall be automatically reduced by the aggregate amount of Aggregate Bridge Commitments.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Allocable Amount” has the meaning specified in Section 10.21(d).

“Applicable Commitment Fee Percentage” means 0.375% per annum.

“Applicable Lenders” means the Required Lenders, the Supermajority Lenders, all affected Lenders, or all Lenders, as the context may require.

“Applicable Margin” means:

(a) from and after the Closing Date until the first Adjustment Date, the percentages set forth in Level II of the pricing grid in clause (b) below;

(b) from and after the first Adjustment Date, and on each Adjustment Date thereafter prior to the Step Down Date, the Applicable Margin shall be determined from the following pricing grid based upon the Average Monthly Revolving Exposure for the most recent Fiscal Month ended immediately preceding such Adjustment Date:

Level	Average Monthly Revolving Exposure	Applicable Eurodollar Rate Margin	Applicable Base Rate Margin
I	Equal to or greater than 50.0% of the Aggregate Revolving Commitments	3.00%	2.00%
II	Less than 50.0% of the Aggregate Revolving Commitments	2.75%	1.75%

(c) from and after the Step Down Date (if any), and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the following pricing grid based upon the Average Monthly Revolving Exposure for the most recent Fiscal Month ended immediately preceding such Adjustment Date:

Level	Average Monthly Revolving Exposure	Applicable Eurodollar Rate	Applicable Base Rate Margin
I	Equal to or greater than 50.0% of the Aggregate Revolving Commitments	2.50%	1.50%
II	Less than 50.0% of the Aggregate Revolving Commitments	2.25%	1.25%

“Applicable Percentage” means, with respect to any Lender at any time, (i) with respect to the Revolving Commitments, Letters of Credit or Swing Line Loans, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments at such time represented by the Revolving Commitment of such Lender at such time (or, if the Aggregate Revolving Commitments have terminated or expired, the percentage of the Total Revolving Exposure at such time represented by such Lender’s Revolving Exposure at such time), and (ii) for purposes of Section 9.14 and Section 10.05 or as otherwise required, the percentage (carried out to the ninth decimal) of the Aggregate Revolving Commitments at such time represented by such Lender’s Revolving Commitment (or, if the Aggregate Revolving Commitments have terminated or expired, the percentage (carried out to the ninth decimal) of the Total Revolving Exposure at such time represented by such Lender’s Revolving Exposure). If the Commitments of each Lender have been terminated in full and there is no Revolving Exposure outstanding at any time, then the Applicable Percentage of each Lender at such time shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of the Revolving Commitments is set forth opposite the name of such Lender on Schedule 2.01(a) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Appraised Value” means, with respect to the Borrower’s Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of the Borrower’s Eligible Inventory as set forth in the inventory stock ledger of Pubco, which value shall be reasonably determined from time to time by reference to the most recent appraisal undertaken by an independent appraiser engaged by the Agent and reasonably satisfactory to the Borrower; provided, that prior to the Flip Date, the Appraised Value, as determined by the appraisal completed by Tiger Capital Group and delivered to the Agent on May 8, 2020, shall be 94.5%.

“Approved Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

“Arrangers” means collectively, BofA Securities, Inc., Credit Suisse Loan Funding LLC, JPMorgan Chase Bank, N.A., Fifth Third Bank, National Association, MUFG Union Bank, N.A., PNC Capital Markets LLC and Wells Fargo Bank, National Association in their capacities as joint lead arrangers and joint bookrunners.

“Assignee Group” means two (2) or more Eligible Assignees that are Affiliates of one another or two (2) or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation (other than any Capital Lease Obligation), the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

“Audited Financial Statements” means the audited consolidated balance sheet of Pubco and its Subsidiaries for the Fiscal Year ended February 1, 2020, and the related Consolidated statements of income or operations, shareholders’ equity and cash flows for such Fiscal Year of Pubco and its Subsidiaries, including the notes thereto.

“Availability” means, as of any date of determination thereof, the result, if a positive number, of:

- (a) the Loan Cap as of such date; minus
- (b) the Total Revolving Exposure as of such date.

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Availability Reserves” means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria (in respect of calculation of Eligible Inventory or Eligible Foreign In-Transit Inventory) or in the Appraised Value, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent’s ability to realize upon the Collateral included in the Borrowing Base, (b) to reflect claims and liabilities that the Agent determines in its Permitted Discretion will need to be satisfied in connection with the realization upon the Collateral included in the Borrowing Base, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent’s Permitted Discretion (but are not limited to) reserves based on (i) in respect of rent with respect to leased locations (both Stores and distribution centers and warehouses) in Landlord Lien States to the extent a Collateral Access Agreement with respect to such locations has not been obtained (which reserve shall not exceed two (2) month’s rent); (ii) in respect of customs duties, and other costs to release Inventory which is being imported into the United States; (iii) in respect of outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, claims of the PBGC and other Taxes which rank *pari passu* with or have priority (in payment or Lien priority) over the interests of the Agent in the Collateral; (iv) customer credit liabilities consisting of the aggregate remaining value at such time of (A) outstanding gift certificates and gift cards of the Operating Companies entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, (B) outstanding merchandise credits of the Operating Companies, and (C) liabilities in connection with frequent shopping programs of the Operating Companies (which reserve under this clause (iv) shall not exceed 50% of the aggregate amount of such liabilities); (v) for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals; (vi) in respect of warehousemen’s or bailee’s charges and other Permitted Encumbrances which are *pari passu* with or have priority (in payment or Lien priority) over the interests of the Agent in the Collateral, to the extent, in the case of warehousemen’s or bailee’s charges, that a Collateral Access Agreement has not been obtained; (vii) in respect of amounts due to vendors on account of consigned goods; (viii) in respect of Cash Management Reserves; (ix) in respect of Bank Products Reserves; (x) in respect of royalties payable in respect of licensed merchandise; (xi) in respect of Customer Deposits Reserves; (xii) in respect of the “FILO Reserve” (if any); (xiii) in respect of the Debt Maturities Reserve (provided, that no Debt Maturities Reserve may be instituted prior to January 31, 2021); (xiv) in respect of the Over-Consignment Reserve; and (xv) in respect of the Credit Card Accounts Receivable Reserve.

“Average Monthly Revolving Exposure” means, for any Fiscal Month, an amount equal to the sum of Total Revolving Exposure for each day of such Fiscal Month divided by the actual number of days in such Fiscal Month, as determined by the Agent, which determination shall be conclusive absent manifest error.

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

“Bail-In Legislation” means, (a) 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, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A.

“Bank Product Obligations” means any obligation on account of any transaction with a Bank Product Provider, which arises out of any Bank Product entered into with any Loan Party or, solely with regards to supply chain finance services with respect to Consigned Inventory and if requested by the Funding and Notice Agent in accordance with the provisions of the Master Agency Agreement, any Macy’s Party or any of their respective Restricted Subsidiaries and any such Person, as each may be amended from time to time; provided, that, in order for any item described in clause (b) of the definition of Bank Products to constitute “Bank Product Obligations”, unless the applicable Bank Product Provider is Bank of America or its Affiliates, the Agent shall have received a Bank Product Provider Letter Agreement within ten (10) days after the date of the provision of the applicable Bank Product to any Loan Party or, solely with regards to supply chain finance services with respect to Consigned Inventory and if requested by the Funding and Notice Agent in accordance with the provisions of the Master Agency Agreement, any Macy’s Party or any of their respective Restricted Subsidiaries.

“Bank Product Provider” means the Agent, any Arranger, any Lender or any Affiliate of the Agent, any Arranger, or any Lender (determined at the time the relevant Bank Product Provider Letter Agreement is entered into) that provides any Bank Products to a Loan Party or, solely with regards to supply chain finance services with respect to Consigned Inventory and if requested by the Funding and Notice Agent in accordance with the provisions of the Master Agency Agreement, any Macy’s Party or any of their respective Restricted Subsidiaries.

“Bank Product Provider Letter Agreement” means a letter agreement, which shall be substantially in the form of Exhibit J, duly executed by the applicable Bank Product Provider and the Borrower, and provided to the Agent.

“Bank Products” means any services or facilities provided to any Loan Party or, solely with regards to supply chain finance services with respect to Consigned Inventory and if requested by the Funding and Notice Agent in accordance with the provisions of the Master Agency Agreement, any Macy’s Party or any of their respective Restricted Subsidiaries by any Bank Product Provider (but excluding Cash Management Services) including, without limitation, on account of (a) merchant services constituting a line of credit and (b) supply chain finance services with respect to Consigned Inventory including, without limitation, trade payable services and supplier accounts receivable purchases.

“Bank Products Reserves” means such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Loan Parties or, if requested by the Funding and Notice Agent in accordance with the provisions of the Master Agency Agreement, any Macy’s Party or any of their respective Restricted Subsidiaries with respect to Bank Products then being provided or outstanding.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. Section 101 *et seq.*) as now or hereafter in effect, or any successor thereto.

“Base Consignment Commission” means, for any period, an amount equal to fifteen percent (15%) of the gross sales proceeds (adjusted for actual Customer Returns (as defined in the Master Agency Agreement as in effect on the Closing Date)) of all Consigned Inventory (as defined in the Master Agency Agreement as in effect on the Closing Date) sold by the Operating Companies during such period.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) the Eurodollar Rate plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Base Rate Loan Notice” means a notice for a Borrowing of Base Rate Loans, which shall be substantially in the form of Exhibit A-1.

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” has the meaning provided in Section 10.26(b).

“Blocked Account” means each deposit account maintained by the Borrower that is subject to a Control Agreement and specified as a “Blocked Account” in Section 6.13, whereby the bank maintaining such account agrees in the case of the SPE Collection Account or any other account designated as a blocked account from time to time, at all times to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

“Bluemercury” means Bluemercury, Inc., a Delaware corporation, together with its Subsidiaries.

“Borrower” has the meaning assigned to such term in the introduction of this Agreement.

“Borrower LLC Agreement” means Borrower’s limited liability company agreement effective as of May 12, 2020.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrower Proceeds” means any proceeds received by the Borrower from the sale of its owned Inventory (including any such amount represented by Payment Processing Accounts Receivable (which shall include solely for purposes of this definition any Account or Payment Intangible, or any income, payments and proceeds thereof, owed by PayPal Holdings, Inc., any of its Subsidiaries) and cash and check proceeds).

“Borrowing” means (i) a Revolver Borrowing, (ii) a Swing Line Borrowing, or (iii) the borrowing of Incremental Term Loans pursuant to Section 2.15(b), as the context may require.

“Borrowing Base” means, at any time (determined by reference to the most recently delivered Borrowing Base Certificate delivered to the Agent pursuant to Section 6.02(b)), as adjusted from time to time pursuant to Section 2.01(c), an amount equal to:

(a) (i) at any time prior to the Flip Date, the Cost of Eligible Inventory (other than Eligible Foreign In-Transit Inventory) multiplied by eighty percent (80%) multiplied by the Appraised Value of such Eligible Inventory (other than Eligible Foreign In-Transit Inventory); and (ii) at any time on and after the Flip Date, the Cost of Eligible Inventory (other than Eligible Foreign In-Transit Inventory), multiplied by ninety percent (90%) multiplied by the Appraised Value of such Eligible Inventory (other than Eligible Foreign In-Transit Inventory); plus

(b) following receipt of the Initial Field Exam, (i) at any time prior to the Flip Date, the Cost of Eligible Foreign In-Transit Inventory multiplied by eighty percent (80%) multiplied by the Appraised Value of such Eligible Foreign In-Transit Inventory; and (ii) at any time on and after the Flip Date, the Cost of Eligible Foreign In-Transit Inventory, multiplied by ninety percent (90%) multiplied by the Appraised Value of such Eligible Foreign In-Transit Inventory; minus

(c) the then applicable amount of all Availability Reserves and Inventory Reserves established pursuant to Section 2.01(c).

“Borrowing Base Certificate” means a certificate substantially in the form of Exhibit F hereto (with such changes therein as may be required by the Agent to reflect the components of and Reserves against the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Borrower.

“Bridge Commitment” means, as to each Revolving Lender, its obligation to make Revolving Loans to the Borrower pursuant to Section 2.01(a), in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender’s name on Schedule 2.01(a).

“Bridge Commitment Termination Date” means December 30, 2020.

“Business” means, at any time, a collective reference to the businesses engaged in by the Parent and the Borrower on the Closing Date (after giving effect to the transactions on the Closing Date) and similar, corollary, ancillary, incidental, complementary or related businesses.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank market.

“Capital Expenditures” means, with respect to any Person for any period, all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, but excluding (a) Capital Lease Obligations incurred by a Person during such period; (b) 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 used or useful in the business of Pubco and its Restricted Subsidiaries; (c) the purchase of property or equipment to the extent financed with the proceeds of asset sales or other dispositions outside the ordinary course of business; (d) expenditures that constitute Investments or other Acquisitions not prohibited under the Master Agency Agreement; (e) any capitalized interest expense reflected as additions to property in the consolidated balance sheet of Pubco and its Restricted Subsidiaries (including in connection with sale-leaseback transactions not prohibited under the Master Agency Agreement); (f) any non-cash compensation or other non-cash costs reflected as additions to property in the consolidated balance sheet of Pubco and its Restricted Subsidiaries; (g) expenditures that are accounted for as capital expenditures of such person and that actually are paid for in cash by a third party (excluding Pubco and any Restricted Subsidiary) which cash payment by such third party may be made directly or may be made as a cash reimbursement; (h) capital expenditures relating to the construction or acquisition of any property or equipment which has been transferred to a Person other than Pubco or any of its Restricted Subsidiaries pursuant to a sale-leaseback transaction not prohibited under the Master Agency Agreement and other capital expenditures arising pursuant to sale-leaseback transactions not prohibited under the Master Agency Agreement and (i) capitalized software expenses. For purposes of this definition, the purchase price of equipment that is purchased substantially contemporaneously with the trade-in or sale of equipment or with insurance proceeds therefrom shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted to such Person for the equipment being traded in by the seller of such new equipment, the proceeds of such sale or the amount of the insurance proceeds, as the case may be.

“Capital Lease Obligations” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other 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 liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided, however, that for the avoidance of doubt, any lease that is accounted for as an operating lease in accordance with GAAP as of December 31, 2018 and any similar lease entered into after December 31, 2018 may, in the sole discretion of the Borrower, be accounted for as a non-capitalized finance lease, and any obligations thereunder shall not constitute “Capital Lease Obligations”.

“Cash Collateral Account” means an account (which may be non-interest bearing) established by the Borrower with Bank of America, and in the name of, the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(k) or Section 8.02(iii).

“Cash Collateralize” has the meaning specified in Section 2.03(k). Derivatives of such term have corresponding meanings.

“Cash Dominion Event” means the occurrence and continuance of Intermediate Cash Dominion or Full Cash Dominion, as the context requires.

“Cash Management Bank” means each bank with whom deposit accounts are maintained in which any funds of the Borrower from one or more DDAs are concentrated and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Cash Management Provider” means the Agent, any Arranger, any Lender, any Affiliate of the Agent, any Arranger or any Lender (determined at the time the relevant Cash Management Provider Letter Agreement is entered into) that provides any Cash Management Services to a Loan Party; provided, that if the applicable Cash Management Provider is any Person other than Bank of America or any of its Affiliates, the Agent shall have received a Cash Management Provider Letter Agreement within ten (10) days after the date of the provision of the applicable Cash Management Services to any Loan Parties.

“Cash Management Provider Letter Agreement” means a letter agreement, which shall be substantially in the form of Exhibit K, duly executed by the applicable Cash Management Provider, and the Borrower, and provided to the Agent.

“Cash Management Reserves” means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

“Cash Management Services” means any cash management services or facilities provided to any Loan Party by any Cash Management Provider, including, without limitation: (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, and (c) credit card processing services.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

- (a) Pubco fails at any time to own directly or indirectly, 100% of the Equity Interests of the Parent, in each case, free and clear of all Liens;
- (b) any “change in control” or similar event as defined in any document governing Material Indebtedness of any Macy’s Entity;

(c) Parent fails at any time to own directly, 100% of the Equity Interests of the Borrower, in each case, free and clear of all Liens (other than the Liens in favor of the Agent and other Permitted Encumbrances), except where such failure is as a result of a transaction permitted by the Loan Documents; or

(d) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Pubco.

“Closed Store Group” means any group of twenty-five (25) Stores that are being permanently closed.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01, which date is the date of this Agreement.

“Closing Date Purchase” means the purchase by the Borrower of Purchased Inventory (as defined in the Purchase Agreement), together with the other related transactions contemplated in the Purchase Agreement to occur on the date of or substantially contemporaneously with the purchase of Purchased Inventory, in each case pursuant to the Purchase Agreement.

“Co-Documentation Agents” means Fifth Third Bank, National Association, MUFG Union Bank, N.A., PNC Bank, National Association and Wells Fargo Bank, National Association.

“Co-Syndication Agents” means Credit Suisse Loan Funding LLC and JPMorgan Chase Bank, N.A.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, in effect.

“Collateral” means any and all “Collateral” as defined in any applicable Security Document and all other property of a Loan Party that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent, including, for the avoidance of doubt, all Borrower Proceeds, the Borrower’s rights under the Servicing Agreements and the Processing Agreement Amendments, all equity interests of the Borrower and all rights under the Subordinated Notes. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, in no event shall “Collateral” include (i) any property of Bluemercury or (ii) any rights to or in respect of Excluded Payments or Sales Tax Amounts.

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, or (b) any landlord of Real Estate leased by any Loan Party or any Operating Company (except any Stores owned by any Macy’s Entity), pursuant to which such Person (i) acknowledges the Agent’s Lien on the Collateral, (ii) releases or subordinates such Person’s Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate and (iv) as to any landlord, provides the Agent with a reasonable time to sell, dispose or remove the Collateral from such Real Estate.

“Collateral Assignment Agreement” means the Collateral Assignment Agreement, dated as of the Closing Date, in substantially the form of Exhibit I-2 hereto, among the Borrower and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed or restated.

“Commercial Letter of Credit” means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by a Loan Party in the ordinary course of business of such Loan Party.

“Commercial Letter of Credit Agreement” means the Commercial Letter of Credit Agreement relating to the issuance of a Commercial Letter of Credit in the form from time to time in use by the L/C Issuer.

“Commitment” means, with respect to each Revolving Lender, such Revolving Lender’s Revolving Commitment (including such Revolving Lender’s Bridge Commitment, if any).

“Commitment Fee” has the meaning specified in Section 2.09(a).

“Commitment Increases” has the meaning specified in Section 2.15(a)(i).

“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.

“Competitor” means any Person that (a) operates, manages or controls the operation of department stores or apparel retailers, and/or (b) is an Affiliate of or has entered into any agreement to control or is under common control with, in each case, directly or indirectly, any Person under clause (a) and, in each case under this clause (b) has either been identified in writing to the Agent as such an Affiliate or is reasonably identifiable as such an Affiliate on the basis of such Affiliate’s name; provided, that the foregoing shall not include (i) commercial or corporate banks and (ii) any funds which principally hold passive investments in commercial loans or debt securities for investment purposes in the ordinary course of business. For the avoidance of doubt, the Borrower may, in its sole discretion, remove any entity from the list of Competitors.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Concentration Account” has the meaning provided in Section 6.13(b)(ii).

“Consignment Commission” has the meaning set forth in the Master Agency Agreement.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Consolidated Cash Balance” means the Unrestricted Cash of Pubco and its Subsidiaries (excluding any Unrestricted Cash of (i) a Regulated Entity to the extent such cash was contributed to or retained by such Regulatory Entity (substantially consistent with historical contributions and distributions, subject to any change in regulations) or (ii) the Loan Parties), but excluding (a) store cash float (including cash that has not arrived and been logged at a bank) to the extent such store cash float is maintained reasonably consistently with past practices of Pubco and its Subsidiaries and (b) amounts owed under clause (z) of the definition of “Excluded Payments” in an amount not in excess of (i) \$50,000,000, during any calendar month other than November and December or (ii) \$100,000,000, during the calendar months of November and December, in each case, calculated on a pro forma basis for the intended short term use of such Unrestricted Cash within one (1) Business Day (including, for the avoidance of doubt, any amounts that will be (x) contributed by Pubco to the Loan Parties as an equity contribution or (y) contributed by Pubco or any Restricted Subsidiary to the Loan Parties under the Master Intercompany Income Note).

“Consolidated EBITDA” means, for any Person for any Measurement Period, the Consolidated Net Income of such Person for such Measurement Period:

(a) increased, without duplication, by the following items to the extent deducted (or not included) in calculating Consolidated Net Income (other than in respect of clauses (a)(xiv), (xv) and (xxiv)) of such Person and its Restricted Subsidiaries for such Measurement Period determined on a consolidated basis in accordance with GAAP, by the sum of:

(i) [reserved],

(ii) Consolidated Interest Charges,

(iii) provision for all taxes (whether or not paid, estimated or accrued) based on income, profits or capital (including penalties and interest, if any) including state, franchise, excise and similar taxes and foreign withholding taxes and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits,

(iv) depreciation expense,

(v) amortization expense (including amortization of (A) excess of cost over net assets acquired, (B) reorganization value in excess of amounts allocable to identifiable assets, (C) unearned restricted stock and (D) amortization of goodwill and intangibles),

(vi) non-cash charges or losses for such period (including non-cash charges arising from impairment of goodwill, impairment of intangibles, impairments/write downs of real estate or other long-term assets and post-retirement settlement charges),

(vii) (A) any extraordinary (as defined under GAAP (without giving effect to the impact of Financial Accounting Standards Board Account Standards Updates 2015-1 (Income Statement – Extraordinary and Unusual Items (Subtopic 225-20)))) items, expenses, losses or charges and (B) any unusual or non-recurring items, expenses, losses or charges (but excluding, in any event, lost revenue); provided that the aggregate amount added to Consolidated EBITDA pursuant to this clause (vii), when taken together with the aggregate amount added pursuant to clauses (xvii), (xxii) and (xxiv), shall not exceed 25% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (vii) and clauses (xvii), (xxii) and (xxiv)); provided, further that the aggregate amount added to Consolidated EBITDA pursuant to this clause (vii) shall not exceed 20% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (vii)),

(viii) [reserved],

(i x) transaction fees, expenses or charges (including legal, advisory and brokerage or other financing fees), or, without duplication, any amortization or write-off thereof related to any transaction that is out of the ordinary course of business including equity offerings, Investments, Acquisitions, dispositions, recapitalizations, mergers, option buyouts or Indebtedness permitted to be consummated or incurred by this Agreement (including any Permitted Refinancing Indebtedness or Permitted Refinancing Existing Notes Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness (including any amendments, waivers or other modifications of the Master Agency Agreement or the Loan Documents) or similar transactions (in each case whether or not consummated or incurred and whether or not permitted under this Agreement (so long as an amendment is being sought or upon consummation of such transaction this Agreement would be terminated),

(x) all deferred financing costs written off and premiums paid in connection with any early extinguishment of Swap Contracts or other derivative instruments,

(xi) (x) any costs or expenses pursuant to any management or employee stock option or other equity-related plan, program or arrangement, or other benefit plan, program or arrangement, or any equity subscription or equityholder agreement, and (y) any non-cash compensation related expenses,

(xii) all fees, costs and expenses related to the transactions contemplated by the Master Agency Agreement and by the Loan Documents,

(xiii) non-operating professional fees, costs and expenses,

(x i v) expense or charges to the extent paid or reimbursed by a third party or reasonably expected to be received in a subsequent period and within 365 days of the end of the Measurement Period; provided, that (x) if such amount is not so reimbursed within such 365 day period, such charges, expenses or losses shall be subtracted in the subsequent calculation period and (y) if such amount is reimbursed or received in a subsequent period following the period during which an amount was added back pursuant to this clause (xiv), such amount shall not be added back in calculating Consolidated EBITDA in such subsequent period,

(xv) business interruption insurance proceeds received in cash during such period or reasonably expected to be received in a subsequent period and within 365 days of the underlying loss; provided, that (x) if such amount is not so reimbursed within such 365 day period, such charges, expenses or losses shall be subtracted in the subsequent calculation period and (y) if such amount is reimbursed or received in a subsequent period following the period during which an amount was added back pursuant to this clause (xv), such amount shall not be added back in calculating Consolidated EBITDA in such subsequent period,

(xvi) earn-out obligations incurred in connection with any Acquisition or other Investment,

(xvii) all losses, charges and expenses in connection with the pre-opening and opening of stores, distribution centers and other facilities and operating losses attributable to any store, distribution center or other facility to the extent such losses, charges or expenses were incurred before or within twelve (12) months after the opening of such store, distribution center or other facility; provided that the aggregate amount added to Consolidated EBITDA pursuant to this clause (xvii), when taken together with the aggregate amount added pursuant to clauses (vii), (xxii) and (xxiv), shall not exceed 25% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xvii) and clauses (vii), (xxii) and (xxiv)); provided, further that the aggregate amount added to Consolidated EBITDA pursuant to this clause (xvii), when taken together with the aggregate amount added pursuant to clauses (xxii) and (xxiv), shall not exceed 15% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xvii) and clauses (xxii) and (xxiv)),

(xviii) [reserved],

(xix) any non-cash losses resulting from mark to market accounting of Swap Contracts or other derivative instruments,

(xx) any unrealized foreign currency translation gains or losses, including in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person,

(xxi) the excess of GAAP rent expense over actual cash rent paid due to the use of straight line rent for GAAP purposes,

(x x i i) business optimization expenses (including expenses related to consolidation initiatives), relocation and integration expenses, costs, charges, expenses, accruals and reserves related to cost savings initiatives, strategic initiatives, and other restructuring costs, charges, expenses, accruals and reserves (which, for the avoidance of doubt, shall include the effect of inventory optimization programs, consolidation, relocation and closing of stores, distribution centers, warehouses and other facilities and exiting lines of business, operating expense reductions, personnel relocation, restructuring, redundancy, recruiting, severance, termination, settlement and judgment, one-time compensation charges, the amount of any signing, retention and completion bonuses, new systems design and implementation costs, software development costs and curtailments and project startup costs); provided that the aggregate amount added to Consolidated EBITDA pursuant to this clause (xxii), when taken together with the aggregate amount added pursuant to clauses (vii), (xvii) and (xxiv), shall not exceed 25% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xxii) and clauses (vii), (xvii) and (xxiv)); provided further that the aggregate amount added to Consolidated EBITDA pursuant to this clause (xxii), when taken together with the aggregate amount added pursuant to clauses (xvii) and (xxiv), shall not exceed 15% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xxii) and clauses (xvii) and (xxiv)),

(xxiii) charges, costs, expenses or fees associated with the implementation of ASC 606 or any comparable regulation,

(xxiv) the amount of net cost savings, operating expense reductions, revenue enhancements and synergies projected by Pubco in good faith to be realized as the result of actions taken or to be taken on or prior to the date that is eighteen (18) months after the consummation of any operational change, respectively (which costs savings, operating expense reductions and synergies shall be reasonably identifiable and factually supportable, certified by a Responsible Officer of Pubco in the applicable Compliance Certificate and calculated on a Pro Forma Basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that the aggregate amount added to Consolidated EBITDA pursuant to this clause (xxiv), when taken together with the aggregate amount added pursuant to clauses (vii), (xvii) and (xxii) shall not exceed 25% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xxiv) and clauses (vii), (xvii) and (xxii)); provided, further that the aggregate amount added to Consolidated EBITDA pursuant to this clause (xxiv), when taken together with the aggregate amount added pursuant to clauses (xvii) and (xxii) shall not exceed 15% of Consolidated EBITDA for such Measurement Period (calculated after giving effect to any increase to Consolidated EBITDA pursuant to this clause (xxiv) and clauses (xvii) and (xxii)), and

(xxv) all costs and expenses in connection with store closings publicly announced by Pubco prior to the Closing Date provided that the aggregate amount added back pursuant to this clause (xxv) shall not exceed \$60,000,000 during such Measurement Period (and, for the avoidance of doubt, any amount in excess of \$60,000,000 shall be permitted to be included as an add-back to Consolidated EBITDA in clause (xxii) at the Company's option, subject to the conditions set forth in such clause (xxii)),

(b) decreased, without duplication, by the following items to the extent added back (or not included) in calculating the Consolidated Net Income of such Person and its Restricted Subsidiaries for such Measurement Period determined on a consolidated basis in accordance with GAAP, by the sum of:

- (i) any extraordinary, unusual or non-recurring gains,
- (ii) federal, state, local and foreign income tax credits,
- (iii) any net income from disposed or discontinued operations (excluding held for sale discontinued operations until actually disposed of), and
- (iv) any payments made during such period that were added as a non-cash charge in a previous period pursuant to clause (a)(vi) above.

Unless otherwise specified "Consolidated EBITDA" shall refer to the Consolidated EBITDA of Pubco and its Restricted Subsidiaries. Consolidated EBITDA shall be further adjusted: (x) to include the Consolidated EBITDA of any Person, property, business or asset acquired by Pubco or any Restricted Subsidiaries during such Measurement Period (or, for any calculation on a Pro Forma Basis, after such Measurement Period), in each case, based on the Consolidated EBITDA of such Person (or attributable to such property, business or asset) for such period (including the portion thereof occurring prior to such acquisition), determined as if references to Pubco and its Restricted Subsidiaries in Consolidated Net Income and other defined terms herein and therein were to such Person and its Subsidiaries and (y) to exclude the Consolidated EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of by Pubco or any Restricted Subsidiaries during such Measurement Period (or, for any calculation on a Pro Forma Basis, after such Measurement Period), in each case based on the actual Consolidated EBITDA of such Person for such period (including the portion thereof occurring prior to such sale, transfer or disposition), determined as if references to Pubco and its Restricted Subsidiaries in Consolidated Net Income and other defined terms herein and therein were to such Person and its Restricted Subsidiaries.

Notwithstanding anything to the contrary in this definition, capitalized terms used in this definition of "Consolidated EBITDA" and not otherwise defined in this Agreement shall have the meanings specified therefor in the Master Agency Agreement.

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination with respect to any Measurement Period, the ratio of

(a) (i) Consolidated EBITDA for such Measurement Period minus (ii) Capital Expenditures paid in cash during such Measurement Period (but excluding any Financed Capital Expenditures) minus (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash (net of the aggregate amount of Federal, state, local and foreign income tax refunds received in cash or applied to reduce Federal, state, local and foreign income taxes owed) during such Measurement Period, to

(b) Consolidated Fixed Charges for such Measurement Period.

"Consolidated Fixed Charges" means, at any date of determination, with respect to any Measurement Period, the sum of:

(a) Consolidated Interest Charges required to be paid in cash of Pubco and its Restricted Subsidiaries on a Consolidated basis minus the sum (without duplication) of any of the following to the extent deemed to be included in Consolidated Interest Charges payable in cash with respect to such Measurement Period: (x) arrangement, commitment or upfront fees and similar financing fees, original issue discount, and redemption or prepayment premiums, (y) any cash costs associated with breakage or termination in respect of hedging agreements for interest rates and costs and fees associated with obtaining Swap Contracts and fees payable thereunder and (z) transaction fees and expenses directly related to the Transactions required to be paid for such Measurement Period, plus

(b) the principal amount of all scheduled amortization payments or maturity payments which are less than \$200,000,000 and are not Refinanced required to be made in cash by Pubco or any of its Restricted Subsidiaries on account of any long term Indebtedness (excluding the Obligations and any Synthetic Lease Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case determined on a Consolidated basis in accordance with GAAP for such Measurement Period, plus

(c) the principal amount of all regularly scheduled payments or dividends required to be made in cash on any Disqualified Stock of Pubco and its Restricted Subsidiaries for such Measurement Period, plus

(d) solely for purposes of calculating the Consolidated Fixed Charge Coverage Ratio when determining compliance with the Payment Conditions for the making of any Restricted Payment set forth in Section 4.06(e)(i) or (ii) of Annex A of the Master Agency Agreement, the amount of Restricted Payments previously made in cash during such Measurement Period.

“Consolidated Interest Charges” means, for any Measurement Period, (a) the sum of (i) all interest (whether cash or non-cash), premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Contracts, (ii) all interest paid or payable with respect to discontinued operations and (iii) the portion of rent expense with respect to such period under Capital Lease Obligations that is treated as interest in accordance with GAAP minus (b) interest income during such period (excluding any portion of interest income representing accruals of amounts received in a previous period) in each case of or by Pubco and its Restricted Subsidiaries, all as determined on a Consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, as of any date of determination for any Measurement Period, the net income (or loss) of Pubco and its Restricted Subsidiaries, all as determined on a Consolidated basis in accordance with GAAP; provided, that there shall be excluded therefrom (a) the income (or loss) of such Person during such Measurement Period in which any other Person has a joint interest, except to the extent of the amount of cash dividends or other distributions actually paid in cash to such Person during such period, (b) the income of any direct or indirect Restricted Subsidiary of a Person to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary, except that Pubco’s equity in any net loss of any such Restricted Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) the cumulative effect of a change in accounting principles.

“Contractual Obligation” means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“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.

“Control Agreement” means with respect to a “deposit account” (as defined in the UCC) or a “securities account” (as defined in the UCC) established by the Borrower, an agreement, in form and substance reasonably satisfactory to the Agent, establishing control, pursuant to Section 9-104, Section 8-106 of the UCC or other applicable section of the UCC, of such account by the Agent.

“Controlled Account” means each deposit account and each securities account maintained by the Borrower that is subject to a Control Agreement and specified as a “Controlled Account” in Section 6.13, whereby the bank or securities intermediary, as applicable, maintaining such deposit account or securities account agrees at all times after the Agent provides a written notice to such bank or securities intermediary, as applicable, in form reasonably acceptable to the Agent (any such notice, a “Control Notice”), to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

“Corrective Extension Amendment” has the meaning set forth in Section 2.16(d).

“Cost” means the lower of cost or market value of Inventory, using the last-in, first-out retail inventory method based upon the Borrower’s accounting practices, known to the Agent, which practices are in effect on the Closing Date (it being understood that (x) the historical accounting practices of Pubco shall be used for purposes of determining accounting practices of the Borrower in effect on the Closing Date and (y) changes permitted by GAAP will be permitted) as such calculated cost is maintained in Pubco’s books and records and utilized in their financial reporting in accordance with GAAP.

“Covenant Compliance Period” means, at any time on or after April 30, 2021, either that (a) a Specified Event of Default has occurred and is continuing, or (b) Availability plus Suppressed Availability is less than or equal to the greater of (x) \$250,000,000 and (y) ten percent (10%) of the Loan Cap. For purposes hereof, the occurrence of a Covenant Compliance Period shall be deemed continuing (i) so long as such Specified Event of Default exists, and/or (ii) if the Covenant Compliance Period arises as a result of the failure to achieve Availability plus Suppressed Availability as required hereunder, until Availability plus Suppressed Availability has exceeded the greater of (x) \$250,000,000 and (y) ten percent (10%) of the Loan Cap for twenty (20) consecutive Business Days, in which case a Covenant Compliance Period shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Compliance Period as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Period in the event that the conditions set forth in clause (a) or clause (b) of this definition again arise.

“Covered Entity” has the meaning provided in Section 10.26(b).

“Covered Party” has the meaning provided in Section 10.26(a).

“Credit Card Accounts Receivable” means each Account or Payment Intangible (each as defined in the UCC), together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to the Borrower, resulting from charges by a customer of an Operating Company on credit cards processed by such processor or issued by such issuer in connection with the sale by an Operating Company of consigned goods owned by the Borrower or services performed by an Operating Company in relation to consigned goods owned by the Borrower, in each case in the ordinary course of its business.

“Credit Card Accounts Receivable Reserve” means reserves, established by the Agent in its Permitted Discretion, to reflect factors that actually negatively impact the value of Credit Card Accounts Receivable (including for chargeback or other accrued liabilities or offsets by Payment Processors and amounts to adjust for material claims, offsets, defenses or counterclaims or other material disputes with an account debtor).

“Credit Card Issuer” means any person (other than the Borrower) who issues or whose members issue credit cards, including, without limitation, 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, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc. and Novus Services, Inc.

“Credit Extensions” mean each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Credit Party” or “Credit Parties” means (a) individually, (i) each Lender, (ii) the Agent, (iii) each L/C Issuer, (iv) each Arranger, (v) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (vi) any Bank Product Provider or Cash Management Provider, and (b) collectively, all of the foregoing.

“Credit Party Expenses” means, without limitation, (a) all reasonable and documented out-of-pocket expenses incurred by the Agent and its Affiliates in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) Agent Professionals, (C) outside consultants for the Agent, (D) appraisers and (E) commercial finance examiners, (ii) all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (iii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of the Borrower (whether by wire transfer or otherwise), together with any reasonable and documented out-of-pocket costs and expenses incurred in connection therewith, (b) with respect to the L/C Issuers, and their Affiliates (without duplication of the expenses referred to in Section 2.03), all reasonable and documented out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable and documented out-of-pocket expenses incurred by the Credit Parties who are not the Agent, the L/C Issuer or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default, provided, that, the Agent, the L/C Issuers, such Credit Parties and their respective Affiliates shall be entitled to reimbursement for no more than one counsel representing all such Persons (absent a conflict of interest with respect to which the Persons affected by such conflict of interest inform the Borrower in writing of the existence of such conflict of interest prior to retaining additional counsel, one additional counsel for each group of similarly situated Persons).

“Customer Deposits Reserves” means, at any time, reserves equal to the aggregate outstanding amount of customer deposits of the Operating Companies (including layaway obligations) at such time.

“Customs Broker/Carrier Agreement” means an agreement in form and substance reasonably satisfactory to the Agent among the Borrower (or an Operating Company acting as agent on behalf of the Borrower), a customs broker, freight forwarder, consolidator or carrier, and the Agent, in which the customs broker, freight forwarder, consolidator or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, which notice the Agent acknowledges and agrees will not be given unless an Event of Default has occurred and is continuing, to hold and dispose of the subject Inventory solely as directed by the Agent.

“DDA” means each checking, savings or other demand deposit account maintained by the Borrower used to receive deposits of payments in cash or checks from a Store. For the avoidance of doubt, none of the SPE Proceeds Accounts, the SPE Collection Account, the SPE Disbursement Account or the SPE Storage Account shall be deemed to be a DDA for any purpose herein.

“Debt Maturities Reserve” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria or in the Appraised Value, such reserves as may be established from time to time by the Agent for long term indebtedness maturing within forty-five (45) days in respect of which the principal amount of such long term indebtedness is greater than \$100,000,000.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate ~~plus~~ (ii) the Applicable Margin, if any, applicable to Base Rate Loans, plus (iii) 2% per annum; provided, that, with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin for Eurodollar Rate Loans, as applicable, plus 2% per annum.

“Default Right” has the meaning provided in Section 10.26(b).

"Defaulting Lender" means any Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement within one (1) Business Day of the date that it is required to do so under this Agreement (including the failure to make available to the Agent amounts required pursuant to a settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified the Borrower, the Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under this Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by the Agent) under which it has committed to extend credit, (d) failed, within one (1) Business Day after written request by the Agent or the Borrower, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under this Agreement, (e) otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it under this Agreement within one (1) Business Day of the date that it is required to do so under this Agreement, (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (g) becomes the subject of a Bail-In Action.

"Defaulting Lender Rate" means (a) for the first three (3) days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Applicable Margin applicable thereto).

"Disposition" or **"Disposed"** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and whether in one transaction or in a series of transactions) of any property (including, without limitation, any Equity Interests other than Equity Interests of the Borrower) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Disqualified Institution" means any financial institution or other Person identified by name in writing by the Borrower to the Agent (x) prior to the Closing Date with regard to the Revolving Loans and Revolving Commitments or (y) at any time prior to making any Incremental Term Loans, with regard to such Incremental Term Loans, in each case as not constituting an **"Eligible Assignee"**, and any Subsidiary or Affiliate thereof (i) that is identified to the Agent in writing from time to time as being a Subsidiary or Affiliate of such financial institution or other Person or (ii) that is reasonably identifiable on the basis of its name; provided, that such updates shall not apply retroactively to disqualify parties that have previously acquired an assignment or participation interest in the Loans and Commitments. The Agent shall have the right, and the Borrower hereby expressly authorizes the Agent to provide the list of Disqualified Institutions to each Lender requesting the same (so long as such Lender agrees to keep such list confidential). For the avoidance of doubt, the Borrower may, in its sole discretion, remove any entity from the list of Disqualified Institutions.

“Disqualified Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Equity Interests that do not constitute Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or redeemable (other than solely for Equity Interests that do not constitute Disqualified Stock) at the option of the holder thereof, in whole or in part, or provides for mandatory scheduled payments or dividends in cash, on or prior to the date that is ninety-one (91) days after the Maturity Date; provided, that, only the portion of such Equity Interests which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require a Loan Party to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock.

“Dollars” and “\$” mean lawful money of the United States.

“Drawing Document” means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit.

“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, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of \$250,000,000; (c) an Approved Fund; and (d) any other Person assigned pursuant to and in accordance with the terms of Section 10.06(b)(iii); provided, that in no event shall a Disqualified Institution, a Competitor, an Affiliate of the Loan Parties or a natural person constitute an “Eligible Assignee” hereunder.

“Eligible Foreign In-Transit Inventory” means, unless otherwise agreed in the good faith discretion of the Agent and the Borrower, as of any date of determination (without duplication of any other Eligible Inventory), Foreign In-Transit Inventory:

- (a) which has been in transit for sixty (60) days or less from the date of shipment of such Inventory;
- (b) which are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrower’s business;

(c) for which the purchase order is in the name of the Borrower (or a Macy's Party acting as agent on behalf of the Borrower pursuant to the Master Agency Agreement) and title and risk of loss has passed to the Borrower;

(d) for which the document of title reflects the Borrower as consignee or, if requested by the Agent, names the Agent as consignee, and in each case as to which the Agent has control over the documents of title which evidence ownership of the subject Inventory (such as, if requested by the Agent, by the delivery of a Customs Broker/Carrier Agreement);

(e) which is insured to the reasonable satisfaction of the Agent (including, without limitation, marine cargo insurance);

(f) which otherwise would constitute Eligible Inventory; and

(g) which is not being shipped from Bangladesh.

Notwithstanding the foregoing, any Inventory received at a distribution center, warehouse or Store owned or leased by Pubco or any of its Subsidiaries but not yet reflected in the general ledger or stock ledger shall constitute Eligible Inventory (subject to the exclusions set forth in the definition of "Eligible Inventory") and shall not constitute Foreign In-Transit Inventory.

"Eligible Inventory" means, as of the date of determination thereof, without duplication, (I) Eligible Foreign In-Transit Inventory in an amount to not exceed \$150,000,000 and (II) other items of Inventory of the Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrower's business, including in-store closing Inventory that is no longer included in the general ledger or stock ledger to the extent not otherwise excluded hereunder, in each case that, except as otherwise agreed by the Agent, (A) complies in all material respects with each of the representations and warranties respecting Inventory made by the Borrower in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by the Borrower or the Borrower does not have good and valid title thereto;

(b) (i) Inventory that is leased by or is on consignment to the Borrower or (ii) which is consigned by the Borrower to any other Person provided, that this clause (ii) shall not exclude Inventory that is on consignment by the Borrower to an Operating Company pursuant to the Master Agency Agreement, so long as the Borrower has taken such steps that the Agent may reasonably determine to be necessary for the Borrower to perfect its interest and title in such Inventory on consignment;

(c) (i) Inventory that is not located in the United States of America (excluding territories or possessions of the United States) except Eligible Foreign In-Transit Inventory that is otherwise Eligible Inventory; (ii) Inventory that is not located at a location that is owned or leased by the Borrower or a Macy's Entity, except (x) Inventory in transit between locations in the continental United States of America that are owned or leased by the Borrower or a Macy's Entity or (y) to the extent that the Borrower has furnished the Agent with any UCC financing statements or other documents that the Agent may reasonably determine to be necessary to perfect its security interest in such Inventory at such location; provided, that, with respect to any Inventory located at a location that is leased by the Borrower or any Macy's Entity, if reasonably requested by the Agent, the Borrower (or a Macy's Entity) shall have used commercially reasonable efforts to cause the Person owning any such location to enter into a Collateral Access Agreement on terms reasonably acceptable to the Agent (it being understood that the Agent may establish an Availability Reserve in such amounts contemplated in such definition whether or not a Collateral Access Agreement has been requested by the Agent but, for the avoidance of doubt, such Inventory shall still be included as Eligible Inventory, subject to any required Availability Reserves); provided, further that with respect to any Inventory that is located in a distribution center or warehouse that is located in a Landlord Lien State and is leased by a Macy's Party, the Agent shall not request such a Collateral Access Agreement unless the aggregate book value of Inventory at such location is more than \$25,000,000; and (iii) Inventory located in a standalone furniture gallery or furniture clearance center;

(d) Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Loan Parties' customary practices); provided, that (A) obsolete or slow-moving Inventory shall not be deemed ineligible under this clause (e)(iii) to the extent the most recent inventory appraisal delivered to the Agent ascribes a value to such obsolete or slow-moving Inventory, (B) as of the Closing Date, no Inventory acquired pursuant to the Purchase Agreement shall be considered slow moving and (C) no Inventory shall be considered slow-moving to the extent it would not be considered slow-moving but for the impact of COVID-19 (subject to clause (f) below), (iv) custom items, work-in-process, raw materials (but not excluding, for example, blank apparel), or that constitute spare parts, promotional, marketing, samples, labels, bags and other packaging and shipping materials or supplies used or consumed in an Operating Company's business, (v) are not in compliance in all material respects with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, or (vi) are bill and hold goods;

(e) it is Inventory that has been packed-away and stored for more than 12 months at a distribution center, warehouse, or a Store for future sale; or

(f) Inventory that is not subject to a perfected first-priority security interest in favor of the Agent or is subject to any other Lien, other than (i) those permitted by clauses (a), (e), (i) and (j) of the definition of Permitted Encumbrance (and in addition with respect to Eligible Foreign In-Transit Inventory, statutory liens in favor of carriers under clause (b) of the definition of Permitted Encumbrances), (ii) other Permitted Encumbrances arising by operation of law (subject to the Agent's right to establish a Reserve in respect thereof), and (iii) any other Liens permitted under this Agreement; provided, that, in the case of this clause (iii) such Liens are subject to an intercreditor agreement in form and substance reasonably satisfactory to the Agent between the holder of such Lien and the Agent);

(g) Inventory that is not insured in compliance with the provisions of Section 6.07 hereof;

(h) Inventory that has been sold but not yet delivered or as to which a Loan Party has accepted a deposit;

(i) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party (i) for which the agreement expressly prohibits the pledging of such Inventory as collateral, (ii) from which the Borrower, or any Operating Company has received written notice of a dispute in respect of any such agreement that limits the Borrower's or such Operating Company's ability to sell such Inventory or (iii) interferes with the Agent's right to Dispose of such Inventory after the occurrence of an Event of Default; or

(j) Inventory acquired in a Permitted Investment (as defined in the Master Agency Agreement) if the aggregate fair market value of the Inventory of the Borrower acquired in connection with such Permitted Investment exceeds \$100,000,000, until the Agent has completed or received (i) an appraisal of such Inventory from appraisers reasonably satisfactory to the Agent and establishes an advance rate and Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (ii) such other due diligence as the Agent may reasonably require, the results of the foregoing to be reasonably satisfactory to the Agent. The Agent shall use commercially reasonable efforts, at the expense of the Loan Parties, to complete diligence in respect of such Inventory within a reasonable time following request of the Borrower.

"Equipment" has the meaning set forth in the UCC.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code solely for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means: (a) a Reportable Event with respect to a Pension Plan; (b) any failure by any Pension Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 303 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, the failure of a Loan Party to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure of a Loan Party to make any required contribution to a Multiemployer Plan; (d) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension 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 that is treated as such a withdrawal under Section 4062(e) of ERISA; (e) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan; (f) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination of a Pension Plan or a Multiemployer Plan under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (g) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (i) the determination that any Pension Plan is considered to be an "at-risk" plan, or that any Multiemployer Plan is considered to be in "endangered" or "critical" status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 or 305 of ERISA; (j) the engagement by any Loan Party or any ERISA Affiliate in a transaction that would reasonably be expected to be subject to Sections 4069 or 4212(c) of ERISA; or (k) the imposition of a Lien upon any Loan Party pursuant to Section 403(k) of the Code or Section 303(k) of ERISA.

“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.

“Eurodollar Borrowing” means a Borrowing comprised of Eurodollar Rate Loans.

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the 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;

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two (2) London Banking Days prior to such date for U.S. Dollar deposits with a term of one (1) month commencing that day; and

(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed to be 0.75% for purposes of this Agreement.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the Eurodollar Rate.

“Eurodollar Rate Loan Notice” means a notice for a Eurodollar Borrowing or continuation pursuant to Section 2.02(b), which shall be substantially in the form of Exhibit A-2.

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Payments” means (x) credit card receipts or other Payment Processing Accounts Receivable that are proceeds of the sale of any Inventory owned by Bluemercury, (y) any payments related to credit cards or other Payment Processing Accounts Receivable that are not Borrower Proceeds (including, for the avoidance of doubt, profit sharing and bounty payments for new credit card accounts) or (z) amounts owed to any third parties pursuant to sales of Third Party Consigned Inventory, Third Party Licensee Inventory or Vendor Direct Inventory.

“Excluded Swap Obligation” means, with respect to the Parent, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of the Parent of, or the grant by the Parent of a security interest to secure, 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 the Parent’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 the Parent or the grant of such security interest 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.

“Excluded Taxes” means, with respect to the Agent, any Lender or the L/C Issuer, the following: (a) Taxes imposed on or measured by net income or profits (however denominated), branch profits Taxes, and franchise Taxes, in each case (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) that are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed on amounts payable to such Lender with respect to an applicable interest in any Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loans or Commitment (other than pursuant to an assignment request by the Borrower pursuant to Section 3.06(b)) or (ii) such Lender designates a new Lending Office, except, in each case, to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding tax pursuant to Section 3.01(a), (c) Taxes attributable to the failure of the Agent, any Lender or the L/C Issuer to comply with Section 3.01(e) and (d) any withholding Tax imposed under FATCA.

“Executive Order” has the meaning set forth in Section 5.27.

“Existing Credit Agreement” means that certain Credit Agreement dated as of May 9, 2019 among Pubco, Macy’s Retail Holdings, LLC (f/k/a Macy’s Retail Holdings, Inc.), the lenders party thereto, and Bank of America, as administrative agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date).

“Existing L/C Facility” means that certain Amended and Restated Letter of Credit Reimbursements and Collateral Agreement by and among West 34th Street Insurance Company New York, Pubco, Credit Suisse AG, Cayman Islands Branch and Credit Suisse AG, New York Branch dated as of September 20, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date).

“Existing Letters of Credit” means the Letters of Credit listed on Schedule 1.03.

“Existing Revolving Commitment” has the meaning set forth in Section 2.16(a).

“Existing Revolving Loans” has the meaning set forth in Section 2.16(a).

“Existing Revolving Tranche” has the meaning set forth in Section 2.16(a).

“Extended Revolving Commitment” has the meaning set forth in Section 2.16(a).

“Extended Revolving Loans” has the meaning set forth in Section 2.16(a).

“Extended Revolving Tranche” has the meaning set forth in Section 2.16(a).

“Extending Lender” has the meaning set forth in Section 2.16(b).

“Extension Amendment” has the meaning set forth in Section 2.16(b).

“Extension Election” has the meaning set forth in Section 2.16(b).

“Extension Request” has the meaning set forth in Section 2.16(a).

“Facility Guaranty” means the Guaranty, dated of even date herewith, made by the Parent in favor of the Agent, on behalf of the other Credit Parties, in substantially the form of Exhibit H hereto, as the same now exists or may hereafter be amended, restated, amended and restated, supplemented, or otherwise modified.

“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, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letter” means the letter agreement, dated of even date herewith, among the Borrower and the Agent.

“Field Exam” has the meaning set forth in Section 6.10(b).

“FILO Intercreditor Provisions” means the provisions set forth on Exhibit L, or any similar provisions reasonably acceptable to the Agent and the Borrower.

“Financed Capital Expenditures” means, with respect to any Person and for any period, Capital Expenditures made by such Person during such period that are financed with the proceeds of long-term Indebtedness (other than revolving indebtedness) or net proceeds of any Disposition of assets, any casualty event, or any issuance of Equity Interests; provided that, for the avoidance of doubt, Capital Expenditures financed through advances under the Master Intercompany Income Note, shall not be Financed Capital Expenditures.

“Fiscal Month” means any fiscal month of any Fiscal Year, which month shall generally end on the Saturday immediately following the last day of each calendar month in accordance with the fiscal accounting calendar of the Loan Parties.

“Fiscal Quarter” means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the Saturday immediately following the last day of each April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

“Fiscal Year” means any period of twelve (12) consecutive months ending on the Saturday nearest to the last day in January of any calendar year.

“Flip Date” means the date that is the earlier of (a) March 31, 2021 and (b) the date on which (x) the Initial Appraisal and (y) the Initial Field Exam are delivered to the Agent; provided that the Flip Date may not occur unless the Initial Appraisal has been completed and delivered to the Agent.

“Foreign Assets Control Regulations” has the meaning set forth in Section 5.27.

“Foreign In-Transit Inventory” means, as of any date of determination thereof, Inventory which has been shipped for receipt by the Borrower, but which has not yet been delivered to the Borrower.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

“Full Cash Dominion” means any period (a) during which any Specified Event of Default has occurred and is continuing or (b) from (x) the date on which Availability plus Suppressed Availability is less than twelve and one half percent (12.5%) of the Loan Cap for two (2) consecutive Business Days until (y) the date on which Availability plus Suppressed Availability is at least twelve and one half percent (12.5%) of the Loan Cap for thirty (30) consecutive calendar days. The termination of a Full Cash Dominion period as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Full Cash Dominion period in the event that the conditions set forth in clause (a) or clause (b) of this definition again arise.

“Funding and Notice Agent” means Pubco, as a funding and notice agent, together with any successors acting in such capacity.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person 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 such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien; provided, that the term “Guarantee” shall not include endorsements of checks, drafts and other items for the payment of money for collection or deposit, in either case in the ordinary course of business). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Incentive Consignment Commission” means, for any period, fifteen percent (15%) of the gross sales proceeds (adjusted for actual Customer Returns) of all Consigned Inventory sold by the Operating Companies during such period.

“Increase Closing Date” has the meaning provided therefor in Section 2.15(a)(iii).

“Incremental Term Lenders” has the meaning provided therefor in Section 2.15(b)(ii).

“Incremental Term Loan Amendment” has the meaning provided therefor in Section 2.15(b)(v).

“Incremental Term Loan Facility” has the meaning provided therefor in Section 2.15(b)(i).

“Incremental Term Loans” has the meaning provided therefor in Section 2.15(b)(i).

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business, including the Assumed Payables (as defined in the Purchase Agreement));
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness of such Person;
- (g) all obligations of such Person with respect to Disqualified Stock, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venture (but only to the extent of such Indebtedness of such partnership or joint venture for which such Person is liable), unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. For the avoidance of doubt, “Indebtedness” shall exclude (A) payment obligations of the Loan Parties pursuant to the Servicing Agreements (other than the Master Intercompany Purchase Note), including, but not limited to, payments of the Consignment Commission or (B) any capital contribution made by a Macy’s Party to the Loan Parties pursuant to the Master Intercompany Income Note.

“Indemnified Taxes” means (a) Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Independent Manager” means a manager or director of any Loan Party who (a) shall not have been at the time of such Person’s appointment or at any time during the preceding five (5) years and shall not be as long as such person is a director or manager of such Loan Party (i) employed by any Macy’s Entity as an officer, director, partner, manager, member (other than as a special member in the case of single member Delaware limited liability companies) or employee, (ii) a supplier to any Macy’s Entity who derives a material portion of its revenue from its activities with any Macy’s Entity, (iii) a person who Controls or is under common Control with any Person described by the foregoing clauses (i) or (ii), (iv) a beneficial owner of any of the outstanding membership or other Equity Interests of any Macy’s Entity, (v) party to a personal services contract with any Macy’s Entity, from which fees and other compensation received by the person pursuant to such personal services contract would exceed 5% of his, her or its (as applicable) gross revenues during the preceding calendar year; or (vi) a member of the immediate family of any Person described by the foregoing clauses (i) through (v); and (b) is provided by a professional provider of independent directors. To the fullest extent permitted by applicable Law, including the Delaware Limited Liability Company Act as in effect from time to time, any Independent Manager’s fiduciary duty in respect of any decision on any matter requiring the unanimous vote of such Loan Party’s managers or directors (including the Independent Manager), as applicable, shall be to such Loan Party and its creditors rather than solely to such Loan Party’s equity holders. In furtherance of the foregoing, when voting on matters subject to the vote of the directors or managers, including any matter requiring the unanimous vote of any Loan Party’s managers or directors (including the Independent Manager), as applicable, notwithstanding that such Loan Party is not then insolvent, the Independent Manager shall take into account the interests of the creditors of such Loan Party as well as the interests of such Loan Party.

“Information” has the meaning specified in Section 10.07.

“Initial Appraisal” means a new appraisal of the Borrower’s Inventory performed by an independent appraiser (other than the initial desktop appraisal).

“Initial Field Exam” means the initial Field Exam engaged by the Agent; provided that the Initial Field Exam shall be completed within one hundred twenty (120) days of the Closing Date (which date may be extended (x) automatically by sixty (60) days if it is not commercially feasible to conduct a Field Exam within one hundred twenty (120) days of the Closing Date as a result of the COVID-19 pandemic or related events or (y) by the Agent in its sole discretion); provided further, that, the Initial Field Exam shall outline the Inventory Reserves.

“Intellectual Property” means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs), unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; any Loan Party’s rights in any license agreements related to any of the foregoing; all intellectual property rights in books, customer lists, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data and databases related thereto; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date ~~provided, that~~, if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the first calendar day after the end of each calendar quarter and the Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3), or six (6) months thereafter, as selected by the Borrower in its Eurodollar Rate Loan Notice; ~~provided, that~~ that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) 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) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Intermediate Cash Dominion” means any period from (a) the date on which Availability plus Suppressed Availability is less than twenty five percent (25%) of the Loan Cap for three (3) consecutive Business Days until (b) the date on which Availability plus Suppressed Availability is at least twenty five percent (25%) of the Loan Cap for twenty (20) consecutive calendar days. The termination of an Intermediate Cash Dominion period as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Intermediate Cash Dominion period in the event that the conditions set forth in this definition again arise.

“Inventory” has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

“Inventory Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria or in the Appraised Value, such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the saleability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent’s Permitted Discretion, include the Store Closing Reserve and reserves based on (but which are not limited to):

- (a) obsolescence;
- (b) seasonality;
- (c) Shrink;
- (d) imbalance;
- (e) change in Inventory character;
- (f) change in Inventory composition;
- (g) change in Inventory mix;
- (h) markdowns (both permanent and point of sale); and
- (i) retail markons and markups (including changes in pricing strategy and price changes) inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person or (c) an acquisition of Inventory from any Person acquired, directly or indirectly, by a Macy’s Party in an Investment (as defined in the Master Agency Agreement) permitted under the Master Agency Agreement, in each case in any transaction or group of transactions which are part of a common plan. For purposes of covenant compliance, the amount of any Investment shall be the cash amount actually invested, less all cash returns, cash dividends and cash distributions (or the fair market value of any non-cash returns, dividends and distributions) received by such Person in respect of such Investment, and less all liabilities expressly assumed by another Person in connection with the sale of such Investment. Notwithstanding the foregoing, “Investment” shall not include payments required to be made to the Macy’s Parties pursuant to the Servicing Agreements (including any return of capital or distributions of income on the Master Intercompany Income Note).

“IP License” has the meaning specified in the Master Agency Agreement.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, the Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower or in favor of the L/C Issuer and relating to any such Letter of Credit.

“L/C Commitment” means, as to each L/C Issuer, its obligation to make Letters of Credit to the Borrower pursuant to Section 2.03 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such L/C Issuer’s name on Schedule 2.01(a), as such amount may be adjusted from time to time in accordance with this Agreement.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof, or the renewal thereof.

“L/C Issuer” means (a) Bank of America, Credit Suisse AG, Cayman Islands Branch, JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., Fifth Third Bank, National Association, U.S. Bank National Association, PNC Bank, National Association, MUFG Union Bank, N.A., CIT Bank, N.A. and Goldman Sachs Bank USA in their capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (which successor may only be a Lender selected by the Borrower, with the consent of the Agent (not to be unreasonably withheld, conditioned or delayed) and such Lender), (b) with respect to the Existing Letters of Credit and until such Existing Letters of Credit expire or are returned undrawn, Credit Suisse AG, Cayman Islands Branch or Credit Suisse AG, New York Branch, and (c) any other Lender selected by the Borrower, with the consent of the Agent (not to be unreasonably withheld, conditioned or delayed) and such Lender; provided, that no L/C Issuer shall be required to issue any Letter of Credit other than any Standby Letter of Credit unless otherwise agreed by such L/C Issuer in its sole discretion or issue any Letter of Credit in excess of such L/C Issuer’s L/C Commitment unless agreed by such L/C Issuer in its sole discretion. The L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the L/C Issuer and/or for such Affiliate to act as an advising, transferring, confirming and/or nominated bank in connection with the issuance or administration of any such Letter of Credit, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. For purposes of this definition of “L/C Issuer”, Credit Suisse AG, New York Branch shall be deemed to be an Affiliate of Credit Suisse AG, Cayman Islands Branch.

“L/C Obligations” means, as at any date of determination, and without duplication, the aggregate undrawn amount available to be drawn under all outstanding Letters of Credit. For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. 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 any rule under the ISP or any article of the UCP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Landlord Lien State” means such state(s) in which a landlord’s claim for rent may have priority over the Lien of the Agent in any of the Collateral included in the Borrowing Base.

“Laws” means each international, foreign, Federal, state and local statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

“Lease” means any written agreement, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

“Lease and Occupancy Agreement” has the meaning specified in the Master Agency Agreement.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent in writing.

“Letter of Credit” means each Standby Letter of Credit and each Commercial Letter of Credit issued hereunder and shall include the Existing Letters of Credit.

“Letter of Credit Application” means an application for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Disbursement” means a payment made by the L/C Issuer pursuant to a Letter of Credit.

“Letter of Credit Expiration Date” means the day that is seven (7) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(l).

“Letter of Credit Indemnified Costs” has the meaning specified in Section 2.03(f).

“Letter of Credit Related Person” has the meaning specified in Section 2.03(f).

“Letter of Credit Sublimit” means an amount equal to \$500,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments. A permanent reduction of the Aggregate Revolving Commitments shall not require a corresponding *pro rata* reduction in the Letter of Credit Sublimit; provided, that, if the Aggregate Revolving Commitments are reduced to an amount less than the Letter of Credit Sublimit, then the Letter of Credit Sublimit shall be reduced to an amount equal to (or, at Borrower’s option, less than) the Aggregate Revolving Commitments.

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

“LIBOR Successor Rate” has the meaning specified in Section 3.03(a).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Applicable Margin, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters as may be appropriate, in the discretion of the Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Agent determines, in consultation with the Borrower, is reasonably necessary in connection with the administration of this Agreement).

“Lien” means (a) any mortgage, deed of trust, pledge, hypothecation, assignment for security, encumbrance, lien (statutory or other), or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities. For the avoidance of doubt, to the extent any Servicing Agreement shall be deemed to create any Lien on the Borrower’s assets, it shall be a Permitted Encumbrance for purposes of this Agreement.

“Liquidation” means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or “going out of business”, “store closing”, or other similarly themed sale or other disposition of the Collateral for the purpose of liquidating the Collateral.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Revolving Loan, a Swing Line Loan, or an extension of credit by a Lender to the Borrower pursuant to Section 2.15.

“Loan Account” has the meaning assigned to such term in Section 2.11(a).

“Loan Cap” means, at any time of determination, the lesser of (a) the Aggregate Revolving Commitments or (b) the Borrowing Base.

“Loan Documents” means this Agreement, each Note, each Issuer Document, the Fee Letter, all Borrowing Base Certificates, the Control Agreements, the Payment Processor Notifications, the Security Documents, the Facility Guaranty, each Request for Credit Extension and other instrument or agreement now or hereafter executed and delivered in connection herewith (but excluding, for the avoidance of doubt, any instrument or agreement executed and delivered in connection with any Cash Management Services and Bank Products). Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, amendment and restatements, supplements or other modifications thereto.

“Loan Parties” means, collectively, the Borrower and the Parent.

“Macy’s Entities” means Pubco and each of its Subsidiaries, other than the Loan Parties.

“Master Agency Agreement” means the Master Agency, Consignment and Servicing Agreement, dated as of even date herewith, by and among the Borrower, the Operating Companies party thereto from time to time, the Merchandising Subsidiaries party thereto from time to time, FDS Bank, as treasury agent, and Pubco, as funding agent, together with any exhibits, schedules and annexes attached thereto and including any amendments, restatements, amendments and restatements, supplements, replacements or other modifications thereto to the extent not prohibited by the terms of this Agreement.

“Master Agency Agreement Termination Event” means an event giving rise to the Borrower’s right to terminate the Master Agency Agreement pursuant to Section 9.02(a) thereof, after giving effect to all applicable grace periods set forth therein, has occurred and is continuing.

“Master Agreement” has the meaning given in the definition of “Swap Contract”.

“Master Intercompany Income Note” means that certain Master Intercompany Income Note, dated as of even date herewith, by and among Pubco, the Borrower and the Operating Companies party thereto from time to time, together with any exhibits, schedules and annexes attached thereto and including any amendments, restatements, amendments and restatements, supplements, replacements or other modifications thereto to the extent not prohibited by the terms of this Agreement or the Master Agency Agreement.

“Master Intercompany Purchase Note” means, that certain Master Intercompany Purchase Note, dated as of even date herewith, made by the Borrower to the order of Pubco, as the Operating Companies’ designated payee thereof, for allocation to the Operating Companies as consideration for the Purchased Inventory under (and as defined in) the Purchase Agreement, together with any exhibits, schedules and annexes attached thereto and including any amendments, restatements, amendments and restatements, supplements, replacements or other modifications thereto to the extent not prohibited by the terms of this Agreement or the Master Agency Agreement.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business or financial condition of the Loan Parties taken as a whole; (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents; or (c) a material impairment of the rights and remedies of the Agent or any Lender under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of the Loan Documents to which it is a party. Notwithstanding anything in paragraph (a) to the contrary, any change in or effect upon the operations, business or financial condition of any Loan Party thereof substantially and directly relating to the impacts of COVID-19 shall not be considered to be a Material Adverse Effect during the period from and including the Closing Date through and including July 31, 2021.

“Material Indebtedness” means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding \$25,000,000. For purposes of determining the amount of Material Indebtedness at any time, (i) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, and (ii) undrawn committed or available amounts shall be included.

“Maturity Date” means (i) with respect to the Revolving Commitments established on the Closing Date (other than the Bridge Commitments, which shall terminate on the Bridge Commitment Termination Date) that have not been converted to Extended Revolving Commitments pursuant to Section 2.16, May 9, 2024 and (ii) with respect to any other Revolving Commitments (other than the Bridge Commitments, which shall terminate on the Bridge Commitment Termination Date), the final maturity date thereof as specified in the applicable Extension Amendment.

“Maximum FILO Borrowing Base” means at any time (determined by reference to the most recently delivered Borrowing Base Certificate delivered to the Agent pursuant to Section 6.02(b)), an amount equal to the Cost of Eligible Inventory net of Inventory Reserves, multiplied by up to fifteen percent (15%) multiplied by the Appraised Value of such Eligible Inventory.

“Maximum Rate” has the meaning provided therefor in Section 10.09.

“Measurement Period” means, at any date of determination, the most recently completed period of four (4) Fiscal Quarters of Pubco ended on or prior to such time (taken as one accounting period) for which financial statements required pursuant to Section 6.01 have been delivered to the Agent or, solely for the purposes of Section 7.15, for which, financial statements required pursuant to Section 6.01 have been, or are required to be, delivered to the Agent.

“Merchandising Subsidiaries” means, collectively, Macy’s Merchandising Corporation, Macy’s Merchandising Group, Inc., and any Subsidiary of Pubco that is from to time party to the Servicing Agreements as a “Merchandising Subsidiary”.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions if any Loan Party would have liability thereto.

“Non-Consenting Lender” has the meaning provided therefor in Section 10.01.

“Non-Defaulting Lender” means, at any time, each Lender other than a Defaulting Lender.

“Note” means (a) a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans made by such Revolving Lender, substantially in the form of Exhibit C-1, and (b) a promissory note made by the Borrower in favor of a Swing Line Lender evidencing the Swing Line Loans made by such Swing Line Lender, substantially in the form of Exhibit C-2.

“Note Payment Conditions” means, at the time of determination with respect to any specified transaction or payment, the following: that (a) no Specified Event of Default has occurred and is continuing or would arise as a result of entering into such transaction or the making of such payment, (b) the Consolidated Cash Balance does not exceed \$500,000,000 at any time on or after the earlier of (A) September 30, 2020 and (B) the date on which outstanding Revolving Loans exceed \$500,000,000 (after giving effect to the initial Borrowing of Loans on the Closing Date and the other transactions contemplated on the Closing Date) and (c) solely to the extent that the cash proceeds received by Pubco or any of its Subsidiaries pursuant to such transaction or payment will be applied pursuant to a clause under the Master Agency Agreement that is subject to the Payment Conditions set forth in paragraph (u) of the definition of Permitted Dispositions, paragraph (s) of the definition of Permitted Investments and Sections 4.06(e)(i) and (ii) and Section 4.07(e) respectively, in each case in Annex A of the Master Agency Agreement, the Payment Conditions are satisfied.

“Obligations” means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding, and (b) all Other Liabilities; provided, that, the Obligations shall not include any Excluded Swap Obligations.

“Operating Companies” means, collectively, Macy’s Retail Holdings, LLC, Bloomingdale’s, LLC, Bloomingdale’s The Outlet Store, LLC, Bloomingdales.com, LLC, Macy’s Backstage, Inc., Macy’s Florida Stores, LLC, Macy’s West Stores, LLC, Macy’s.com, LLC, Macy’s Corporate Services, LLC, Macy’s Credit and Customer Services, Inc., and any Subsidiary of Pubco that is from to time party to the Servicing Agreements as an “Operating Company”; provided, that in no event shall “Operating Companies” include Bluemercury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party.

“Originating Account” has the meaning specified in Section 6.13(l)(iii).

“Other Connection Taxes” means, with respect to the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Loan Parties hereunder, Taxes imposed as a result of a present or former connection between such Person and the jurisdiction imposing such Tax (other than connections arising from such Person 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 interests in any Loan or Loan Document).

“Other Liabilities” means any obligation on account of (a) any Cash Management Services and/or (b) any Bank Product Obligations.

“Other Taxes” means 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 3.06(b)).

“Outstanding Amount” means (a) with respect to Revolving Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date.

“Overadvance” means a Credit Extension to the extent that, immediately after its having been made, the aggregate amount of Credit Extensions then outstanding would exceed Availability.

“Over-Consignment Reserve” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria or in the Appraised Value, such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the amount of Inventory that has been consigned to the Operating Companies by third parties to the extent such third party consignment would alter the Inventory mix at the Macy’s Parties in a manner that materially and adversely impacts the Lenders.

“Parent” has the meaning specified in the introduction of this Agreement.

“Parent LLC Agreement” means Parent’s limited liability company agreement effective as of May 12, 2020.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Payment Conditions” means, at the time of determination with respect to any specified transaction or payment, the following: that (a) no Specified Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, (b) no Event of Default under Section 5.01(f) to Annex A of the Master Agency Agreement then exists or would arise as a result of entering into such transaction or the making of such payment, and (c) either (i) Availability plus Suppressed Availability is equal to or greater than fifteen percent (15%) of the Loan Cap for the thirty (30) consecutive calendar days preceding such transaction or payment and immediately after giving effect to such transaction or payment or (ii) (x) Availability plus Suppressed Availability is equal to or greater than twelve and one half percent (12.5%) of the Loan Cap for the thirty (30) consecutive calendar days preceding such transaction or payment and immediately after giving effect to such transaction or payment and (y) the pro forma Consolidated Fixed Charge Coverage Ratio for the most recent Measurement Period ended immediately prior to the proposed transaction or payment is at least 1.00 to 1.00.

“Payment Processing Accounts Receivable” means each Account or Payment Intangible (each as defined in the UCC), together with all income, payments and proceeds thereof, owed by a credit or debit card payment processor or an issuer of credit cards or debit cards or any other Person pursuant to any agreement relating to the processing of electronic payments made in any form (other than in-store payments for purchases by cash or check), whether by credit card, debit card, electronic funds transfer or other processing of electronic payments to the Borrower, resulting from charges by a customer of an Operating Company on such credit cards, debit cards, by electronic funds transfer or other processing of electronic payments processed by such processor or any other Person or issued by such issuer in connection with the sale by an Operating Company of Consigned Inventory (as defined in the Master Agency Agreement) owned by the Borrower or services performed by an Operating Company in relation to Consigned Inventory owned by the Borrower, in each case in the ordinary course of its business; provided, that notwithstanding anything to the contrary herein, no Account or Payment Intangible, or any income, payments and proceeds thereof, owed by PayPal Holdings, Inc., any of its Subsidiaries or any similar Payment Processors shall be deemed to be a Payment Processing Accounts Receivable.

“Payment Processing Agreements” means (i) that certain Amended and Restated Credit Card Program Agreement dated as of November 10, 2014 among Pubco, certain of its subsidiaries, FDS Bank, Department Stores National Bank and Citibank, N.A.; (ii) that certain Merchant Services Bankcard Agreement, dated as of July 28, 2006, by and between Federated Retail Holdings, doing business as Macy’s, Bloomingdale’s, Macys.com, Bloomingdales.com, Bloomingdale’s by Mail, Lord & Taylor, David’s Bridal, After Hours Formalwear and Priscilla of Boston, and Fifth Third Bank; (iii) that certain Merchant Services Agreement, dated as of January 1, 2011, by and between DFS Services LLC and Macy’s Credit and Customer Services, Inc.; (iv) that certain Amended and Restated Agreement for American Express® Card Acceptance, dated as of May 1, 2016, by and between American Express Travel Related Services Company, Inc. and Pubco; and (v) any such other agreement relating to the processing of payments made in any form other than in-store payments for purchases by cash or check, whether by credit card, electronic funds transfer or otherwise, entered into from time to time in accordance with the provisions of the Master Agency Agreement, in each case, as any of the foregoing may be amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions of the Master Agency Agreement.

“Payment Processor” means each credit card company or other debit card or other payment processing party that is party from time to time to any Payment Processing Agreement.

“Payment Processor Notification” has the meaning provided in Section 6.13(a)(i)(x).

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCAOB” means the Public Company Accounting Oversight Board.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years if any Loan Party would have liability thereto.

“Permitted Discretion” means, as used in this Agreement with reference to the Agent, a determination made in good faith in the exercise of its reasonable business judgment based on how an asset based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it.

“Permitted Disposition” means any of the following:

(a) Dispositions of Inventory in the ordinary course of business;

(b) so long as no Event of Default exists or would result therefrom, bulk sales or other Dispositions of Inventory of the Borrower not in the ordinary course of business in connection with Store closings or relocations, at arm’s length; provided, that other than Store closings or relocations publicly announced by Pubco prior to the Closing Date, the revenues of such Stores to be closed shall not exceed in any Fiscal Year of Pubco, fifteen percent (15.0%) of the gross revenues of all Stores of the Macy’s Parties and any Restricted Subsidiaries as of the beginning of such Fiscal Year (net of the revenues of new Stores opened during such Fiscal Year), it being understood and agreed that temporary Store closures (including as a result of COVID-19 or any re-branding or refurbishment) shall be excluded from the cap set forth in this proviso,

(c) consignments of Inventory pursuant to and in accordance with the terms of the Master Agency Agreement;

(d) Dispositions consisting of returns or sales of unsold, damaged, obsolete, or non-conforming Inventory in the ordinary course of business, including to a central return center;

(e) Dispositions consisting of the compromise, settlement or collection of accounts receivable in the ordinary course of business, consistent with practices in effect on the Closing Date or otherwise in accordance with then current market practice for similar retailers;

(f) (i) Dispositions of cash and cash equivalents in the ordinary course of business, and (ii) Dispositions constituting Permitted Investments and Restricted Payments permitted under Section 7.06;

(g) Dispositions of assets resulting from any casualty event or any taking of power of eminent domain or by condemnation or similar proceeding;

(h) other Dispositions of assets (excluding Dispositions described in clause (b) above, and Dispositions of Inventory included in the Borrowing Base); provided, that the aggregate fair market value of all assets Disposed of in reliance upon this clause (h) shall not exceed \$20,000,000 during any Fiscal Year of the Borrower;

(i) to the extent constituting Dispositions, Permitted Encumbrances;

(j) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind; and

(k) the unwinding of any Swap Contract pursuant to its terms.

For the avoidance of doubt, transactions which are permitted by Sections 7.01, 7.02, and 7.06 of this Agreement which may be construed to constitute a "Disposition" of property by a Loan Party shall not be prohibited by operation of Section 7.05.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet delinquent for a period of more than thirty (30) days or are being contested in compliance with Section 6.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations (i) that are not overdue by more than thirty (30) days or (ii) where (x) the validity or amount thereof is being contested in good faith by appropriate proceedings, (y) the applicable Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (z) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect;

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

(d) deposits to secure or relating to the performance of trade contracts, statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business or letter of credit guarantees issued in respect thereof;

(e) Liens in respect of judgments, decrees, attachments or awards for payment of money that do not constitute an Event of Default hereunder;

(f) Liens created pursuant to the Loan Documents;

(g) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Permitted Investments provided, that such Liens (i) attach only to such Investments or other Investments held by the applicable broker or dealer and (ii) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(h) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(i) Liens securing the obligations under any Incremental Term Loan Facility;

(j) Liens on goods in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods solely to the extent the following conditions are satisfied (i) the obligations secured are not overdue by more than thirty (30) days or (ii) (A) such Liens secure obligations that are being contested in good faith by appropriate proceedings, and (B) the applicable Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP;

(k) Liens (i) on advances or earnest money deposits in favor of the seller of Inventory to be acquired in any Permitted Investment to be applied against the purchase price for such Inventory, or (ii) consisting of an agreement to transfer any property in a Permitted Disposition;

(l) Liens solely on any cash advances or cash earnest money deposits made by the Borrower in connection with any letter of intent or purchase agreement in respect of Inventory permitted hereunder;

(m) Liens that are contractual rights of set-off relating to purchase orders and other similar agreements in respect of the acquisition of Inventory entered into by the Borrower;

(n) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto incurred in the ordinary course of business;

(o) Liens on property of Loan Parties to secure Indebtedness permitted under clause (i) of the definition of “Permitted Indebtedness”; provided, that if such Liens are on assets that constitute Collateral, the Liens securing such assets are junior to those securing the Obligations and subject at all times to an intercreditor agreement entered into between the Agent and a representative for the holder of the Lien on usual and customary terms and conditions reasonably acceptable to the Agent;

(p) other Liens on assets securing obligations (other than for borrowed money) outstanding in an aggregate principal amount not to exceed \$25,000,000;

(q) Liens or rights of setoff against credit balances of the Borrower with Credit Card Issuers or Payment Processors or amounts owing by such Credit Card Issuers or Payment Processors to the Borrower in the ordinary course of business, but not Liens on or rights of setoff against any other property or assets of the Borrower to secure the obligations of the Borrower to the Credit Card Issuers or Payment Processors as a result of fees and chargebacks; and

(r) to the extent constituting Liens, restrictions in any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party other than any restriction that (i) expressly prohibits the pledging of covered Inventory as collateral, or (ii) interferes with the Borrower’s or any Operating Company’s right to Dispose of any such Inventory (or Agent’s right to Dispose of any such Inventory after the occurrence of an Event of Default).

“Permitted Indebtedness” means each of the following:

(a) any Indebtedness incurred pursuant to an Incremental Term Loan Facility;

(b) obligations (contingent or otherwise) of any Loan Party existing or arising under any Swap Contract; provided, that, such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates relating to this Agreement or the business of the Borrower, and not for purposes of speculation or taking a “market view”;

(c) Indebtedness with respect to the deferred purchase price for any Permitted Investment in connection with the purchase of Inventory;

(d) the Obligations;

(e) Indebtedness constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments in connection with Permitted Investments in connection with the purchase of Inventory or Permitted Dispositions;

(f) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(g) Indebtedness in respect of netting services, overdraft protections and similar arrangements and related liabilities arising from treasury, depository and cash management services, credit card processing services, other credit and debit card programs and/or any automated clearing house transfers of funds in the ordinary course of business (including, without limitation Guarantees of any such obligations) with respect to the Borrower’s accounts;

- (h) to the extent constituting Indebtedness, judgments, decrees, attachments or awards not constituting an Event of Default under Section 8.01(h);
- (i) so long as no Event of Default exists or would result therefrom, other Indebtedness (other than for borrowed money) in an aggregate principal amount not to exceed, at any time outstanding, \$25,000,000;
- (j) Guarantees of Indebtedness otherwise permitted under the definition of “Permitted Indebtedness”;
- (k) to the extent constituting Indebtedness, obligations in respect of customer deposits and advance payments received in the ordinary of course in connection with purchasing of Inventory; and
- (l) unsecured subordinated Indebtedness under the Master Intercompany Purchase Note.

“Permitted Investments” means each of the following:

- (a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition thereof; provided, that, the full faith and credit of the United States of America or such other country, as applicable, is pledged in support thereof;
- (b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated, at the time of acquisition thereof, at least “Prime-2” (or the then equivalent grade) by Moody’s or at least “A-2” (or the then equivalent grade) by S&P, in each case with maturities of not more than one year from the date of acquisition thereof;
- (c) any Investments of the Loan Parties consisting of demand deposits or time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated, at the time of acquisition thereof, as described in clause (b) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, at the time of the acquisition thereof, in each case with maturities of not more than one year from the date of acquisition thereof;
- (d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria, at the time of acquisition thereof, described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, and which invest primarily in one or more of the types of securities described in clauses (a) through (d) above;

(f) an acquisition of Inventory from any Person acquired, directly or indirectly, by Pubco in connection with an Investment (as defined in the Master Agency Agreement) permitted under the Master Agency Agreement;

(g) Investments by the Parent in the Borrower;

(h) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof in the ordinary course of business consistent with current practices in effect on the Closing Date or otherwise in accordance with customary market practice;

(i) Guarantees constituting Permitted Indebtedness;

(j) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(k) [reserved];

(l) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.05 hereof;

(m) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers, in each case in the ordinary course of business or otherwise in accordance with customary market practice;

(n) other Investments in connection with the purchase of Inventory in an aggregate amount outstanding at any time not to exceed \$5,000,000;

(o) Investments consisting of deposits, prepayments and other credits to suppliers in the ordinary course of business in connection with the purchase of Inventory; and

(p) Investments consisting of purchases and acquisitions of Inventory in the ordinary course of business.

“Permitted Overadvance” means an Overadvance made by the Agent, in its reasonable discretion, which:

(a) (i) is made to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; or (ii) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation; or (iii) is made to pay any other amount chargeable to any Loan Party hereunder; and

(b) together with all other Permitted Overadvances then outstanding, shall not (i) exceed an amount equal to five percent (5%) of the Aggregate Revolving Commitments at any time or (ii) unless a Liquidation is occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case, the Required Lenders otherwise agree.

provided, that, the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.03 regarding the Lenders' obligations with respect to Letters of Credit, or Section 2.04 regarding the Lenders' obligations with respect to Swing Line Loans, or (ii) result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; provided, further, that in no event shall the Agent make an Overadvance, (x) if after giving effect thereto, the Total Revolving Exposure would exceed the Aggregate Revolving Commitments (as in effect prior to any termination of the Revolving Commitments pursuant to Section 2.06 or Section 8.02 hereof) or (y) Section 7.15(a) is in effect.

"Permitted Tax Distributions" means, customary payments or distributions to pay the U.S. federal, state and local income or franchise Tax liabilities of any direct or indirect parent, including any consolidated, combined, or unitary group or other similar type of Tax liabilities, to the extent such payments cover Taxes that are attributable to the activities of the Parent or the Borrower.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate, other than a Multiemployer Plan.

"Platform" has the meaning specified in Section 6.02.

"Pre-Increase Lenders" has the meaning specified in Section 2.15(a)(v).

"Priority of Payments Waterfall" has the meaning specified in Section 6.13(j).

"Processing Agreement Amendment" has the meaning specified in Section 6.13(a)(i)(y).

"Pro Forma Financial Information" means the unaudited pro forma Consolidated balance sheet, Consolidated statements of income or operations, and cash flows of the Parent and the Borrower as at February 2, 2020.

"Pubco" means Macy's, Inc., a Delaware corporation.

"Public Lender" has the meaning specified in Section 6.02.

“Purchase Agreement” means that certain Purchase and Sale Agreement, dated as of even date herewith, by and among certain of the Operating Companies, as sellers, and the Borrower, as purchaser.

“QFC” has the meaning provided in Section 10.26(b).

“QFC Credit Support” has the meaning provided in Section 10.26.

“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 effective with respect to such Swap Obligation or such other person as 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 entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate” means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

“Register” has the meaning specified in Section 10.06(c).

“Registered Public Accounting Firm” has the meaning specified by the Securities Laws and shall be independent of the applicable reporting entity and its Subsidiaries as prescribed by the Securities Laws.

“Regulated Entity” means each of (a) as of the Closing Date (i) FDS Bank, a federal savings bank organized under the laws of the United States), and (ii) West 34th Insurance Company New York, a captive insurance company organized under the laws of New York, (b) captive banks, captive insurance companies and other similarly regulated Subsidiaries of Pubco, and (c) each Subsidiary of a Regulated Entity.

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

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to this Agreement.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Reports” has the meaning provided in Section 9.12(b).

“Request for Credit Extension” means (a) with respect to a Borrowing or conversion or continuation of Loans (other than a Swing Line Loan), a written notice to the Agent via a Base Rate Loan Notice or Eurodollar Rate Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application and, if required by the L/C Issuer, a Standby Letter of Credit Agreement or Commercial Letter of Credit Agreement, as applicable, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, the Lender or Lenders holding more than fifty percent (50%) of the Aggregate Revolving Commitments (or, if the Aggregate Revolving Commitments have been terminated, the Total Revolving Exposure); provided, that the Outstanding Amount of Revolving Commitment and Revolving Exposure of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Reserves” means all Inventory Reserves and Availability Reserves.

“Reserves Notice Period” means five (5) Business Days’ prior written notice to the Borrower, except that if a Full Cash Dominion Event has occurred and is continuing, the Reserves Notice Period shall mean any notice period (including no notice) determined by the Agent in its Permitted Discretion to be necessary or desirable to protect the interests of the Credit Parties.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, secretary, assistant secretary, or vice president of a Loan Party (or any individual performing substantially similar functions regardless of his or her title) or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a 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 shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. For the avoidance of doubt, no payments of Indebtedness on the Master Intercompany Purchase Note, or of the Consignment Commission pursuant to the Master Agency Agreement, shall be deemed to be a “Restricted Payment”.

“Restricted Subsidiary” has the meaning specified in the Master Agency Agreement.

“Revolver Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01(a).

“Revolving Commitment” means, as to each Revolving Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01(a), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender’s name on Schedule 2.01(a) or in the Assignment and Assumption pursuant to which such Revolving Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. Revolving Commitments shall include all Commitment Increases, Extended Revolving Commitments and, except as otherwise specified herein (including, without limitation, in Sections 2.03 and 2.04), Bridge Commitments.

“Revolving Exposure” means, at any time, with respect to any Lender (a) the aggregate Outstanding Amount of Revolving Loans of such Lender plus (b) such Lender’s Applicable Percentage of the Outstanding Amount of Swing Line Loans and L/C Obligations at such time.

“Revolving Lender” means a Lender with a Revolving Commitment (including a Bridge Commitment) or Revolving Exposure.

“Revolving Loan” has the meaning specified in Section 2.01(a).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sales Tax Amount” means, for any applicable period, the amount of any sales taxes payable by any of the Operating Companies on the sale of Consigned Inventory sold during such period.

“Sanctioned Country” has the meaning specified in Section 5.27(b).

“Sanctions” has the meaning specified in Section 5.27(b).

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

“Scheduled Payment Date” means the Thursday of each week (or if such day is not a Business Day, the immediately succeeding Business Day).

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(a)(ii).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Indebtedness” means, as of any date, all Indebtedness as of such date that is secured by a Lien.

“Securities Laws” means the Securities Act of 1933, the Exchange Act, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

“Security Agreement” means the Security Agreement, dated as of the Closing Date, in substantially the form of Exhibit I-1 hereto, among the Loan Parties and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed or restated.

“Security Documents” means, collectively, the following: (a) the Security Agreement, (b) the Control Agreements, the Processing Agreement Amendments and the Payment Processor Notifications, (c) the Collateral Assignment Agreement and (d) each other security agreement or other instrument or document executed and delivered by any Loan Party to the Agent pursuant to this Agreement or any other Loan Document granting a Lien, or purporting to grant a Lien, to secure any of the Obligations.

“Servicer Specified Events of Default” means termination of the Master Agency Agreement, any material cessation of the consignment arrangements set forth in the Master Agency Agreement and/or breach of Section 4.03(a) and (b) of the Master Agency Agreement.

“Servicing Agreements” means, collectively, (i) the Master Agency Agreement, (ii) the Purchase Agreement, (iii) the Master Intercompany Purchase Note, (iv) the Master Intercompany Income Note, (v) the IP License and (vi) the Lease and Occupancy Agreement, in each case, together with any exhibits, schedules and annexes attached thereto and including any amendments, restatements, amendments and restatements, supplements or other modifications thereto to the extent not prohibited by the terms of this Agreement.

“Settlement Date” has the meaning provided in Section 2.14(a).

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“SOFR” means, with respect to any day, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“SOFR-Based Rate” means SOFR and Term SOFR.

“Solvent” and “Solvency” with respect to any Person on a particular date, means that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person’s ability to pay as such debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person’s properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

“Specified Event of Default” means the occurrence of any (x) Event of Default (a) arising under any of Sections 8.01(a), 8.01(b) (but only as a result of a failure to comply with Sections 6.02(b), 6.13, 7.11(c), 7.11(d), 7.11(e), 7.11(f) and 7.15), 8.01(c) (but only as a result of a failure to comply with Sections 6.01 and 6.02(a)), 8.01(f), and (b) arising under Section 8.01(d) as a result of any representation or warranty contained in any Borrowing Base Certificate being incorrect or misleading in any material respect or (y) any Servicer Specified Event of Default.

“Specified Existing Revolving Tranche” has the meaning set forth in Section 2.16(a).

“SPE Collection Account” has the meaning specified in Section 6.13(a)(iv)(w). All funds in the SPE Collection Account shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the SPE Collection Account.

“SPE Disbursement Account” has the meaning specified in Section 6.13(a)(iv)(y).

“SPE Proceeds Account” has the meaning specified in Section 6.13(a)(iv)(v).

“SPE Storage Account” has the meaning specified in Section 6.13(a)(iv)(x). All funds in the SPE Storage Account shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in the SPE Storage Account.

“Spot Rate” for a currency means the rate determined by the Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Agent may obtain such spot rate from another financial institution designated by the Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

“Standard Letter of Credit Practice” means, for the L/C Issuer, any domestic or foreign Law or letter of credit practices applicable in the city in which the L/C Issuer issued the applicable Letter of Credit or, for its branch or correspondent, such Laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

“Standby Letter of Credit” means any Letter of Credit that is not a Commercial Letter of Credit.

“Standby Letter of Credit Agreement” means the Standby Letter of Credit Agreement relating to the issuance of a Standby Letter of Credit in the form from time to time in use by the L/C Issuer.

“Stated Amount” means at any time the maximum amount for which a Letter of Credit may be honored.

“Step Down Date” means the date (which shall be after the date of delivery of the financial statements pursuant to Section 6.01(b) for the Fiscal Quarter ending April 30, 2021) after (x) the Borrower delivers financial statements demonstrating that Consolidated EBITDA of Pubco and its Restricted Subsidiaries as of the end of two (2) consecutive Fiscal Quarters was equal to at least seventy-five percent (75.0%) of the consolidated EBITDA for such Fiscal Quarters set forth in the base case model dated April 16, 2020 and delivered to the Arrangers prior to the Closing Date and (y) Availability plus Suppressed Availability was at least thirty percent (30.0%) of the Loan Cap for thirty (30) consecutive days immediately prior to the Step Down Date (which thirty (30) consecutive day period need not be at the end of a Fiscal Quarter).

“Store” means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any of the Operating Companies.

“Store Closing Reserve” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria or in the Appraised Value, such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the amount of Inventory located at any store including within any Closed Store Group; provided, however that such Store Closing Reserve shall only be implemented on Inventory no earlier than five (5) weeks after the commencement of the store closure sale.

“Subordinated Indebtedness” means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is on terms reasonably satisfactory to the Agent.

“Subordinated Notes” means, collectively, the Master Intercompany Purchase Note and the Master Intercompany Income Note.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Loan Party.

“Supermajority Lenders” means, as of any date of determination, the Revolving Lender or Revolving Lenders holding more than sixty-six and two-thirds percent (66 2/3%) of the Aggregate Revolving Commitments or, if the commitment of each Revolving Lender to make Revolving Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Aggregate Revolving Commitments have otherwise terminated or expired, the Revolving Lender or Revolving Lenders holding in the aggregate more than sixty-six and two-thirds percent (66 2/3%) of the Total Revolving Exposure; provided, that, the Revolving Commitment of, and the portion of the Total Revolving Exposure held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Supermajority Lenders.

“Supported QFC” has the meaning provided in Section 10.26.

“Suppressed Availability” means, at any time, the amount, if any, by which the Borrowing Base exceeds the Aggregate Revolving Commitments at such time, but not to exceed the amount equal to 2.5% of the Aggregate Revolving Commitments.

“Swap Contract” means (a) any and all 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 or 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 any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to the Borrower, 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.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America, in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

“Swing Line Sublimit” means an amount equal to \$125,000,000; provided, that if the Aggregate Revolving Commitments are reduced to an amount less than the Swing Line Sublimit, then the Swing Line Sublimit shall be reduced to an amount equal to (or, at Borrower’s option, less than) the Aggregate Revolving Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Aggregate Revolving Commitments is accelerated (or deemed accelerated) and the Aggregate Revolving Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (iii) the termination of the Aggregate Revolving Commitments in accordance with the provisions of Section 2.06(a) hereof.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Agent from time to time in its reasonable discretion.

“Third Party Consigned Inventory” means inventory held by any of the Operating Companies on consignment from parties other than the Borrower.

“Third Party Licensee Inventory” means inventory owned by a Third Party Licensee for sale through Sales Channels in accordance with a Third Party Licensee Arrangement (as such terms are defined in the Master Agency Agreement).

“Total Revolving Exposure” means, at any time, the Revolving Exposure of all Revolving Lenders at such time.

“Trading With the Enemy Act” has the meaning set forth in Section 5.27.

“Tranche” means, with respect to a Loan, its character as a Revolving Loan or an Incremental Term Loan.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“UCC” or “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of New York; ~~provided, that~~, (a) if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9 and (b) that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

“UFCA” has the meaning specified in Section 10.21(d).

“UFTA” has the meaning specified in Section 10.21(d).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unintentional Overadvance” means an Overadvance which, to the Agent’s knowledge, did not constitute an Overadvance when made but which was or has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Borrowing Base, increase in Reserves or misrepresentation by the Loan Parties.

“Unrestricted Cash” means, at any time, the aggregate amount of unrestricted cash and cash equivalents held in accounts of Pubco and its Restricted Subsidiaries (including cash in Store registers, but excluding cash held at a Regulated Entity) that (x) would not appear as “restricted” on a consolidated balance sheet of Pubco or such Restricted Subsidiary (unless such appearance is related to a restriction in favor of the Agent (including by a control agreement)) or (y) are restricted in favor of any Secured Indebtedness permitted under the terms of the Master Agency Agreement (including by a control agreement).

“United States” and “U.S.” mean the United States of America.

“U.S. Special Resolution Regimes” has the meaning provided in Section 10.26.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 3.01(e)(ii)(B)(3).

“Vendor Direct Inventory” means inventory owned and held by a Vendor for sale through Sales Channels and delivered directly to Customers by such Vendor in accordance with a Vendor Direct Sales Arrangement (as such terms are defined in the Master Agency Agreement).

“Vendor Invoices” has the meaning specified in Section 6.13(j).

“Waterfall Payment Date” means (a) at any time when no Cash Dominion Event has occurred and is continuing, each date elected by the Borrower, (b) following the occurrence and during the continuance of Intermediate Cash Dominion, each Scheduled Payment Date, each Interest Payment Date, each other date on which payment of any other Obligations is due under the Credit Agreement and any other date elected by the Borrower, and (c) following the occurrence and during the continuance of Full Cash Dominion, each Business Day.

“Write-Down and Conversion Powers” means, (a) 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 and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein 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, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented, extended or otherwise modified (subject to any restrictions on such amendments, restatements, amendments and restatements, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) 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. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been waived, cured, or otherwise remedied, in accordance with this Agreement.

(b) 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.”

(c) All references to “knowledge” or “awareness” of any Loan Party means the actual knowledge of a Responsible Officer of such Loan Party.

(d) For all purposes hereof, both commercial reasonableness and past or current business practices shall be determined to take into account the effects of COVID-19, and obligations to undertake actions or omissions in the “ordinary course of business” may include commercially reasonable actions or omissions taken in response to COVID-19).

(e) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(f) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations (or words of similar import) shall mean the repayment in Dollars in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Cash Collateralization (or receipt of backstop letters of credit reasonably satisfactory to the L/C Issuer and the Agent)) or other collateral as may be reasonably satisfactory to the Agent, of all of the Obligations other than (i) unasserted contingent indemnification Obligations, and (ii) any Other Liabilities.

(g) Any capitalized terms used herein but not defined herein shall have the meanings specified therefor in the Master Agency Agreement, as in effect on the Closing Date (or as amended to the extent not prohibited by the terms of this Agreement).

Section 1.03 Accounting Terms

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, except as otherwise specifically prescribed herein (including, without limitation, as set forth in the definition of “Capital Lease Obligations”).

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision herein, the accounting for any lease (and whether the obligations thereunder shall be treated as Capital Lease Obligations) shall be based on GAAP as in effect on December 31, 2018 and without giving effect to any subsequent changes in GAAP (or required implementation of any previously promulgated changes in GAAP) relating to the treatment of a lease as an operating lease or a capital lease.

(c) Adoption of International Financial Reporting Standards In the event that the Borrower elects to transition the accounting policies and reporting practices of the Loan Parties from GAAP to the International Financial Reporting Standards pursuant to Section 7.12 hereof, and any such adoption of the International Financial Reporting Standards would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such adoption of the International Financial Reporting Standards (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such adoption of the International Financial Reporting Standards and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such adoption of the International Financial Reporting Standards.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Borrower or the other Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall 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 of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall 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; provided, that, (x) for purposes of calculating any Letter of Credit Fees hereunder, such Letter of Credit Fees shall be calculated on the actual Stated Amount of such Letter of Credit in effect at the time of such calculation, without giving effect to automatic increases which have not yet occurred and (y) for purposes of calculating Commitment Fees under Section 2.09(a), Total Revolving Exposure shall be determined based on the actual Stated Amount of such Letter of Credit in effect at the time of such calculation, without giving effect to automatic increases which have not yet occurred.

Section 1.07 Certifications. All certifications to be made hereunder or in any other Loan Document by an officer or representative of a Loan Party shall be made by such Person in his or her capacity solely as an officer or representative of such Loan Party, on such Loan Party's behalf, and not in such Person's individual capacity.

Section 1.08 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.

Section 1.09 Currency. Unless stated otherwise (i) principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents shall be payable in Dollars and (ii) all calculations, comparisons, measurements or determinations under this Agreement shall be made in Dollars. If the Agent shall receive payment in a currency other than the currency in which the Obligations are due, whether as proceeds or realization of the Collateral or otherwise, then the Agent shall be authorized to convert such amounts at the Spot Rate to the currency in which such Obligations are due for application thereto. All financial statements and Compliance Certificates shall be set forth in Dollars.

ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 Revolving Loans; Reserves.

(a) Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a Revolving Loan) to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Revolving Lender's Revolving Commitment, or (y) such Revolving Lender's Applicable Percentage of the Borrowing Base; subject in each case to the following limitations:

(i) after giving effect to any Revolver Borrowing, the Total Revolving Exposure shall not exceed the Loan Cap;

(i i) after giving effect to any Revolver Borrowing, the Revolving Exposure of any Lender shall not exceed such Lender's Revolving Commitment; and

- (iii) the Outstanding Amount of all L/C Obligations shall not at any time exceed the Letter of Credit Sublimit.

Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(a), prepay under Section 2.05, and reborrow under this Section 2.01(a). Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

- (b) The Inventory Reserves and Availability Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 4.01(c) hereof.

(c) The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves upon the Reserves Notice Period (during which period the Agent shall be available to discuss in good faith any such proposed 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 Reserve or modification no longer exists; provided, that (x) no such prior notice shall be required for Bank Products Reserves, Cash Management Reserves or changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent and customer credit liabilities) and (y) solely for purposes of new Credit Extensions made during the Reserves Notice Period, the Borrowing Base shall be reduced by the amount of any Reserve established or modified immediately upon notice to the Borrower. The amount of any Reserve shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by the Agent in its Permitted Discretion; provided, that the circumstances, conditions, events or contingencies existing or arising prior to the Closing Date and known to the Agent, in each case, prior to the Closing Date, shall, to the extent not reserved for as of the Closing Date, not be the basis for the establishment of any Reserves after the Closing Date, unless such circumstances, conditions, events or contingencies have changed since the Closing Date; provided further, that, for the avoidance of doubt, additional Reserves may be instituted based on the Initial Field Exam and the Initial Appraisal. Promptly after the Agent has knowledge that the event, condition or matter which is the basis for the establishment of a Reserve no longer exists, the Agent shall eliminate such Reserve.

Section 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Revolving Loans (other than Swing Line Loans) shall be either Base Rate Loans or Eurodollar Rate Loans as the Borrower may request subject to and in accordance with this Section 2.02. All Swing Line Loans shall be Base Rate Loans. Subject to the other provisions of this Section 2.02, Revolver Borrowings of more than one Type may be incurred at the same time.

(b) Each request for a Borrowing consisting of a Base Rate Loan shall be made upon the Borrower's irrevocable notice to the Agent, which may be given by (A) telephone, or (B) a Base Rate Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Agent of a Base Rate Loan Notice by 12:00 p.m. on the requested date of such Borrowing, which request shall specify the location and number of the Borrower's account to which funds are to be disbursed (which must be the SPE Storage Account or to the extent no Cash Dominion Event has occurred or is continuing, the SPE Disbursement Account). Each request for a Borrowing consisting of a Eurodollar Rate Loan shall be upon the Borrower's irrevocable notice to the Agent, which may be given by (A) telephone, or (B) a Eurodollar Rate Loan Notice; provided, that any telephonic notice must be confirmed immediately by delivery to the Agent of a Eurodollar Rate Loan Notice, which must be received by the Agent not later than 12:00 p.m. three (3) Business Days prior to the requested date of any Borrowing or continuation of, or conversion into, Eurodollar Rate Loans; provided, that, with respect to the initial Borrowing of Loans on the Closing Date, the request for such Borrowing may be delivered to the Agent at any time prior to 2:00 p.m. one (1) Business Day prior to the Closing Date, and such request may be conditioned upon the occurrence of the Closing Date. Each Eurodollar Rate Loan Notice shall specify (i) the requested date of the Borrowing or continuation, as the case may be (which shall be a Business Day), (ii) the principal amount of Eurodollar Rate Loans to be borrowed or continued (which shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof), (iii) the duration of the Interest Period with respect thereto and (iv) the location of the Borrower's account to which funds are to be disbursed (which must be the SPE Storage Account or to the extent no Cash Dominion Event has occurred or is continuing, the SPE Disbursement Account). If the Borrower fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. On the requested date of any Eurodollar Rate Loan (other than any continuation of any Eurodollar Rate Loan), (i) in the event that Base Rate Loans are outstanding in an amount equal to or greater than the requested Eurodollar Rate Loan, all or a portion of such Base Rate Loans shall be automatically converted to a Eurodollar Rate Loan in the amount requested by the Borrower, and (ii) if Base Rate Loans are not outstanding in an amount at least equal to the requested Eurodollar Rate Loan, the Borrower shall make a written request to the Agent for additional Base Rate Loans in such amount, when taken with the outstanding Base Rate Loans (which shall be converted automatically at such time), as is necessary to satisfy the requested Eurodollar Rate Loan. If the Borrower fails to give a timely notice with respect to any continuation of a Eurodollar Rate Loan, then the applicable Loans shall automatically be continued as a Base Rate Loan, effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loan. If the Borrower requests a conversion to, or continuation of, Eurodollar Rate Loans but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(c) The Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable notice. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Agent shall, as promptly as practicable, make all funds so received available to the Borrower in like funds (and, in any event, shall use commercially reasonable efforts to make all such funds available to the Borrower by no later than 4:00 p.m. on the day of receipt by the Agent) either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Borrower.

(d) The Agent, without the request of the Borrower, may advance any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby; provided, that, notwithstanding the foregoing, Agent shall not, unless an Event of Default has occurred and is continuing, advance any such amounts or payments and/or charge the Loan Account with respect to fees and service charges of third parties (including without limitation, legal fees, field examination fees and appraisal fees) prior to the third (3rd) day after the presentation of such invoices to the Borrower or prior to any other applicable grace period with respect to payment of other charges and amounts as set forth in this Agreement. The Agent shall advise the Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrower's obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans (unless and until converted by the Borrower to one (1) or more Eurodollar Rate Loans).

(e) A Eurodollar Rate Loan may be continued or converted on a day other than the last day of the Interest Period for such Eurodollar Rate Loan, subject to the Borrower making any payments required under Section 3.05. During the existence of an Event of Default, upon the request of the Required Lenders, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans.

(f) The Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to Eurodollar Rate Loans at any one time.

(h) The Agent, the Revolving Lenders, the Swing Line Lender and the L/C Issuer shall have no obligation to make any Revolving Loan or to provide any Letter of Credit if an Overadvance would result. The Agent may, in its discretion, make Permitted Overadvances (i) without the consent of the Lenders, the Swing Line Lender or the L/C Issuer but (ii) with the consent of the Borrower (unless an Event of Default has occurred and is continuing, in which case the consent of the Borrower shall not be required), and, in each case, the Borrower and each Lender shall be bound thereby. Any Permitted Overadvance may, at the option of the Agent, constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrower and shall constitute a Base Rate Loan and an Obligation and shall be repaid by the Borrower in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding.

Section 2.03 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, upon the request of the Borrower made in accordance herewith, and prior to the Maturity Date, the L/C Issuer agrees to issue a requested Letter of Credit for the account of the Loan Parties (including in their capacity as agent for the Macy's Parties under the Master Agency Agreement). By submitting a request to the L/C Issuer for the issuance of a Letter of Credit, the Borrower shall be deemed to have requested that the L/C Issuer issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be irrevocable and shall be made in writing pursuant to a Letter of Credit Application by a Responsible Officer and delivered to the L/C Issuer and the Agent via telefacsimile or other electronic method of transmission reasonably acceptable to the L/C Issuer not later than 12:00 p.m. at least two (2) Business Days (or such later date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the L/C Issuer and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as the Agent or the L/C Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that the L/C Issuer generally requests for Letters of Credit in similar circumstances. The Agent's records of the content of any such request will be conclusive.

(b) The L/C Issuer shall have no obligation to issue a Letter of Credit if, after giving effect to the requested issuance, (i) the Total Revolving Exposure would exceed the Loan Cap, (ii) the Revolving Exposure of any Revolving Lender would exceed such Revolving Lender's Revolving Commitment, or (iii) the Outstanding Amount of the L/C Obligations would exceed the Letter of Credit Sublimit;

(c) In the event there is a Defaulting Lender with Revolving Commitments as of the date of any request for the issuance of a Letter of Credit, the L/C Issuer shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's participation with respect to such Letter of Credit may not be reallocated pursuant to Section 9.16(b), or (ii) the L/C Issuer has not otherwise entered into arrangements reasonably satisfactory to it and the Borrower to eliminate the L/C Issuer's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include the Borrower Cash Collateralizing such Defaulting Lender's participation with respect to such Letter of Credit in accordance with Section 9.16(b). Additionally, the L/C Issuer shall have no obligation to issue a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit or request that the L/C Issuer refrain from the issuance of letters of credit generally or such Letter of Credit in particular, or (B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally, or (C) if the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless either such Letter of Credit is Cash Collateralized on or prior to the date of issuance of such Letter of Credit (or such later date as to which the Agent may agree, if agreed to by the L/C Issuer, in the L/C Issuer's sole discretion so long as the Borrower agrees to, and executes any and all documents deemed necessary by the L/C Issuer to Cash Collateralize such Letter of Credit on or prior to the Letter of Credit Expiration Date) or all the Revolving Lenders have approved such expiry date.

(d) Any L/C Issuer (other than Bank of America or any of its Affiliates) shall notify the Agent in writing no later than the Business Day immediately following the Business Day on which such L/C Issuer issued any Letter of Credit; provided, that (i) until the Agent advises any such L/C Issuer that any conditions precedent set forth in Section 4.02 are not satisfied (to the extent not waived), or (ii) unless the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by the Agent and such L/C Issuer, such L/C Issuer shall be required to so notify the Agent in writing only once each week of the Letters of Credit issued by such L/C Issuer during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as the Agent and such L/C Issuer may agree. The Borrower and the Credit Parties hereby acknowledge and agree that all Existing Letters of Credit shall constitute Letters of Credit under this Agreement on and after the Closing Date with the same effect as if such Existing Letters of Credit were issued by the applicable L/C Issuer at the request of the Borrower on the Closing Date. Each Letter of Credit shall be in form and substance reasonably acceptable to the L/C Issuer, including the requirement that the amounts payable thereunder must be payable in Dollars; provided, that, if the L/C Issuer, in its discretion, issues a Letter of Credit denominated in a currency other than Dollars, all reimbursements by the Borrower of the honoring of any drawing under such Letter of Credit shall be paid in Dollars based on the Spot Rate. If the L/C Issuer makes a payment under a Letter of Credit, the L/C Issuer shall notify the Borrower and the Agent in writing of such payment, and the Borrower shall pay to the Agent an amount equal to the applicable Letter of Credit Disbursement no later than one (1) Business Day following receipt of such notice and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 4.02 hereof) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, the Borrower's obligation to pay the amount of such Letter of Credit Disbursement to the L/C Issuer shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by the Agent of any payment from the Borrower pursuant to this paragraph, the Agent shall distribute such payment to the L/C Issuer or, to the extent that the Revolving Lenders have made payments pursuant to Section 2.03(e) to reimburse the L/C Issuer, then to such Revolving Lenders and the L/C Issuer as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.03(d), each Revolving Lender agrees to fund its Applicable Percentage of any Revolving Loan deemed made pursuant to Section 2.03(d) on the same terms and conditions as if the Borrower had requested the amount thereof as a Revolving Loan and the Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Revolving Lenders. By the issuance of a Letter of Credit (or an amendment, renewal, or extension of a Letter of Credit) and without any further action on the part of the L/C Issuer or the Revolving Lenders, the L/C Issuer shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by the L/C Issuer, in an amount equal to its Applicable Percentage of such Letter of Credit, and each such Revolving Lender agrees to pay to the Agent, for the account of the L/C Issuer, such Revolving Lender's Applicable Percentage of any Letter of Credit Disbursement made by the L/C Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of the L/C Issuer, such Revolving Lender's Applicable Percentage of each Letter of Credit Disbursement made by the L/C Issuer and not reimbursed by the Borrower on the date due as provided in Section 2.03(d), or of any reimbursement payment that is required to be refunded (or that the Agent or the L/C Issuer elects, based upon the advice of counsel, to refund) to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to the Agent, for the account of the L/C Issuer, an amount equal to its respective Applicable Percentage of each Letter of Credit Disbursement pursuant to this Section 2.03(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of a Default or Event of Default or the failure to satisfy any condition set forth in Section 4.02 hereof. If any such Revolving Lender fails to make available to the Agent the amount of such Revolving Lender's Applicable Percentage of a Letter of Credit Disbursement as provided in this Section 2.03(e), such Revolving Lender shall be deemed to be a Defaulting Lender and the Agent (for the account of the L/C Issuer) shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Borrower agrees to indemnify, defend and hold harmless each Credit Party (including the L/C Issuer and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including the L/C Issuer, a "Letter of Credit Related Person") (to the fullest extent permitted by Law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any such Letter of Credit Related Person (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

- (i) any Letter of Credit or any pre-advice of its issuance;
- (ii) any transfer, sale, delivery, surrender or endorsement of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;
- (iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;
- (iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

- (v) any unauthorized instruction or request made to the L/C Issuer in connection with any Letter of Credit or requested Letter of Credit or error in computer or electronic transmission;
- (vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;
- (vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;
- (viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;
- (ix) the L/C Issuer's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation; or
- (x) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person;

in each case, including that resulting from the Letter of Credit Related Person's own negligence; provided, that, such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (x) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence, bad faith or willful misconduct of the Letter of Credit Related Person claiming indemnity. The Borrower hereby agrees to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.03(f). If and to the extent that the obligations of the Borrower under this Section 2.03(f) are unenforceable for any reason, the Borrower agrees to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable Law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of the L/C Issuer (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by the Borrower (or its Affiliates, as applicable) that are caused directly by the L/C Issuer's gross negligence, bad faith or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit, or (iii) retaining Drawing Documents presented under a Letter of Credit. The L/C Issuer shall be deemed to have acted with due diligence and reasonable care if the L/C Issuer's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. The Borrower's (or its Affiliates', as applicable) aggregate remedies against the L/C Issuer and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by the Borrower to the L/C Issuer in respect of the honored presentation in connection with such Letter of Credit under Section 2.03(d), plus interest at the rate then applicable to Base Rate Loans hereunder. The Borrower shall (or shall cause its Affiliates, as applicable, to) take action to avoid and mitigate the amount of any damages claimed against the L/C Issuer or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by the Borrower (or its Affiliates, as applicable) under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by the Borrower as a result of the breach or alleged wrongful conduct complained of; and (y) the amount (if any) of the loss that would have been avoided had the Borrower taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing the L/C Issuer to effect a cure.

(h) The Borrower shall be responsible for preparing or approving the final text of the Letter of Credit as issued by the L/C Issuer, irrespective of any assistance the L/C Issuer may provide such as drafting or recommending text or by the L/C Issuer's use or refusal to use text submitted by the Borrower. The Borrower is solely responsible for the suitability of the Letter of Credit for the Borrower's (or its Affiliates', as applicable) purposes. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, the L/C Issuer, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if the Borrower does not at any time want such Letter of Credit to be renewed, the Borrower will so notify the Agent and the L/C Issuer at least fifteen (15) calendar days before the L/C Issuer is required to notify the beneficiary of such Letter of Credit or any advising bank of such nonrenewal pursuant to the terms of such Letter of Credit.

(i) The Borrower's reimbursement and payment obligations under this Section 2.03 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit or this Agreement or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) the L/C Issuer or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

(iv) the L/C Issuer or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary, any assignee of proceeds, the L/C Issuer or any other Person;

(vi) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.03(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Borrower's reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against the L/C Issuer, the beneficiary or any other Person; or

(vii) the fact that any Default or Event of Default shall have occurred and be continuing;

provided, that, subject to Section 2.03(g) above, the foregoing shall not release the L/C Issuer from such liability to the Borrower (or its Affiliates, as applicable) as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against the L/C Issuer following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of the Borrower to the L/C Issuer arising under, or in connection with, this Section 2.03 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, the L/C Issuer and each other Letter of Credit Related Person (if applicable) shall not be responsible to any Loan Party for, and the L/C Issuer's rights and remedies against the Loan Parties and the obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than the L/C Issuer's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that the L/C Issuer in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to the Borrower;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and the Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where the L/C Issuer has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by the L/C Issuer if subsequently the L/C Issuer or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by the L/C Issuer to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons;

provided, that, the foregoing shall not release the L/C Issuer or any other Letter of Credit Related Person from liability with respect to actions referred to in Sections 2.03(j)(i) through (vii) and (xii) (subject to the limitations on liability of L/C Issuer in Section 2.03(g)) to the Borrower (or its Affiliates, as applicable), to the extent determined pursuant to a final non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of the L/C Issuer or such other Letter of Credit Related Person.

(k) Upon the request of the Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Obligation that remains outstanding, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, within one (1) Business Day after such request, Cash Collateralize the then Outstanding Amount of all L/C Obligations. Sections 2.05 and 8.02(iii) set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this Section 2.03, Section 2.05 and Section 8.02(iii), “Cash Collateralize” means to pledge and deposit with or deliver to the Agent, for the benefit of the L/C Issuer and the Revolving Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to one hundred three percent (103%) of the Outstanding Amount of all L/C Obligations (other than L/C Obligations with respect to Letters of Credit denominated in a currency other than Dollars, which L/C Obligations shall be Cash Collateralized in an amount equal to one hundred five percent (105%) of the Outstanding Amount of such L/C Obligations), pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer (which documents are hereby consented to by the Revolving Lenders). The Borrower hereby grants to the Agent a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America except that Permitted Investments of the type listed in clauses (a) through (e) of the definition thereof may be made at the request of the Borrower at the option and in the sole discretion of the Agent (and at the Borrower’s risk and expense), in which case, interest or profits, if any, on such investments shall accumulate in such account. If at any time the Agent reasonably determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer and, to the extent not so applied, shall thereafter be applied to satisfy other Obligations. To the extent the amount of Cash Collateral then being held by the Agent exceeds the amount required to be held as set forth above, the Agent shall promptly return such excess Cash Collateral to the Borrower.

(l) The Borrower shall pay to the Agent for the account of each Revolving Lender in accordance with its Applicable Percentage a Letter of Credit fee (the “Letter of Credit Fee”) for each Letter of Credit equal to the Applicable Margin in respect of Eurodollar Rate Loans (then in effect) times the daily Stated Amount under each such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of the Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first day after the end of each Fiscal Quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, and after the Letter of Credit Expiration Date, on demand, and (ii) computed on a quarterly basis (for the calendar quarter then ended) in arrears and shall be charged to the Borrower in accordance with Section 2.02(d).

(m) In addition to the Letter of Credit Fees as set forth in Section 2.03(l) above, the Borrower shall pay to the Agent for the account of the L/C Issuer as non-refundable fees, commissions, and charges: (i) a fronting fee which shall be imposed by the L/C Issuer upon the issuance of each Letter of Credit of 0.125% per annum of the face amount thereof, plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, the L/C Issuer, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit. Such amounts shall be (A) due and payable on the first day after the end of each calendar quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, and after the Letter of Credit Expiration Date, on demand, and (B) computed on a quarterly basis in arrears and shall be charged to the Borrower in accordance with Section 2.02(d); provided, that, the fees and other charges referred to in clause (m)(ii) above, shall be due and payable when presented to the Agent by the L/C Issuer or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit.

(n) Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP or the UCP shall apply to each Standby Letter of Credit, as selected, and (ii) the rules of the UCP shall apply to each Commercial Letter of Credit.

(o) The L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(p) In the event of a direct conflict between the provisions of this Section 2.03 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.03 shall control and govern.

(q) Notwithstanding anything in the foregoing to the contrary, for purposes of this Section 2.03 (other than clause (b) above), all references to the Revolving Lenders shall exclude Revolving Lenders holding Bridge Commitments (but solely to the extent of such Bridge Commitments), all references to the Revolving Commitments shall exclude Bridge Commitments, and the Applicable Percentage shall be calculated without taking into account the Bridge Commitments. Without limiting the generality of the foregoing, it is understood and agreed that (i) no Revolving Lender with Bridge Commitments shall be required to fund any Revolving Loan deemed made pursuant to Section 2.03(d) in respect of such Bridge Commitments, (ii) no Revolving Lender with Bridge Commitments shall be deemed to have purchased a participation in any Letter of Credit issued by the L/C Issuer or will be required to pay any amounts in respect of any Letter of Credit Disbursement made by the L/C Issuer under any Letter of Credit, in each case, in respect of such Bridge Commitments, and (iii) no Revolving Lender shall be entitled to any fees under this Section 2.03 in respect of such Bridge Commitments.

(r) The Borrower may request a Letter of Credit on behalf of any Macy's Party; provided, that the Borrower acknowledges and agrees that, notwithstanding anything to the contrary in any Letter of Credit Application or any Letter of Credit requested pursuant to or issued under this Agreement which may state or indicate that the "Account Party", "Applicant", "Requesting Party" or any similar designation with respect to such Letter of Credit is a Person other than the Borrower, the Borrower is and shall at all times remain the "Applicant" (as defined in Section 5-102(a) of the UCC) with respect to each Letter of Credit issued by any L/C Issuer under this Agreement.

Section 2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender may, in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.04, make loans (each such loan, a “Swing Line Loan”) to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Swing Line Lender, may exceed the amount of such Revolving Lender’s Revolving Commitment; provided, that after giving effect to any Swing Line Loan, (i) the Total Revolving Exposure shall not exceed the Loan Cap, and (ii) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Revolving Lender’s Revolving Commitment; provided, further, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest at the rate applicable to Base Rate Loans. Immediately upon the making of a Swing Line Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Lender’s Applicable Percentage times the amount of such Swing Line Loan. The Swing Line Lender shall have all of the benefits and immunities (A) provided to the Agent in Article IX with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with Swing Line Loans made by it or proposed to be made by it as if the term “Agent” as used in Article IX included the Swing Line Lender with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Swing Line Lender.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower’s irrevocable notice to the Swing Line Lender and the Agent, which may be given by telephone provided that any telephonic notice must be promptly confirmed by delivery to the Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Agent not later than 12:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$1,000,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Agent (by telephone or in writing) that the Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Agent at the request of the Required Lenders prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied (and such condition or conditions have not been waived), then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower at its office by crediting the account of the Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion shall request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Lender (including the Swing Line Lender) make a Base Rate Loan in an amount equal to such Revolving Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing by Swing Line Lender to the Agent no less frequently than once each week (or more frequently at Swing Line Lender's discretion) in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Loan Cap and the conditions set forth in Section 4.02. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount of such outstanding Swing Line Loan available to the Agent in immediately available funds for the account of the Swing Line Lender at the Agent's Office not later than 1:00 p.m. on the day specified by the Swing Line Lender, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Agent shall remit the funds so received to the Swing Line Lender.

(i i) If for any reason any Swing Line Loan cannot be refinanced by such a Revolver Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Lender's payment to the Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Agent, for the account of the Swing Line Lender, any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Lender's Revolving Loan included in the relevant Revolver Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Revolving Lender (through the Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, that, each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

(g) Revolving Lenders with Bridge Commitments. Notwithstanding anything in the foregoing to the contrary, for purposes of this Section 2.04 (other than the first proviso in the first sentence of clause (a) above), all references to the Revolving Lenders shall exclude Revolving Lenders holding Bridge Commitments (but solely to the extent of such Bridge Commitments), all references to the Revolving Commitments shall exclude Bridge Commitments, and the Applicable Percentage shall be calculated without taking into account the Bridge Commitments. Without limiting the generality of the foregoing, it is understood and agreed that (i) no Revolving Lender with Bridge Commitments shall be required to fund any Revolving Loan under this Section 2.04 in respect of such Bridge Commitments, (ii) no Revolving Lender with Bridge Commitments shall be deemed to have purchased a risk participation in any Swing Line Loan made by the Swing Line Lender in respect of such Bridge Commitments, and (iii) no Revolving Lender shall be entitled to any fees or interest under this Section 2.04 in respect of Bridge Commitments.

Section 2.05 Prepayments.

(a) The Borrower may, upon irrevocable (except in connection with a termination of Aggregate Revolving Commitments as set forth in Section 2.06 below) notice from the Borrower to the Agent, at any time or (without limiting Section 6.13) from time to time voluntarily prepay the Loans (other than Swing Line Loans, which are covered in clause (b) below) in whole or in part without premium or penalty; provided, that (i) such notice must be received by the Agent not later than 12:00 p.m. (A) two (2) Business Days prior to any date of prepayment of Eurodollar Rate Loans (or such shorter period as Agent may agree in its reasonable discretion) and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; provided, further, that such notice delivered by the Borrower may state that such notice is conditioned on the funding or consummation of any transaction or transactions specified therein (including, without limitation, any sale or disposition of Collateral or the closing of any other financing transaction). Each such notice shall specify the date and amount of such prepayment, the Tranche(s) of Loans to be prepaid, the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Loans of the applicable Lenders in accordance with their respective Applicable Percentages. If the Borrower shall fail to specify the Type(s) of Loans to be prepaid, then such prepayment shall be applied first to Base Rate Loans, second to Eurodollar Rate Loans. If the Borrower shall fail to specify the Interest Period(s) of the Loans to be prepaid, then such prepayment shall apply in direct order of Interest Payment Dates.

(b) Upon irrevocable (except in connection with a termination of Aggregate Revolving Commitments as set forth in Section 2.06 below) notice from the Borrower to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, Borrower shall voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided, that (i) such notice must be received by the Swing Line Lender and the Agent not later than 12:00 p.m. on the date of the prepayment, (ii) any such prepayment shall be in a minimum principal amount of \$100,000 (or, if less, the entire remaining principal balance thereof) and (iii) such notice delivered by the Borrower may state that such notice is conditioned on the funding or consummation of any transaction or transactions specified therein (including, without limitation, any sale or disposition of Collateral or the closing of any other financing transaction). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason (i) the Total Revolving Exposure at any time exceeds the Loan Cap then in effect or (ii) (A) the Consolidated Cash Balance exceeds \$500,000,000 at any time on or after the earlier of (x) September 30, 2020 and (y) the date on which outstanding Revolving Loans exceed \$500,000,000 (after giving effect to any Borrowing of Loans on the Closing Date and the other transactions contemplated on the Closing Date) and (B) Total Revolving Exposure is greater than \$0, the Borrower shall promptly (and in any event within one (1) Business Day) prepay Revolving Loans, Swing Line Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount, in each case, equal to such excess; provided, that, the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Revolving Loans and Swing Line Loans the Total Revolving Exposure exceeds the Loan Cap (and any such Cash Collateralization shall only be required with respect to such additional amount).

(d) The Borrower shall prepay the Revolving Loans and Cash Collateralize the L/C Obligations with the proceeds and collections received by the Loan Parties to the extent so required under the provisions of Section 2.03 and Section 6.13 hereof.

(e) Prepayments made pursuant to Section 2.05(c) and (d) above, first, shall be applied to the Swing Line Loans; second, shall be applied ratably to the outstanding Revolving Loans (including Revolving Loans made in respect of Bridge Commitments) (first to Base Rate Loans and then to Eurodollar Rate Loans); third, shall be used to Cash Collateralize the remaining L/C Obligations; and, fourth, the amount remaining, if any, after the prepayment in full of all Swing Line Loans and Revolving Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the L/C Issuer or the Lenders, as applicable.

(f) Prepayments of Revolving Loans made pursuant to this Section 2.05 shall not reduce the Aggregate Revolving Commitments hereunder.

Section 2.06 Termination or Reduction of Commitments

(a) The Borrower may, upon irrevocable (except as set forth below) notice from the Borrower to the Agent, terminate the Aggregate Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit or from time to time (without affecting its rights pursuant to Section 2.15) permanently reduce the Aggregate Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided, that (i) any such notice shall be received by the Agent not later than 12:00 p.m. one (1) Business Day prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce (A) the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Exposure would exceed the Aggregate Revolving Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, and (C) the Swing Line Sublimit if, after giving effect thereto, and to any concurrent payments hereunder, the Outstanding Amount of Swing Line Loans hereunder would exceed the Swing Line Sublimit; provided, further, that such notice delivered by the Borrower may state that such notice is conditioned on the funding or consummation of any transaction or transactions specified therein (including, without limitation, any sale or disposition of Collateral or the closing of any other financing transaction).

(b) If, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Commitments, such Letter of Credit Sublimit or Swing Line Sublimit shall be automatically reduced by the amount of such excess.

(c) The Agent will promptly notify the Revolving Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Aggregate Revolving Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, Commitment Fees and Letter of Credit Fees) and interest in respect of the Aggregate Revolving Commitments accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination. If, as a result of such termination or reduction, (i) the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, the Borrower shall, contemporaneously with such reduction or termination, Cash Collateralize such excess amount, and (ii) the Revolving Loans or the Swing Line Loans hereunder would exceed the Aggregate Revolving Commitments or the Swing Line Sublimit, as applicable, the Borrower shall contemporaneously with such reduction or termination, pay the Agent, for the benefit of the Revolving Lenders, an amount equal to such excess.

(d) On the Bridge Commitment Termination Date, (x) the Bridge Commitments of each Revolving Lender shall be permanently reduced to \$0 and (y) the Borrower shall repay all Revolving Loans outstanding pursuant to the Bridge Commitments, which repayment may be made through a Revolver Borrowing in accordance with Section 2.02. All fees (including, without limitation, Commitment Fees) and interest in respect of the Aggregate Bridge Commitments accrued until the Bridge Commitment Termination Date shall be paid on the Bridge Commitment Termination Date. If, as a result of such reduction, the Revolving Loans hereunder would exceed the Aggregate Revolving Commitments in effect as of the Bridge Commitment Termination Date, the Borrower shall contemporaneously with such reduction or termination, pay the Agent, for the benefit of the Revolving Lenders with Bridge Commitments, an amount equal to such excess.

Section 2.07 Repayment of Loans.

(a) The Borrower shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of Revolving Loans outstanding on such date.

(b) To the extent not previously paid, the Borrower shall repay the outstanding balance of the Swing Line Loans on the Termination Date.

(c) On the Termination Date, the Borrower shall Cash Collateralize the L/C Obligations, and, if required pursuant to Section 10.11 hereof, the Other Liabilities, in each case outstanding as of such date in accordance with the terms hereof.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Margin; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) (i) If any amount payable under any Loan Document is not paid when due (after giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws for so long as such Event of Default is continuing.

(ii) If an Event of Default exists under Section 8.01(f), then all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law for so long as such Event of Default is continuing.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees. In addition to certain fees described in subsections (l) and (m) of Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Agent, for the account of each Revolving Lender (other than a Defaulting Lender) in accordance with its Applicable Percentage of the Aggregate Revolving Commitments, a commitment fee (the "Commitment Fee") calculated on a per annum basis equal to (i) the Applicable Commitment Fee Percentage times (ii) the daily averages by which the Aggregate Revolving Commitments (excluding the Revolving Commitment of any Defaulting Lender) exceed the Total Revolving Exposure; provided, that, for purposes of calculating any Commitment Fee hereunder, such Commitment Fee shall be calculated without giving effect to automatic increases to the Stated Amount of Letters of Credit which have not yet occurred when determining Total Revolving Exposure. The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the Closing Date (i.e., July 1, 2020), and on the last day of the Availability Period. The Commitment Fee shall be calculated quarterly in arrears. Outstanding Swing Line Loans will not be considered in the calculation of the Commitment Fee.

(b) Other Fees. The Borrower shall pay to the Agent fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.10 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year (or 365 or 366 days, as the case may be, in the case of Base Rate Loans) and actual days elapsed. Interest shall accrue on each outstanding Loan beginning, and including the day on which the such Loan is made and until (but not including) the day on which such Loan or such portion thereof, for the day on which the Loan or such portion is paid; provided, that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Tranche, Type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrower will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

Section 2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Subject to Section 2.14 hereof, the Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m., at the option of the Agent, shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue until such next succeeding Business Day. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by the Agent. Unless the Agent shall have received notice from a Lender prior to (A) the proposed date of any Borrowing of Eurodollar Rate Loans (or in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) or (B) the date that such Lender's participation in a Letter of Credit or Swing Line Loan is required to be funded, that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender (on demand) and, after giving effect to any reallocation under Section 9.16, the Borrower (within two (2) Business Days after demand) severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Revolver Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Agent.

(c) Payments by the Borrower; Presumptions by the Agent. Unless the Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Agent, for the account of the Lenders or the L/C Issuer hereunder, that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds 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 Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment hereunder.

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Obligations greater than its *pro rata* share thereof (or other amount to which it is entitled) as provided herein (including as in contravention of the priorities of payment set forth in Section 6.13(j) or Section 8.03 as applicable), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Credit Parties, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 6.13(j) or Section 8.03, as applicable; provided, that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.13 shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to the Borrower (as to which the provisions of this Section shall apply).

Each Loan Party consents 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 such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

Section 2.14 Settlement Amongst Revolving Lenders.

(a) The amount of each Revolving Lender's Applicable Percentage of outstanding Revolving Loans (including outstanding Swing Line Loans), shall be computed weekly (or more frequently in the Agent's discretion) and shall be adjusted upward or downward based on all Revolving Loans (including Swing Line Loans and repayments of Revolving Loans (including Swing Line Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent)).

(b) The Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans and Swing Line Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Revolving Lender its Applicable Percentage of repayments, and (ii) each Revolving Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Revolving Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Revolving Lender shall be equal to such Revolving Lender's Applicable Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Revolving Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Agent, such Revolving Lender agrees to pay to the 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 Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

(c) Notwithstanding anything in the foregoing to the contrary, for purposes of this Section 2.14, no Revolving Lender with Bridge Commitments shall be subject to any of the foregoing settlement procedures applicable to Swing Line Loans in respect of such Revolving Lender's Bridge Commitments.

Section 2.15 Increase in Aggregate Revolving Commitments; Incremental Term Loan Facilities.

(a) Uncommitted Increase in Aggregate Revolving Commitments

(i) Request for Increase. Upon notice to the Agent (which shall promptly notify the Lenders), the Borrower may from time to time, request an increase in the Aggregate Revolving Commitments (each request being a "Commitment Increase"); provided, that, (x) the aggregate principal amount of all Commitment Increases shall not exceed \$750,000,000, (y) any such request for an increase shall be in a minimum amount of \$50,000,000, and (z) the Borrower may make a maximum of five (5) such requests.

(ii) Lender Elections to Increase. The Borrower may request Commitment Increases from existing Lenders and/or from other Eligible Assignees; provided, that (x) any existing Lender approached to provide all or a portion of the Commitment Increase may elect or decline, in its sole discretion, to provide all or any portion of such Commitment Increase offered to it and (y) any potential Lender that is not an existing Lender or an Affiliate of an existing Lender and agrees to make available a Commitment Increase shall be required to be an Eligible Assignee and shall require approval by the Agent (such approval not to be unreasonably withheld, conditioned or delayed) solely to the extent such approval would be required under Section 10.06.

(iii) Closing Date and Allocations. If the Aggregate Revolving Commitments are increased in accordance with this Section 2.15, the Agent, in consultation with the Borrower, shall determine the effective date of such Commitment Increase (the "Increase Closing Date") and the final allocation of such increase. The Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Closing Date. On the Increase Closing Date (x) the Aggregate Revolving Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment Increases, and (y) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Revolving Commitments and Applicable Percentages of the Revolving Lenders.

(iv) Conditions to Effectiveness of Commitment Increase. As a condition precedent to such Commitment Increase, (i) the Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the Increase Closing Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Commitment Increase, and (B) in the case of the Borrower, certifying that, immediately before and immediately after giving effect to such Commitment Increase, (1) the representations and warranties of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Increase Closing Date, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality or "Material Adverse Effect", such representation and warranty shall be true and correct in all respects, and (iii) the representations and warranties contained in subsection (a) of Section 5.05 shall be deemed to refer to the most recent statements furnished to the Agent pursuant to Section 6.01, (2) no Default or Event of Default has occurred and is continuing or would result therefrom, and (3) the other conditions to the effectiveness of such Commitment Increase are satisfied, (ii) the Borrower, the Agent, and each Additional Commitment Lender (if not an existing Revolving Lender) shall have executed and delivered a joinder to the Loan Documents in such form as the Agent shall reasonably require; (iii) the Borrower shall have paid such fees and other compensation to the Additional Commitment Lenders as the Borrower and such Additional Commitment Lenders shall agree; (iv) the Borrower shall have paid such arrangement fees to the Agent and/or the arrangers of such Commitment Increase as the Borrower and the Agent and/or such arrangers may agree; and (v) if reasonably requested by the Agent, the Borrower shall deliver to the Agent and the Additional Commitment Lenders customary opinions from counsel to the Borrower and dated the Increase Closing Date.

(v) Adjustment of Revolving Loans. If there are any outstanding Revolving Loans or Letters of Credit on any Increase Closing Date, then each of the Revolving Lenders having a Revolving Commitment prior to such Increase Closing Date (such Revolving Lenders, the “Pre-Increase Lenders”) shall assign or transfer to any Revolving Lender which is providing a new or additional Commitment on the Increase Closing Date (such Revolving Lenders, the “Additional Commitment Lenders”), and such Additional Commitment Lenders shall purchase from each such Pre-Increase Lender, at the principal amount thereof, such interests in the Revolving Loans and participation interests in L/C Obligations and Swing Line Loans (but not, for the avoidance of doubt, the related Revolving Commitments) outstanding on such Increase Closing Date as shall be necessary in order that, after giving effect to all such assignments or transfers and purchases, such Revolving Loans and participation interests in L/C Obligations and Swing Line Loans will be held by Pre-Increase Lenders and Additional Commitment Lenders ratably in accordance with their Revolving Commitments after giving effect to such Commitment Increase (and after giving effect to any Revolving Loans made on the relevant Increase Closing Date). Such assignments or transfers and purchases shall be made pursuant to such procedures as may be designated by the Agent and shall not be required to be effectuated in accordance with Section 10.06. In addition, the Letter of Credit Sublimit may be increased by an amount not to exceed the amount of any increase in Commitments with the consent of the L/C Issuers and the holders of such Commitment Increase.

(b) Incremental Term Loans.

(i) Request for Incremental Term Loans. Upon notice to the Agent (which shall promptly notify the Lenders), the Borrower may, from time to time, request to add one (1) tranche of first-in, last-out term loans under the Loan Documents (the “Incremental Term Loans”, and any tranche of Incremental Term Loans, an “Incremental Term Loan Facility”).

(ii) Lender Elections to Provide Incremental Term Loans. The Borrower may request Incremental Term Loans from existing Lenders and/or from other Eligible Assignees; provided, that (x) any existing Lender approached to provide all or a portion of any Incremental Term Loan Facility may elect or decline, in its sole discretion, to provide all or any portion of such Incremental Term Loans offered to it and (y) any potential Lender that is not an existing Lender or an Affiliate of an existing Lender and agrees to provide Incremental Term Loans shall be required to be an Eligible Assignee and shall require approval by the Agent (such approval not to be unreasonably withheld, conditioned or delayed) solely to the extent such approval would be required under Section 10.06 (the Lenders agreeing to provide any Incremental Term Loans pursuant hereto, the “Incremental Term Lenders”).

(iii) Ranking. Any Incremental Term Loans shall (A) rank junior in right of payment to the Obligations in respect of the Aggregate Revolving Commitments, including (without limitation) as set forth in Section 8.03 and in the FILO Intercreditor Provisions and (B) at the Borrower's option, (x) be secured by Liens on the Collateral on a *pari passu* basis with the Liens securing the Obligations in respect of the Revolving Commitments, subject to the terms of Section 8.03 and the FILO Intercreditor Provisions, or (y) be secured by Liens on the Collateral on a junior basis with the Liens securing the Obligations in respect of the Revolving Commitments, subject to the FILO Intercreditor Provisions.

(iv) Conditions. The initial availability of any Incremental Term Loan Facility shall 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 of each Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality or "Material Adverse Effect", such representation and warranty shall be true and correct in all respects, and (iii) the representations and warranties contained in subsection (a) of Section 5.05 shall be deemed to refer to the most recent statements furnished to the Agent pursuant to Section 6.01.

(C) such other conditions (if any) as may be required by the Lenders providing such Incremental Term Loan Facility, unless such other conditions are waived by such Lenders, and

(D) the principal amount of any Incremental Term Loan Facility shall not exceed the Maximum FILO Borrowing Base.

(v) Documentation. Each Incremental Term Loan Facility will become effective pursuant to an amendment (each, an Incremental Term Loan Amendment) to this Agreement and, as appropriate, the other Loan Documents, executed by the Loan Parties, the Agent and the applicable Incremental Term Lenders, and for the avoidance of doubt, no Incremental Term Loan Amendment need be executed by any Lender other than the applicable Incremental Term Lenders; provided, that the Agent shall promptly notify each Lender as to the effectiveness of each Incremental Term Loan Facility. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Term Loan 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 Term Loan Facility (including any necessary amendments to Section 6.13(j) and Section 8.03 solely with respect to the order of priority of payment in relation to Cash Management Services to the extent reasonably acceptable to the Agent) evidenced thereby. Any Incremental Term Loan Facility shall be on the terms set forth in the Loan Documents, as amended by the applicable Incremental Term Loan Amendment, subject to the terms and conditions set forth in this Section 2.15(b) and in the FILO Intercreditor Provisions. Any Incremental Term Loan Amendment shall provide (A) that the Incremental Term Loans provided thereunder (x) may not mature or require any scheduled cash payment or mandatory prepayment of principal prior to the Maturity Date (except for customary amortization and mandatory prepayments acceptable to the Agent in its reasonable discretion) and (y) shall be subject to the relative priorities and intercreditor provisions as described in Section 2.15(b)(iii), (B) for the maintenance of a "FILO Reserve" under the Borrowing Base (to be defined as an amount equal to the excess (if any) of (1) the aggregate outstanding principal amount of the Incremental Term Loans at such time over (2) the "FILO Borrowing Base" (to be defined in agreement with, and subject to customary terms and conditions reasonably acceptable to, the Incremental Term Lenders, the Agent and the Borrower)), (C) that the Incremental Term Loans provided thereunder shall not have any obligors other than the Loan Parties and shall not be secured by any assets other than the Collateral, (D) that the Incremental Term Loans provided thereunder may not be repaid or prepaid other than (x) to the extent set forth in clause (A) above, (y) in connection with a termination of all of the Aggregate Revolving Commitments together with the payment in full (or cash collateralization, as applicable) of all Revolving Loans, Swing Line Loans and L/C Obligations or (z) at any time when the Payment Conditions required to make a Restricted Payment set forth in Sections 4.06(e)(i) or (ii) of Annex A of the Master Agency Agreement are satisfied, (E) receipt by the Agent of such other approvals, opinions or documents as the Agent may reasonably request and (F) each of the other terms and conditions applicable to the Incremental Term Loans shall be reasonably acceptable to the Agent.

(c) Conflicting Provisions. This Section 2.15 shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

Section 2.16 Extensions of Revolving Commitments.

(a) The Borrower may at any time and from time to time request (which such request shall be offered equally to all Lenders with Revolving Commitments expiring on the same Maturity Date) that all or a portion of the Revolving Commitments existing at the time of such request (each, an Existing Revolving Commitment) and any Revolving Loans thereunder, Existing Revolving Loans; each Existing Revolving Commitment and related Existing Revolving Loans together being referred to as an Existing Revolving Tranche) be modified to extend the Maturity Date of the Existing Revolving Commitments and related Existing Revolving Loans thereunder (any such Existing Revolving Commitments which have been so extended, Extended Revolving Commitments) and any related Existing Revolving Loans, Extended Revolving Loans; each Extended Revolving Commitment and related Extended Revolving Loans together being referred to as an Extended Revolving Tranche) and to provide for other terms consistent with this Section 2.16. Prior to entering into any Extension Amendment, the Borrower shall provide a notice to the Agent (who shall provide a copy of such notice to each of the Revolving Lenders with the applicable Existing Revolving Commitments) (an Extension Request) setting forth the proposed terms of the Extended Revolving Tranche to be established thereunder, which terms shall be identical in all material respects to those applicable to the Existing Revolving Tranche from which they are to be extended (the Specified Existing Revolving Tranche) except that (w) the Maturity Date of such Extended Revolving Tranche may be extended beyond the Maturity Date of the Specified Existing Revolving Tranche, (x)(A) the interest rates, interest margins, rate floors, upfront fees and prepayment premiums with respect to the Extended Revolving Tranche may be different from those for the Specified Existing Revolving Tranche and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Revolving Commitments in addition to or in lieu of any of the items contemplated by the preceding clause (A) and (y) the undrawn commitment fee rate with respect to the Extended Revolving Commitments may be different from those for the Specified Existing Revolving Tranche. No Revolving Lender shall have any obligation to agree to have any of its Revolving Loans or Revolving Commitments extended pursuant to any Extension Request.

(b) The Borrower shall provide the applicable Extension Request to the Agent at least five (5) Business Days (or such shorter period as the Agent may determine in its reasonable discretion) prior to the date on which the applicable Revolving Lenders are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Agent, in each case acting reasonably, to accomplish the purpose of this Section 2.16. Any Revolving Lender (an "Extending Lender") wishing to have all or a portion of its Existing Revolving Tranche that is subject to such Extension Request converted to the Extended Revolving Tranche shall notify the Agent (an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Existing Revolving Tranche which it has elected to convert into the Extended Revolving Tranche (subject to any minimum denomination requirements imposed by the Agent). In the event that the aggregate amount of Existing Revolving Tranche subject to Extension Elections exceeds the amount requested for the Extended Revolving Tranche pursuant to the Extension Request, the portion of the Existing Revolving Tranche of each Lender subject to such Extension Election shall be converted to or exchanged to the Extended Revolving Tranche on a *pro rata* basis (subject to such rounding requirements as may be established by the Agent) based on the amount thereof included in each such Extension Election or as may be otherwise agreed to in the applicable Extension Amendment.

(c) Any Extended Revolving Tranche shall be established pursuant to an amendment (an "Extension Amendment") to this Agreement and, as applicable, the other Loan Documents (which shall not require the consent of any Lender other than the Extending Lenders thereunder) executed by the Loan Parties, the Agent and the Extending Lenders. No Extension Amendment shall provide for any Extended Revolving Tranche in an aggregate principal amount that is less than \$500,000,000 (it being understood that the actual loans funded by the applicable Revolving Lenders may be lower than such minimum amount). In connection with any Extension Amendment, the Borrower shall, if reasonably requested by the Agent, deliver an opinion of counsel reasonably acceptable to the Agent as to the enforceability of such Extension Amendment and other customary matters.

(d) In the event that the Agent determines in its sole discretion that the allocation of the Extended Revolving Tranche pursuant to any Extension Amendment, in each case to a given Revolving Lender was incorrectly determined as a result of manifest administrative error in the receipt and processing of an Extension Election timely submitted by such Revolving Lender in accordance with the procedures set forth in the applicable Extension Amendment, then the Agent, the Borrower and each affected Revolving Lender may (and hereby are authorized to), in their sole discretion and without the consent of any other Revolving Lender, enter into an amendment to this Agreement and the other Loan Documents (each, a "Corrective Extension Amendment") within fifteen (15) days following the effective date of such Extension Amendment, as the case may be, which Corrective Extension Amendment shall (i) provide for the conversion of the Existing Revolving Tranche or Extended Revolving Tranche, as the case may be, in such amounts as is required to cause each Revolving Lender to hold the Existing Revolving Tranche and Extended Revolving Tranche, as applicable, in the amount such Revolving Lenders would have held had such administrative error not occurred.

(e) No extension pursuant to any Extension Amendment in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(f) Notwithstanding anything to the contrary herein, any payment of principal, interest or fees in respect of an Existing Revolving Tranche on the Maturity Date for such Existing Revolving Tranche may be applied solely to the Revolving Loans and Revolving Commitments terminating on such date.

(g) This Section 2.16 shall supersede any provisions in Sections 2.12, 2.13 or 10.01 to the contrary. For the avoidance of doubt, any of the provisions of this Section 2.16 may be amended with the consent of the Required Lenders; provided, that no such amendment shall require any Revolving Lender to provide any Extended Revolving Tranche without such Revolving Lender's consent.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold.

(i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Agent or the applicable Loan Party) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to Section 3.01(e).

(ii) If any Loan Party or the Agent shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from a payment described in clause (i) above, then (x) 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 3.01) the Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (y) the Loan Party or the Agent, as applicable, shall make such deductions and (z) the Loan Party or the Agent, as applicable, shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnification.

(i) The Loan Parties shall indemnify the Agent, each Lender and the L/C Issuer, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid or payable by, or required to be withheld or deducted from a payment to, the Agent, such Lender or the L/C Issuer, as the case may be, and any penalties, interest and 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 the Borrower by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of the Agent, a Lender or the L/C Issuer, shall be conclusive, binding and final for all purposes absent manifest error.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, the Agent for (i) any Indemnified Taxes attributable to such Lender or L/C Issuer (but only to the extent that the Loan Parties have not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such 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 any Lender by the Agent or a Loan Party shall be conclusive, binding and final for all purposes absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the 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 Agent.

(e) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax under the Laws of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Agent), at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the 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 Agent, shall deliver such other documentation prescribed by applicable Laws or reasonably requested by the Borrower or the Agent as will enable the Borrower or the 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 paragraphs (e)(ii)(A), (e)(ii)(B)(1) through (4) and (e)(ii)(C) of this Section) shall 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.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is resident for tax purposes in the United States shall deliver to the Borrower and the Agent (in such number of copies as shall be reasonably requested by the recipient) on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be reasonably requested by the recipient) 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 Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI,

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3) (C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E,

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner; and/or

(5) any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower to determine the withholding or deduction required to be made; and

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender 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 Lender shall deliver to the Borrower and the Agent at the time or times prescribed by applicable Laws and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable Laws (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (B), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) 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 paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted but shall not be required to pay any compensation pursuant to Section 3.05.

Section 3.03 Inability to Determine Rates.

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if prior to the commencement of any Interest Period for a Eurodollar Borrowing the Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Agent (with a copy to the Borrower) that the Required Lenders have determined that:

(i) adequate and reasonable means do not exist for ascertaining the Eurodollar Rate, for any requested Interest Period, including, without limitation, because the Eurodollar Rate is not available or published on a current basis and such circumstances are unlikely to be temporary;

(i i) the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which the Eurodollar Rate or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, provided, that, at the time of such statement, there is no successor administrator that is satisfactory to the Agent, that will continue to provide the Eurodollar Rate after such specific date (such specific date, the “Scheduled Unavailability Date”); or

(iii) similar loans currently being executed, or that include language similar to that contained in this Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR,

then, after such determination by the Agent or receipt by the Agent of such notice, as applicable, the Agent and the Borrower may amend this Agreement solely for the purpose of replacing the Eurodollar Rate in accordance with this Section 3.03 with (x) one (1) or more SOFR-Based Rates or (y) any other alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Agent from time to time in its reasonable discretion in consultation with the Borrower and may be periodically updated (the “Adjustment” and, any such proposed rate, a “LIBOR Successor Rate”), and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth (5th) Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders (A) in the case of an amendment to replace the Eurodollar Rate with a rate described in clause (x), object to the Adjustment; or (B) in the case of an amendment to replace the Eurodollar Rate with a rate described in clause (y), object to such amendment; provided, that for the avoidance of doubt, in the case of clause (A), the Required Lenders shall not be entitled to object to any SOFR-Based Rate contained in any such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided, that to the extent such market practice is not administratively feasible for the Agent, such LIBOR Successor Rate shall be applied in a manner otherwise reasonably determined by the Agent.

If no LIBOR Successor Rate has been determined and the circumstances under clause (a)(i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Agent will promptly so notify the Borrower and each Lender, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods) and the Eurodollar Rate component shall no longer be utilized in determining the Base Rate upon delivery of notice to the Borrower. Upon receipt of such notice, the Borrower may revoke any pending request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than 0.75% for purposes of this Agreement.

In connection with the implementation of a LIBOR Successor Rate, the Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided, that, with respect to any such amendment effected, the Agent shall (a) post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Lenders and (b) provide each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower, in each case, reasonably promptly after such amendment becomes effective.

(b) If after the Closing Date, the adoption of any applicable Law, or any change in any applicable law (whether adopted before or after the Closing Date), or any change in interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or its applicable Lending Office with any directive (whether or not having the force of law) of any such authority, central bank or comparable agency, shall make it unlawful or impossible for any Lender or its applicable Lending Office to make, maintain or fund its portion of Eurodollar Rate Loans, such Lender shall so notify the Agent, and the Agent shall forthwith give notice thereof to the other Lenders and the Borrower. Before giving any notice to the Agent pursuant to this Section 3.03(b), such Lender shall designate a different lending office if such designation will avoid the need for giving such notice and will not, in the sole reasonable judgment of such Lender, be otherwise materially disadvantageous to such Lender. Upon receipt of such notice, notwithstanding anything contained in Article II or this Article III, the Borrower shall repay in full the then outstanding principal amount of such Lender's portion of each affected Eurodollar Rate Loan, together with accrued interest thereon, on either (i) the last day of the then current Interest Period applicable to such affected Eurodollar Rate Loans if such Lender may lawfully continue to maintain and fund its portion of such Eurodollar Rate Loan to such day or (ii) immediately if such Lender may not lawfully continue to fund and maintain its portion of such affected Eurodollar Rate Loans to such day. Concurrently with repaying such portion of each affected Eurodollar Rate Loan denominated in Dollars, the Borrower may borrow a Base Rate Loan from such Lender, whether or not it would have been entitled to effect such borrowing and such Lender shall make such Loan, if so requested, in an amount such that the outstanding principal amount of the affected Loan made by such Lender shall equal the outstanding principal amount of such Loan immediately prior to such repayment. The obligation of such Lender to make Eurodollar Rate Loans is suspended only until such time as it is once more possible and legal for such Lender to fund and maintain Eurodollar Rate Loans.

Section 3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurodollar Rate) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any Taxes of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer); or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered as set forth in a certificate provided by such Lender or the L/C Issuer, as applicable, pursuant to clause (c) below; provided, that the Borrower shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto or (y) such Lender invokes Section 3.02.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered as set forth in a certificate provided by such Lender or the L/C Issuer, as applicable, pursuant to clause (c) below.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, and the method for calculating such amount or amounts as specified in subsection (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation; provided, that, the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.05 Compensation for Losses. Upon demand of any Lender (which demand shall be accompanied by a statement setting forth the basis for the amount being claimed, and with a copy to the Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13 (other than with respect to any Defaulting Lender);

including any net loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained but excluding any loss of anticipated profits and/or interest rate margin (including the Applicable Margin). The Borrower shall also pay any customary and reasonable administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded. A certificate of any Lender setting forth any amount or amount that such Lender is entitled to receive pursuant to this Section 3.05 and setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section and setting forth in reasonable detail the manner in which such amount or amounts was determined shall be delivered to the Borrower.

Section 3.06 Mitigation Obligations; Replacement of Lenders

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section, or if any Lender gives a notice pursuant to Section 3.02, the Borrower may replace such Lender in accordance with Section 10.13.

Section 3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Revolving Commitments and repayment of all other Obligations hereunder.

ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01 Conditions of Initial Credit Extensions. Except as set forth in Section 6.19, the obligation of the L/C Issuer and each Lender to make Credit Extensions on the Closing Date is subject to satisfaction (or waiver in accordance with Section 10.01) of the following conditions precedent:

(a) the Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (and, to the extent originals are reasonably requested, followed within a reasonable amount of time by the originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or the Lenders, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Agent:

(i) executed counterparts of this Agreement;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) executed certificates of Responsible Officers of each Loan Party evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications, as the Agent may reasonably request, to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction would not reasonably be expected to have a Material Adverse Effect;

(v) opinions of (x) Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents and certain other matters as the Agent may reasonably request and (y) Jones Day, counsel to the Loan Parties, addressed to the Agent and each Lender, as to certain matters concerning the Loan Parties and certain bankruptcy matters as the Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or would be reasonably expected to have a Material Adverse Effect, and (C) to the Solvency of the Loan Parties, on a Consolidated basis, as of the Closing Date immediately after giving effect to the transactions contemplated hereby to occur on the Closing Date, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) subject to Section 6.19, evidence that all insurance required to be maintained pursuant to the Loan Documents and all endorsements in favor of the Agent required under the Loan Documents have been obtained and are in effect;

(viii) a payoff letter from the issuing lenders under the Existing L/C Facility reasonably satisfactory to the Agent evidencing that the Existing L/C Facility has been, or concurrently with the Closing Date is being, terminated, all obligations thereunder are being paid in full (other than contingent obligations that are not yet due and payable) and all Liens securing obligations under the Existing L/C Facility have been, or concurrently with the Closing Date are being, released;

(ix) executed copies of each Servicing Agreement together with confirmation that any conditions to effectiveness thereunder have been satisfied or waived and that each such Servicing Agreement is in full force and effect or shall be in full force and effect concurrently with this Agreement;

(x) the Security Documents (other than the Processing Agreement Amendments), each duly executed by the applicable Loan Parties;

(xi) the Facility Guaranty, duly executed by the Parent;

(xii) (A) desktop appraisals (based on net liquidation value) by a third party appraiser reasonably acceptable to the Agent of all Inventory of the Loan Parties, the results of which are reasonably satisfactory to the Agent and (B) a written report regarding the results of a commercial finance examination of the Loan Parties, which shall be reasonably satisfactory to the Agent;

(xiii) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements, releases, satisfactions, discharges or subordination agreements, as applicable, reasonably satisfactory to the Agent are being tendered concurrently with the Closing Date or with respect to which other arrangements reasonably satisfactory to the Agent have been made;

(xiv) Uniform Commercial Code financing statements, required by law to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents (to the extent such Liens can be created or perfected by the filing of such financing statements) and the Agent shall have been authorized to file, register or record such financing statements on the Closing Date; and

(xv) the Pro Forma Financial Information;

(b) the Agent shall have received (i) evidence that the maximum commitments under the Existing Credit Agreement have been reduced to no more than \$76,000,000 and (ii) an executed amendment to the Existing Credit Agreement permitting the Borrower's incurrence of the Obligations and the other transactions contemplated by this Agreement;

(c) the Agent shall have received a Borrowing Base Certificate dated the Closing Date, executed by a Responsible Officer of the Borrower;

(d) there shall not be pending any litigation or other proceeding pending before any Governmental Authority that challenges the legality of, or otherwise seeks to enjoin, the transactions contemplated hereby;

(e) the consummation of the transactions contemplated hereby shall not violate any applicable Law in any material respect or any Organization Document in all respects;

(f) the Lenders shall have received evidence reasonably satisfactory to the Lenders regarding valuation of the assets to be owned by Macy's Retail Holdings, LLC following the Transactions (as defined in the Master Agency Agreement);

(g) after giving effect to (i) the first funding under the Loans, (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby and (iii) all Letters of Credit to be issued at, or immediately subsequent to, such establishment, Availability shall be not less than \$1,000,000,000;

(h) all fees required to be paid to the Agent or any Arranger on or before the Closing Date, including pursuant to this Agreement and the Fee Letter, shall have been paid in full, and all fees required to be paid to the Lenders on or before the Closing Date shall have been paid in full or, in each case, will be paid substantially concurrently with the initial funding of the Loans hereunder;

(i) the Borrower shall have paid all reasonable and documented fees, charges and out-of-pocket disbursements of one external counsel to the Agent to the extent invoiced at least two (2) Business Days (unless otherwise agreed) prior to the Closing Date, plus such additional amounts of such reasonable and documented fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided, that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Agent) or, in each case, will be paid substantially concurrently with the initial funding of the Loans hereunder;

(j) the Agent and the Lenders shall have received, at least three (3) Business Days prior to the Closing Date: (i) all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations and requested by the Agent or the Lenders in writing at least seven (7) Business Days prior to the Closing Date, including without limitation the USA PATRIOT Act in each case, the results of which are reasonably satisfactory to the Agent and (ii) to the extent the Borrower qualifies as a "legal entity customer", the Borrower shall deliver to each Lender that so requests (which request is made through the Agent), a certification regarding beneficial ownership required by the Beneficial Ownership Certification in relation to the Borrower; provided that the Agent has provided the Borrower a list of each such Lender and its electronic delivery requirements at least seven (7) Business Days prior to the Closing Date; and

(k) immediately prior to or substantially concurrently with the initial Credit Extensions hereunder, the Closing Date Purchase shall have been consummated in all material respects in accordance with the terms of the Purchase Agreement.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Eurodollar Rate Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) and each L/C Issuer to issue each Letter of Credit is subject to satisfaction (or waiver in accordance with Section 10.01) of the following conditions precedent:

(a) the representations and warranties (x) of each Loan Party contained in Article V, in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, and (y) of each “Macy’s Party” (as such term is defined in the Master Agency Agreement) contained in the Master Agency Agreement, shall be true and correct in all material respects on and as of the date of such Credit Extension, except (i) (other than with respect Section 5.05(c) hereof or Section 2.05(c) of Annex A of the Master Agency Agreement) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality or “Material Adverse Effect”, such representation and warranty shall be true and correct in all respects, and (iii) for purposes of this Section 4.02, the representations and warranties set forth in subsection (a) of Section 5.05 shall be made only on the Closing Date and not remade.

(b) no Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof;

(c) the Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension, in accordance with the requirements hereof;

(d) solely with respect to a request for a Revolving Loan or any L/C Credit Extension, no Overadvance shall result from such Credit Extension.

Each Request for Credit Extension (other than a Eurodollar Rate Loan Notice requesting a conversion of Loans into another Type and/or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties, but until the Required Lenders otherwise direct the Agent to cease making Loans and the L/C Issuer to cease issuing Letters of Credit, the Lenders will fund their Applicable Percentage of all Loans and participate in all Swing Line Loans and Letters of Credit whenever made or issued, which are requested by the Borrower; provided, that the making of any such Revolving Loans or the issuance of any Letters of Credit shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

Section 5.01 Existence, Qualification and Power. Each Loan Party thereof (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

Section 5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, (a) has been duly authorized by all necessary corporate or other organizational action, and (b) does not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach, termination, or contravention of, or constitute a default under (x) any Material Indebtedness to which such Person is a party or (y) any order, injunction, writ or decree of any Governmental Authority binding on a Loan Party; (iii) result in or require the creation of any Lien upon any asset of any Loan Party (other than Permitted Encumbrances); or (iv) violate any Law, in the case of clause (b), except that would not reasonably be expected to result in a Material Adverse Effect.

Section 5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof (subject to Permitted Encumbrances) to the extent specified in the Security Agreement), (b) filings required with the SEC, (c) such as have been obtained or made and are in full force and effect on the Closing Date and (d) any approval, consent, exemption, authorization, action or notice or filing, the failure to obtain or make which would not reasonably be expected to result in a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto and thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 5.05 Financial Statements; No Material Adverse Effect

(a) The Audited Financial Statements were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and fairly present, in all material respects, the financial condition of Pubco and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) [Reserved].

(c) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had, or would reasonably be expected to have, a Material Adverse Effect.

(d) The Consolidated forecasted balance sheet and statements of income and cash flows of the Parent and its Subsidiaries delivered pursuant to Section 6.01(d) were prepared in good faith on the basis of assumptions believed by the Parent to be reasonable in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' reasonable estimate of its future financial performance (it being understood that such forecasted financial information is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, that no assurance is given that any particular forecasts will be realized, that actual results may differ and that such differences may be material).

Section 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or against any of its properties or revenues that either individually or in the aggregate, if determined adversely, would reasonably be expected to have a Material Adverse Effect.

Section 5.07 No Default. No Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

Section 5.08 Ownership of Property; Liens. No Loan Party owns any Real Estate or has any Leases.

Section 5.09 [Reserved].

Section 5.10 Insurance. The properties (including without limitation, the Collateral) of the Loan Parties are insured with financially sound and reputable insurance companies (or otherwise reasonably acceptable to the Agent) or through self-insurance arrangements, in such amounts (after giving effect to any self-insurance), with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties operates, in each case, determined as of the date on which such insurance was obtained.

Section 5.11 Taxes. The Loan Parties have filed all federal, state and other Tax returns and reports required to be filed, and have paid all federal, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties (including without limitation, the Collateral), income or assets otherwise due and payable, except for (a) those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Liens (other than Permitted Encumbrances on account thereof) have been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation, or (b) which would not be reasonably expected to result in a Material Adverse Effect.

Section 5.12 ERISA Compliance.

(a) Except as would not reasonably be expected to result in a Material Adverse Effect: (i) each Plan is in compliance with the applicable provisions of ERISA, the Code, and other applicable Laws and (ii) no ERISA Event has occurred or is reasonably expected to occur.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or would reasonably be expected to result in a Material Adverse Effect.

Section 5.13 Subsidiaries; Equity Interests. The Borrower has no Subsidiaries, and the Parent has no Subsidiaries other than the Borrower. As of the Closing Date, Schedule 5.13 sets forth the legal name, jurisdiction of incorporation or formation and issued and outstanding Equity Interests of the Borrower. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable and, other than directors' qualifying shares, are owned by the Parent in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for those created under the Loan Documents and Permitted Encumbrances. There are no outstanding rights to purchase any Equity Interests in the Borrower. The Loan Parties have no equity investments in any other corporation or entity.

Section 5.14 Margin Regulations; Investment Company Act;

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Credit Extensions shall be used directly or indirectly for any purpose that violates Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties or any Person Controlling any Loan Party is or is required to be registered as an "investment company" under the Investment Company Act of 1940. In making the foregoing determination, the Borrower does not rely solely on the exemption from the definition of "investment company" set forth in Section 3(c)(1) and/or 3(c)(7) of the Investment Company Act.

Section 5.15 Disclosure. No written report, financial statement, certificate or other information previously or hereafter furnished in writing by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (excluding projected financial information, budgets and forecasts and general industry or economic data) (in each case, as modified or supplemented by other information so furnished (including public disclosures made pursuant to press releases and public filings) and when taken as a whole) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided, that, (a) with respect to projected financial information and any budget or forecast, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood and agreed that (i) such projected financial information, budget or forecast is subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, (ii) no assurance is given that any particular projections will be realized, and (iii) actual results may differ from the forecast results set forth in such projections and such differences may be material) and (b) where such projected financial information and any budget or forecast (including any related underlying assumptions) expressly or implicitly takes into account the current market volatility and widespread impact of the COVID-19 outbreak, the extent of the impact of these developments on the Loan Parties' operational and financial performance will depend on future developments, including the duration and spread of the outbreak and related governmental advisories and restrictions, and the impact of the COVID-19 outbreak on overall demand for the Loan Parties' products and services, all of which are outside of the control of the Loan Parties, and are highly uncertain and cannot be predicted; provided, further that no representation is made in this Section 5.15 with respect to any materials that may be delivered by the Loan Parties (other than materials required to be delivered pursuant to the Loan Documents) that the Loan Parties specified in writing at the time of delivery is not intended to be subject to this Section 5.15.

Section 5.16 Compliance with Laws. Each of the Loan Parties is in compliance in all respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties (including, without limitation, the Collateral), except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 5.17 Intellectual Property; Licenses, Etc. Except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Loan Parties own, or possess the right to use, all of the Intellectual Property that is reasonably necessary for the operation of their respective businesses. Except, in each case, as would not reasonably be expected to have individually or in the aggregate, a Material Adverse Effect, to the knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Loan Party infringes upon any Intellectual Property rights held by any other Person.

Section 5.18 Labor Matters. Except to the extent a Material Adverse Effect would not reasonably be expected to result therefrom, there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters except to the extent that any such violation would not reasonably be expected to have a Material Adverse Effect. No Loan Party has incurred any outstanding material liability or obligation from violation of the Worker Adjustment and Retraining Act or similar state Law, except to the extent that any such violation would not reasonably be expected to have a Material Adverse Effect. Except to the extent a Material Adverse Effect would not reasonably be expected to result therefrom, all material payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party.

Section 5.19 Security Documents. The Security Agreement and the Collateral Assignment Agreement, when executed and delivered, create in favor of the Agent, for the benefit of the Credit Parties referred to therein, a legal, valid, continuing and enforceable first priority security interest (subject to Permitted Encumbrances) in the Collateral (as defined in the Security Agreement) or in the Collaterally Assigned Agreements (as defined in the Collateral Assignment Agreement), as applicable, in each case the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 5.20 Solvency. Immediately after giving effect to the transactions contemplated by this Agreement and the Servicing Agreements and the Closing Date Purchase, and before and after giving effect to the initial Credit Extension on the Closing Date, the Loan Parties, on a Consolidated basis, are Solvent.

Section 5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties, which Schedule includes, with respect to each DDA (i) the name and address of the depository institution; (ii) the account number(s) maintained with such depository institution; and (iii) the identification of each Cash Management Bank, in each case, as of the Closing Date.

(b) Annexed as Schedule 5.21(b) is a list describing all arrangements as to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party, in each case, as of the Closing Date.

Section 5.22 Beneficial Ownership. As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

Section 5.23 Use of Proceeds. The proceeds of each Borrowing hereunder (including the Swing Line Loans) and the Letters of Credit issued hereunder) will be used in accordance with the provisions of Section 6.11.

Section 5.24 Special Purpose Vehicle. The Borrower and the Parent is each in compliance with Section 6.12 and the restrictions on its activities set forth in the Borrower LLC Agreement and the Parent LLC Agreement, respectively.

Section 5.25 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 Agent has been approved by or is satisfactory to the Agent (unless the Agent has otherwise notified the Borrower), all material Inventory reflected therein as eligible for inclusion in the Borrowing Base is Eligible Inventory.

Section 5.26 Other Obligations and Liabilities. The Borrower has no material liabilities or other material obligations that arose or accrued prior to the Closing Date (other than (i) the obligations under the Loan Documents, (ii) Master Intercompany Purchase Note, (iii) the Assumed Payables (as defined in the Purchase Agreement) and (iv) statutory and other non-voluntary liabilities that would not reasonably be expected to have a Material Adverse Effect). The Borrower has no known material contingent liabilities (other than contingent obligations provided for hereunder). The Parent has no material liabilities or other material obligations that arose or accrued prior to the Closing Date and has no known material contingent liabilities (other than contingent obligations provided for hereunder).

Section 5.27 Foreign Assets Control Regulations and Anti-Bribery Laws.

(a) To the extent applicable, neither the advance of the Loans nor the use of the proceeds thereof nor the issuance of any Letter of Credit or any draw in respect thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “Trading With the Enemy Act”) or applicable foreign assets control regulations of the United States Department of the Treasury (31 CFR, Subtitle B, Chapter V, as amended) (the “Foreign Assets Control Regulations”) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “Executive Order”) and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, the Borrower (a) is not and will not become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations and (b) does not and will not engage in any dealings or transactions with any such “blocked person” or in violation of any such order.

(b) Neither the Borrower nor any director, officer, or, to the knowledge of the Borrower, any employee or agent of the Borrower is an individual or entity that is, or is 50% or more owned or controlled by Persons that are, (i) the subject of any applicable sanctions administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State or the United Nations Security Council (collectively, “Sanctions”), or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of comprehensive Sanctions (each, a “Sanctioned Country”), which countries and territories include, as of the Closing Date, the Crimea Region of Ukraine, Cuba, Iran, North Korea and Syria.

(c) Neither of the Borrower, nor any director, officer or, to the knowledge of the Borrower, employee, agent or other person acting on behalf of the Borrower is aware of or has taken any action that would constitute a material violation by such Persons of any applicable anti-bribery law, including the U.S. Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE VI
AFFIRMATIVE COVENANTS

Until payment in full of the Obligations and termination of the Commitments, the Loan Parties shall:

Section 6.01 Financial Statements. Deliver to the Agent (for distribution to each Lender):

(a) as soon as available, but in any event on or prior to the date that is the later of (x) ninety (90) days after the end of each Fiscal Year of Pubco and (y) to the extent Pubco is required to file a Form 10-K under the Exchange Act, the date on which Pubco files or is required to file its Form 10-K under the Exchange Act (after giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule)) for each Fiscal Year of the Parent, commencing with the Fiscal Year ending on or about January 30, 2021: an unaudited Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case, commencing with the Fiscal Year ending on or about January 29, 2022, in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, all in reasonable detail, such Consolidated statements to be reviewed by KPMG LLP or another Registered Public Accounting Firm of nationally recognized standing and certified by a Responsible Officer of the Parent as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Year in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(b) as soon as available, but in any event on or prior to the date that is the later of (x) forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year of Pubco and (y) to the extent Pubco is required to file a Form 10-Q (including, for the avoidance of doubt, a Form 10-QT) under the Exchange Act, the date on which Pubco files or is required to file its Form 10-Q or Form 10-QT, as applicable, under the Exchange Act (after giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule)) for each of the first three (3) Fiscal Quarters of each Fiscal Year of the Parent, commencing with the Fiscal Quarter ending on or about August 2, 2020: an unaudited Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Quarter and for the portion of the Parent's Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) the corresponding Fiscal Quarter of the previous Fiscal Year and (B) the corresponding portion of the previous Fiscal Year, in each case solely for periods occurring after the Closing Date, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Parent as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

Section 6.02 Certificates; Other Information. Deliver to the Agent (for distribution to each Lender), in form and detail reasonably satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the Fiscal Quarter ended on or about August 2, 2020), a duly completed Compliance Certificate signed by a Responsible Officer of the Parent, and in the event of any material change in generally accepted accounting principles used in the preparation of such financial statements, to the extent not previously disclosed in Pubco's periodic reports with the SEC, Parent shall also provide (i) a statement of reconciliation conforming such financial statements to GAAP and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(b) (A) on the fifteenth (15th) day of each Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day) or (B) more frequently (but no more frequently than weekly and so long as the same frequency of delivery is maintained by the Borrower for the immediately following ninety (90) day period) as the Loan Parties may elect, a certificate in the form of Exhibit F (a "Borrowing Base Certificate") showing the Borrowing Base as of the close of business as of the last day of the immediately preceding Fiscal Month (or in the case of a delivery of a Borrowing Base Certificate pursuant to (B) above, the date specified therein) (~~provided, that~~, the Appraised Value applied to the Eligible Inventory set forth in each Borrowing Base Certificate shall be the Appraised Value set forth in the most recent appraisal obtained by the Agent pursuant to Section 6.10 hereof (or prior to the Flip Date, pursuant to the definition of Appraised Value in Section 1.01) for the applicable period to which such Borrowing Base Certificate relates), each Borrowing Base Certificate to be certified as complete and correct in all material respects by a Responsible Officer of the Borrower; ~~provided, that~~ at any time during an Accelerated Borrowing Base Delivery Event, such Borrowing Base Certificate shall be delivered on the third (3rd) Business Day of each week as of the close of business on the last day of the immediately preceding week;

(c) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the management of the Parent by its Registered Public Accounting Firm in connection with the accounts or books of the Parent or the Borrower, or any audit of any of them;

(d) [reserved];

(e) promptly following the furnishing thereof under the Master Agency Agreement, copies of any financial statements, reports or other notices furnished to the Borrower by Pubco or any of its Restricted Subsidiaries under the Master Agency Agreement;

(f) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement relating to Material Indebtedness and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(g) promptly after the Agent's request therefor, copies of all material documents evidencing Material Indebtedness;

(h) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any other matter which, in each case would reasonably be expected to have a Material Adverse Effect;

(i) if the proceeds received by the Operating Companies derived from third-party consignment arrangements (excluding, for the avoidance of doubt, consignment pursuant to the Servicing Agreements) exceed 7.5% of the gross sale proceeds received by the Operating Companies for any Fiscal Month, on the fifteenth (15th) day of the following Fiscal Month (or, if such day is not a Business Day, on the next succeeding Business Day), a report of the percentage of proceeds of the Operating Companies derived from such third party consignment arrangements; and

(j) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party, or compliance with the terms of the Loan Documents, as the Agent on its own behalf or on behalf of any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Sections 6.01(a), 6.01(b), 6.02(c), or 6.02(g) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Pubco posts such documents, or provides a link thereto on Pubco's website on the Internet at the website address listed on Schedule 10.02 (as updated from time to time by notice to the Agent); or (ii) on which such documents are posted on Pubco's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that the Borrower shall deliver paper copies of such documents to the Agent or any Lender (through the Agent) that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender. The 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 (through the Agent) or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) 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 Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that so long as any Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, that, to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

It is understood and agreed that nothing in this Section 6.02 shall require the Parent or the Borrower to provide any documents or information secrets or, (a) in respect of which disclosure to the Agent or any Lender (or their respective representatives) is prohibited by any applicable law or any bona fide agreement binding on Parent or the Borrower or (b) that is subject to attorney-client privilege or similar privilege or constitutes attorney work product.

Section 6.03 Notices. Promptly notify the Agent of the following promptly after any Responsible Officer of the Borrower obtains knowledge thereof:

- (a) the occurrence of any Default or Event of Default;
- (b) any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect;
- (c) [reserved];
- (d) any dispute, litigation, investigation, proceeding or suspension between any Loan Party and any Governmental Authority or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party, that would be required to be reported in Pubco's public filings (provided, that, Borrower shall only be required to give Agent telephonic notice of such dispute, litigation, investigation, proceeding or suspension and, to the extent practicable, at a time reasonably prior to any such public disclosure) or otherwise would be reasonably be expected to result in a Material Adverse Effect;
- (e) the occurrence of any ERISA Event that would reasonably be expected to result in a Material Adverse Effect;
- (f) of any material change in accounting policies or financial reporting practices by any Loan Party to the extent such change would reasonably be expected to affect the calculation of the Borrowing Base or the Reserves, other than any such change that is made in accordance with GAAP; and
- (g) any casualty or other insured damage to any material portion of the Collateral.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating any action the applicable Loan Party has taken and proposes to take with respect thereto.

It is understood and agreed that nothing in this Section 6.03 shall require the Parent or the Borrower to provide any notice, (a) in respect of which disclosure to the Agent or any Lender (or their respective representatives) is prohibited by any applicable Law or any bona fide agreement binding on Parent or the Borrower or (b) that is subject to attorney-client privilege or similar privilege or constitutes attorney work product.

Section 6.04 Payment of Taxes. Pay and discharge as the same shall become due and payable, (a) all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, except, in each case, where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (iii) the failure to pay pending such contest would not reasonably be expected to result in a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence (and, to the extent applicable and except to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect, good standing) under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; and

(c) preserve or renew all of its owned Intellectual Property, except as is permitted in a transaction permitted by Section 7.04 or 7.05 and to the extent such Intellectual Property is no longer used or, in the judgment of a Loan Party, no longer useful in the conduct of the business of the Loan Parties or that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.06 [Reserved].

Section 6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies (or otherwise reasonably acceptable to the Agent or through self-insurance arrangements reasonably acceptable to the Agent, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent; provided that policies maintained with respect to any Collateral located at a warehouse or distribution center shall provide coverage for Inventory at (x) the retail selling price of such Inventory less any permanent markdowns or (y) another selling price permitted by the Agent in its Permitted Discretion. The Agent and the Lenders acknowledge that the insurance described in Schedule 5.10 as of the Closing Date and the insurance carriers providing such insurance are acceptable and satisfy the requirements of this Section 6.07.

(b) Maintain fire and extended coverage policies with respect to any Collateral which shall be endorsed or otherwise amended to include (i) a lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent and (ii) such other provisions as the Agent may reasonably require (and customarily requires) from time to time to protect the interests of the Credit Parties. Commercial general liability policies shall be endorsed to name the Agent as an additional insured. Business interruption policies maintained by the Loan Parties shall name the Agent as a loss payee and shall be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent and (ii) such other provisions as the Agent may reasonably require (and customarily requires) from time to time to protect the interests of the Credit Parties. The Borrower shall use commercially reasonable efforts to cause each such policy referred to in this Section 6.07(b) to provide that it shall not be canceled or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent. The Borrower shall deliver to the Agent, prior to the cancellation 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 Agent, including an insurance binder) together with evidence reasonably satisfactory to the Agent of payment of the premium therefor.

(c) [Reserved].

(d) Maintain for themselves, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon reasonable request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

Section 6.08 Compliance with Laws. Comply (a) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree (x) is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP or (y) is being contested and such contest effectively suspends enforcement of the contested Laws or (ii) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, and (b) with Section 5.27.

Section 6.09 Books and Records; Accountants. Maintain proper books of record and account, in which true and correct, in all material respects, entries in conformity with GAAP shall be made of all financial transactions and matters involving the assets and business of the Loan Parties; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties.

Section 6.10 Inspection Rights

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties (provided, that the Agent shall use commercially reasonable efforts to minimize disruption to the business of the Loan Parties), to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its officers, and Registered Public Accounting Firm, and permit the Agent or professionals (including investment bankers, consultants, accountants and lawyers) retained by the Agent to conduct evaluations of the Loan Parties' business plan, forecasts and cash flows, no more than once per Fiscal Year at the expense of the Loan Parties (but more than once, at Lenders' expense) and at such reasonable times during normal business hours and as may be reasonably requested, upon reasonable advance notice to the Borrower; provided, that, if an Event of Default exists or has occurred and is continuing, the Agent (or any of its representatives or Agent Professionals) may conduct additional visits and inspections at the expense of the Loan Parties during normal business hours and without advance notice.

(b) Subject to the following sentence, no more than once per Fiscal Year, upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, appraisers and lawyers, as applicable) retained by the Agent to conduct (i) commercial field examinations and other evaluations (each, a "Field Exam"), including, without limitation, of (A) the Borrower's practices in the computation of the Borrowing Base and (B) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves and (ii) appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base, in each case of clauses (i) and (ii), at the Loan Parties' expense; provided, that the Initial Appraisal must be completed and delivered to the Agent no later than March 31, 2021. Without limiting the foregoing, the Loan Parties acknowledge and agree that if Availability plus Suppressed Availability is less than fifteen percent (15.0%) of the Loan Cap for five (5) consecutive days, the Agent shall be permitted to conduct or cause to be conducted (x) one (1) additional Field Exam in such Fiscal Year and (y) one (1) additional appraisal of Inventory in such Fiscal Year, in each case, at the Loan Parties' expense. Notwithstanding the foregoing, the Agent may cause additional Field Exams or additional appraisals to be conducted (I) as it in its discretion deems necessary or appropriate, at its own expense, or (II) if required by Law or if an Event of Default exists or has occurred and is continuing, at the expense of the Loan Parties and without advance notice. With respect to each appraisal made pursuant to this Section 6.10(b), any adjustments to the Appraised Value of any Eligible Inventory or the Borrowing Base hereunder as a result of such appraisal shall only be reflected in the Borrowing Base Certificate delivered immediately succeeding the finalization of such appraisal and shall not apply to any previously delivered Borrowing Base Certificates.

(c) Physical Inventories.

(i) Cause not less than one (1) physical inventory to be undertaken, at the expense of the Loan Parties, in each consecutive twelve (12) month period and periodic cycle counts, in each case consistent with past practices or as otherwise agreed to by the Agent in its reasonable discretion, conducted by such inventory takers as are reasonably satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be reasonably satisfactory to the Agent. The Agent (or its designated Agent Professionals), at the expense of the Loan Parties, may observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Borrower, within sixty (60) days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to Pubco's stock ledgers and general ledgers, as applicable.

(ii) Permit the Agent, in its discretion, if any Event of Default exists, to cause additional inventories to be taken as the Agent reasonably determines (at the expense of the Loan Parties).

(d) Nothing in this Section 6.10 shall require the Parent or the Borrower to provide, or permit the inspection of any documents or information that provide, any information (a) in respect of which disclosure to the Agent or any Lender (or their respective representatives) is prohibited by any applicable Law or a bona fide contractual obligation binding on Parent or the Borrower or (b) that is subject to attorney-client privilege or similar privilege or constitutes attorney work product.

Section 6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (a) on the Closing Date (if applicable), to finance the Closing Date Purchase in part and to pay fees, costs and expenses in connection therewith, (b) on the Closing Date (if applicable), to pay fees, costs and expenses pursuant to or in connection with this Agreement and the Fee Letter, and (c) for general corporate purposes, including the purchase of Inventory and the financing of Permitted Investments and payments of Subordinated Indebtedness (including the Master Intercompany Purchase Note), returns of capital and distributions on the Master Intercompany Income Note and the making of Restricted Payments, in each case to the extent under applicable Law and the Loan Documents; provided, that no proceeds of any Credit Extension, whether directly or indirectly for any purpose that would violate Regulations T, U, or X issued by the FRB. The Borrower will not, directly or, to the knowledge of the Borrower, indirectly, use the proceeds of the Loans or any Letter of Credit, or lend or contribute such proceeds to any joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any Sanctioned Country to the extent such activities, businesses or transaction would be prohibited by Sanctions (as such term is defined in Section 5.27) if conducted by a corporation incorporated in the United States or (ii) in any other manner that would result in a violation of Sanctions by any party hereto. No part of the proceeds of the Loans or any Letter of Credit will be used, directly or, to the knowledge of the Borrower, indirectly, for any payments that would constitute a violation of any applicable anti-bribery law (including the United States Foreign Corrupt Practices Act of 1977, as amended).

Section 6.12 Separate Existence. The Loan Parties acknowledge that the Agent and the Lenders are entering into the transactions contemplated by this Agreement in reliance upon each Loan Party's identity as a legal entity that is separate from the Macy's Entities. Therefore, from and after the Closing Date, each Loan Party shall take all reasonable steps, including, without limitation, all steps that the Agent may from time to time reasonably request, to maintain such Loan Party's identity as a separate legal entity and to make it manifest to third parties that each Loan Party is an entity with assets and liabilities distinct from those of the Macy's Entities and that no Loan Party is just a division thereof. Without limiting the generality of the foregoing and in addition to the other covenants set forth herein, except as herein specifically otherwise provided, each Loan Party will:

(a) maintain in full effect its existence, rights and franchise as a limited liability company under the laws of the state of its formation and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the Master Agency Agreement and the other Loan Documents to which it is a party and each other instrument or agreement necessary or appropriate to proper administration hereof or thereof and to permit and effectuate the transactions contemplated hereby or thereby;

(b) use separate stationery, invoices, checks and other business forms from those of any Macy's Entity and bearing its own name (each of which may be computer-generated);

(c) conduct its business and affairs solely in its own name through its duly authorized officers or agents (which agents may include the Macy's Entities) including, in all oral and written communications such as letters, purchase orders, contracts, statements and applications and comply with all organizational formalities to maintain its separate existence;

(d) have a board of managers or directors separate from that of any Macy's Entity;

(e) cause its board of managers or directors to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Delaware limited liability company formalities;

(f) at all times maintain at least one Independent Manager and at least one officer;

(g) allocate all overhead expenses pursuant to and in accordance with the Master Agency Agreement;

(h) ensure that all limited liability company actions with respect to (A) the filing for any petition of bankruptcy of such Loan Party and (B) the merger, consolidation, dissolution or liquidation of such Loan Party, in each case, are duly authorized by unanimous vote of its managers or directors (including the Independent Manager), as applicable;

(i) observe all limited liability company formalities and record keeping, including maintaining complete and correct books and records of account and minutes of meetings and other proceedings of its member(s) and managers or directors;

(j) maintain its assets in a reasonable manner such that it will not be difficult to segregate, ascertain or identify its individual assets from those of any other Person (other than any other Loan Party);

(k) maintain its financial, limited liability company and other books and records separate from those of any Macy's Entity;

(l) maintain bank account(s) that are separate from those of any Macy's Entity and, except as permitted in the Loan Documents and the Servicing Agreements, not commingle funds or other assets of such Loan Party with those of any other Person (including any Macy's Entity other than any other Loan Party);

(m) pay operating expenses and liabilities, from its own funds and not permit any Macy's Entity to pay any of such Loan Party's operating expenses or liabilities (except (x) pursuant to allocation arrangements pursuant to and in accordance with the Master Agency Agreement, (y) for initial setup costs paid by any Macy's Entity or (z) as otherwise may be permitted under the Loan Documents and the Servicing Agreements); provided, however that, with respect to the salaries of its own officers, if any, that are common officers or employees of such Loan Party and any one or more Macy's Entity(ies), such Loan Party may allocate fairly and reasonably such salaries to the extent practicable, and to the extent such allocation is not practicable, on a basis reasonably related to actual service;

(n) as of the Closing Date, have adequate capitalization in light of its contemplated business and purpose, transactions and liabilities, and will not permit distributions to the Parent if such distributions would leave it with inadequate capitalization in light of its contemplated business and purpose, transactions and liabilities;

(o) not hold out its credit or assets or permit its credit or assets to be held out as being available to satisfy the obligations of others, nor will it hold any Macy's Entity out or permit any Macy's Entity to be held out as having agreed to pay or as being liable for the debts of such Loan Party (except as contemplated by the Loan Documents and Servicing Agreements);

(p) correct any known misunderstanding regarding its separate existence and identity;

(q) not operate or purport to operate as an integrated, single economic unit with one or more Macy's Entities; provided that the foregoing shall not preclude consolidation of such Loan Party's financial statements with those of any Macy's Entity in accordance with GAAP or tax reporting purposes;

(r) not seek or obtain credit or incur any obligation to any third party based upon the assets of one or more Macy's Entities or induce any such third party to reasonably rely on the creditworthiness of one or more Macy's Entities; it being acknowledged by each Lender that it is not relying on the creditworthiness of any of the Macy's Entities in extending credit hereunder, and will not seek recourse to any of the Macy's Entities for payment of any of the Obligations;

(s) not guaranty or otherwise become liable with respect to indebtedness of any Macy's Entity nor permit guaranties or liability by any Macy's Entity of the indebtedness of such Loan Party;

(t) maintain an arm's-length relationship with each of its Affiliates (other than any other Loan Party) and cause all business transactions entered into by such Loan Party with any such Affiliates (other than any other Loan Party) to be on terms that are not more or less favorable to such Loan Party, as the case may be, than terms and conditions available at the time to such Loan Party for comparable arm's length transactions with unaffiliated Persons, in each case, with the exception of the transactions contemplated by this Agreement and the Servicing Agreements;

(u) clearly identify its offices, if any, as its offices and, to the extent that any Macy's Entities have offices in the same location, clearly identify the files and other books and records that belong to such Loan Party and allocate fairly and reasonably any overhead expenses that are shared with such Macy's Entities, including services performed by an employee of such Macy's Entities;

(v) not, to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of its business except as provided for in the Loan Documents;

(w) upon an officer or other responsible party of the Borrower or the applicable Macy's Entity(ies) obtaining knowledge or notice that any of the foregoing provisions in this Section 6.12 has been breached or violated in any material respect, the Borrower shall promptly notify the Agent and shall take such actions as may be reasonable and appropriate under the circumstances to correct and remedy such breach or violation as soon as reasonably practicable under such circumstances; and

(x) take such other actions as are necessary on its part to ensure that the facts and assumptions set forth in the opinion issued by Jones Day pursuant to Section 4.01(a)(v)(y) relating to substantive consolidation issues, and in the certificates accompanying such opinion, remain true and correct in all material respects at all times.

Section 6.13 Cash Management

(a) Payment Processing Agreements and Bank Accounts. (i) On or before the Closing Date (or such later date as the Agent, in its reasonable discretion, may agree), the Borrower shall deliver or cause to be delivered to the Agent, with respect to each Payment Processor arrangement listed on Schedule 5.21(b) (subject to clause (v) below), either (x) copies of notifications substantially in the form of Exhibit G (each, a "Payment Processor Notification") executed on behalf of Pubco or the applicable Operating Company or other Subsidiary of Pubco and delivered to such Person's Payment Processor(s) or (y) a copy of an amendment in the form previously agreed (or such other agreement or documentation causing Payment Processing Accounts Receivable to be irrevocably directed to a SPE Proceeds Account, adding a restriction on any future amendment, modification or waiver of such payment direction, joining the Borrower as a party and adding the Agent as a third party beneficiary to the relevant Payment Processing Agreement solely in respect of such provisions, and permitting the Borrower to collaterally assign its interest thereunder, in each case except to the extent otherwise agreed by the Agent in its reasonable discretion) to the relevant Payment Processing Agreement (each, a "Processing Agreement Amendment"), executed on behalf of the relevant Payment Processor, the Borrower, Pubco (to the extent a party) and each other Operating Company or other Subsidiary of Pubco (to the extent a party);

(ii) Within thirty (30) days after the Closing Date (or such later date as the Agent, in its reasonable discretion, may agree), subject to clause (v) below, the Borrower shall execute and deliver or cause to be delivered to the Agent, Processing Agreement Amendments with respect to each Payment Processor arrangement listed on Schedule 5.21(b) to the extent not delivered on or before the Closing Date pursuant to clause (a)(i)(y) above;

(iii) After the Closing Date, the Borrower shall (x) not amend, modify, or waive any provision of any Payment Processing Agreement to which it is a party without the prior written consent of the Agent, except for any amendment, modification or waiver that is not materially adverse to the interests of the Agent or the Lenders, taken as a whole (provided, that any amendment, waiver or modification that permits Payment Processing Accounts Receivable to be directed to any deposit account other than a SPE Proceeds Account or which has the effect of removing the Borrower as a party or the Agent as a third party beneficiary to the relevant Payment Processing Agreement in respect of such provisions or removing the Borrower's right to collaterally assign its interest thereunder will be deemed to be materially adverse), or (y) not accept, or permit any Macy's Party to accept, Payment Processing Accounts Receivable from any Payment Processor without entering into a Payment Processing Agreement, which such Payment Processing Agreement shall comply with the immediately succeeding sentence, other than a de minimis amount. If Pubco or any of its Subsidiaries (other than Bluemercury) enter into a separate or additional Payment Processing Agreement, then Pubco or the relevant Subsidiary shall at such time also provide for such rights for the Borrower and the Agent as are set forth in the Existing Payment Processor Agreements (substantially consistent with the Processing Agreement Amendments) *ceteris paribus*;

(iv) On or before the Closing Date (or such later date as the Agent, in its reasonable discretion, may agree), the Borrower will open with the Agent (in its capacity as a Cash Management Bank) the following accounts: (v) one (1) or more deposit accounts (each, a "SPE Proceeds Account") which shall be Controlled Account(s), (w) a deposit account (the "SPE Collection Account") which shall be a Blocked Account, (x) an account that is both a deposit account and a securities account (the "SPE Storage Account") which shall be a Controlled Account, (y) a checking account (the "SPE Disbursement Account") and (z) from time to time, the Borrower may open DDAs, each of which shall be a Controlled Account with the Agent in its capacity as a Cash Management Bank or another depository institution (which shall be a Lender or an Affiliate of a Lender at the time such account is established or a nationally recognized banking institution or another bank reasonably acceptable to the Agent) that has entered into a Control Agreement; provided, that if a DDA is maintained with any financial institution other than the Agent, the Borrower shall provide to the Agent (i) the name and address of the financial institution at which such DDA is maintained and (ii) the account number assigned to such DDA by such financial institution; and

(v) Notwithstanding anything in this clause (a) to the contrary, with respect to PayPal Holdings, Inc., any of its Subsidiaries or any similar Payment Processors, the Borrower shall instead be permitted to satisfy the requirements of clauses (i) and (ii) above by delivering to such Persons a letter of direction, or entering into such other agreement or arrangement reasonably satisfactory to the Agent, to comply with clause (c) below.

(b) Controlled Accounts. Agent hereby agrees (i) with respect to the SPE Proceeds Accounts, to only deliver a Control Notice upon the occurrence and during the continuance of Full Cash Dominion, (ii) with respect to the SPE Storage Account, to only deliver a Control Notice upon the occurrence and during the continuance of Full Cash Dominion and (iii) with respect to any DDA, to only deliver a Control Notice upon the occurrence and during the continuance of Full Cash Dominion.

(c) Cash Management (Payments from Payment Processors). Whether or not a Cash Dominion Event has occurred and is continuing, the Borrower shall cause each Payment Processor to pay all Payment Processing Accounts Receivable made under the applicable Payment Processing Agreement by ACH or wire transfer directly into a SPE Proceeds Account.

(d) Cash Management (Stores cash and in-store customer card payment offsets). At all times on or after the date which is forty-five (45) days after the Closing Date (or such later date as the Agent, in its reasonable discretion, may agree), whether or not a Cash Dominion Event has occurred and is continuing, the Borrower shall (i) whether or not there are then any outstanding Obligations, cause all cash proceeds of sales of Inventory from Stores operations that Operating Companies deposit in bank accounts on a periodic basis consistent with customary industry practice in accordance with Section 4.03(a) of the Master Agency Agreement and, subject to Section 6.19, cause any credit balances in such deposit accounts to be transferred daily by ACH or wire transfer into an Inventory Account (as defined in the Master Agency Agreement) or a DDA, if applicable, and (ii) subject to Section 6.19, on a daily basis on each Business Day (and whether or not there are then any outstanding Obligations), ACH or wire transfer all amounts on deposit and available (net of any minimum balance as may be required to be kept in such Inventory Account or DDA, as applicable, by the depository institution at which such Inventory Account or DDA, as applicable, is maintained) in each Inventory Account or DDA, as applicable, to a SPE Proceeds Account.

(e) Cash Management (Other Amounts). At all times on or after the Closing Date, whether or not a Cash Dominion Event has occurred and is continuing, the Borrower shall cause all other cash receipts received by the Borrower from any Person or from any source or on account of any sale or transaction, including any payment or prepayment of Obligations hereunder, all proceeds from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of any Collateral (including Inventory), all proceeds received from any equity issuance by, or capital contribution to, the Borrower, and any proceeds of Collateral, in each case other than Excluded Payments and Sales Tax Amounts, to be deposited into the SPE Collection Account (or, if no Cash Dominion Event has occurred and is continuing, an SPE Proceeds Account or the SPE Storage Account).

(f) SPE Proceeds Accounts.

(i) At any time during the term of this Agreement while no Cash Dominion Event has occurred or is continuing, the Borrower shall on a weekly basis on the Business Day prior to each Scheduled Payment Date (or more frequently as elected by the Borrower) commencing on June 17, 2020, based on a certification provided by the Funding and Notice Agent to the Borrower (with a copy to the Agent), withdraw amounts on deposit and available in each SPE Proceeds Account (net of the sum of any minimum balance as may be required to be kept in such SPE Proceeds Account by the Agent pursuant to the terms of such SPE Proceeds Account) in an amount equal to the sum of (x) an amount representing any Excluded Payments received in the prior weekly period plus (y) an amount equal to the Sales Tax Amount accrued for the prior weekly period (or in each case on the first such date, the period from the Closing Date until such date), including any true-ups (the amounts in (x) and (y), the "Pre-Cash Dominion Excluded Amounts"), and deposit such Pre-Cash Dominion Excluded Amounts in the SPE Disbursement Account. The Borrower shall, at the direction of the Funding and Notice Agent, pay the Pre-Cash Dominion Excluded Amounts deposited into the SPE Disbursement Account by ACH or wire transfer to an account of the applicable Operating Company(ies) in accordance with the terms of the Master Agency Agreement.

(ii) At any time during the term of this Agreement after the occurrence and during the continuance of Intermediate Cash Dominion, the Borrower shall on a weekly basis on the Business Day prior to each Scheduled Payment Date (or more frequently as elected by the Borrower) commencing on the Business Day prior to the first Scheduled Payment Date after the commencement of Intermediate Cash Dominion, based on a certification provided by the Funding and Notice Agent to the Borrower (with a copy to the Agent), withdraw amounts on deposit and available in each SPE Proceeds Account (net of the sum of any minimum balance as may be required to be kept in such SPE Proceeds Account by the Agent pursuant to the terms of each SPE Proceeds Account) in an amount equal to the sum of (x) an amount representing any Excluded Payments received in the prior weekly period plus (y) an amount equal to the Sales Tax Amount accrued for the prior weekly period, including any true-ups (the amounts in (x) and (y), the "Intermediate Cash Dominion Excluded Amounts"), and deposit such Intermediate Cash Dominion Excluded Amounts in the SPE Disbursement Account. The Borrower shall, acting at the direction of the Funding and Notice Agent, pay the Intermediate Cash Dominion Excluded Amounts deposited into the SPE Disbursement Account by ACH or wire transfer to an account of the applicable Operating Company(ies) in accordance with the terms of the Master Agency Agreement.

(iii) At any time during the term of this Agreement after the occurrence and during the continuance of Full Cash Dominion, the Borrower shall (and shall be permitted to) on each Business Day commencing on the first Business Day after the commencement of Full Cash Dominion, based on a certification provided by the Funding and Notice Agent to the Borrower (with a copy to the Agent) on such date, instruct the Agent (and the Agent shall comply with such instructions) to, after the completion of any automatic transfer of funds pursuant to clause (i) below, withdraw amounts (to the extent of funds available from such transfer before any application in accordance with the Priority of Payments Waterfall set forth in clause (j) below) from the SPE Collection Account in an amount equal to the sum of (x) an amount representing any Excluded Payments received and not transferred since the date of the last such certification plus (y) an amount equal to the Sales Tax Amount received and not transferred since the date of the last such certification, including any true-ups (the amounts in (x) and (y), the "Full Cash Dominion Excluded Amounts"), and deposit such Full Cash Dominion Excluded Amounts into the SPE Disbursement Account. The Borrower shall, at the direction of the Funding and Notice Agent, pay the Full Cash Dominion Excluded Amounts deposited into the SPE Disbursement Account by ACH or wire transfer to an account of the applicable Operating Company(ies) in accordance with the terms of the Master Agency Agreement.

(g) Cash Management (No Cash Dominion Event). At any time that no Cash Dominion Event has occurred and is continuing, on a weekly basis on the Business Day prior to each Scheduled Payment Date commencing on June 17, 2020 or more frequently as directed by the Borrower (and whether or not there are then any outstanding Obligations), after payment of any Pre-Cash Dominion Excluded Amounts pursuant to clause (f)(i) above, all remaining amounts then held in each SPE Proceeds Account at the specified time agreed between the Borrower and the Cash Management Bank where such account is located on such date after giving effect to clause (f)(i) above in excess of a target balance of \$1,000,000 per account shall automatically be transferred by ACH or wire transfer to the SPE Storage Account, unless the Borrower has directed the Agent to instead transfer such amounts by ACH or wire transfer to the SPE Collection Account for application on the applicable Waterfall Payment Date in accordance with the Priority of Payments Waterfall set forth in clause (j) below.

(h) Cash Management (Intermediate Cash Dominion Event). At any time when Intermediate Cash Dominion shall have occurred and is continuing, on a weekly basis on the Business Day prior to each Scheduled Payment Date commencing on the Business Day prior to the first Scheduled Payment Date occurring after the commencement of any period of Intermediate Cash Dominion or more frequently as directed by the Borrower (and whether or not there are then any outstanding Obligations), after payment of any Intermediate Cash Dominion Excluded Amounts pursuant to clause (f)(ii) above, all amounts then held in each SPE Proceeds Accounts on such date after giving effect to clause (f)(ii) above in excess of a target balance of \$1,000,000 per account at the specified time agreed between the Borrower and the Cash Management Bank where such account is located on such date, shall automatically be transferred by ACH or wire transfer to the SPE Collection Account, and all funds in the SPE Collection Account shall then automatically be transferred by ACH or wire transfer into the Agent Payment Account and all funds received in the Agent Payment Account shall be applied on the applicable Waterfall Payment Date in accordance with the Priority of Payment Waterfall set forth in clause (j) below.

(i) Cash Management (Full Cash Dominion Event). At any time when Full Cash Dominion shall have occurred and is continuing, on a daily basis on each Business Day (and whether or not there are then any outstanding Obligations) commencing on the first Business Day occurring after the commencement of Full Cash Dominion, all amounts then held in the SPE Proceeds Account on such date in excess of a target balance of \$1,000,000 per account at the specified time agreed between the Borrower and the Cash Management Bank where such account is located on such date, shall automatically be transferred by ACH or wire transfer to the SPE Collection Account. All amounts in the SPE Collection Account shall then automatically be transferred by ACH or wire transfer into the Agent Payment Account and all funds received in the Agent Payment Account shall be applied first to payment of any Full Cash Dominion Excluded Amounts pursuant to clause (f)(iii) above and thereafter on the applicable Waterfall Payment Date in accordance with the Priority of Payments Waterfall set forth in clause (j) below.

(j) Priority of Payments Waterfall.

(A) On each Waterfall Payment Date, all amounts on deposit in the SPE Collection Account (or following the occurrence and during the continuance of a Cash Dominion Event, the Agent Payment Account) shall be applied by the Agent in the following order of priority (the “Priority of Payments Waterfall”):

First, all reasonable out-of-pocket operating expenses of the Borrower and the Parent then due and payable by any Loan Party; *provided*, that the aggregate amount payable pursuant to this clause *First* shall be limited to a total of \$250,000 during any calendar year;

Second, to the SPE Disbursement Account, an amount equal to the accrued but unpaid Base Consignment Commission then due and payable (and the Borrower shall, at the direction of the Funding and Notice Agent, pay such Base Consignment Commission deposited into the SPE Disbursement Account by ACH or wire transfer to an account of the applicable Operating Company(ies) in accordance with the terms of the Master Agency Agreement);

Third, on the respective dates when such amounts are due and payable pursuant to this Agreement, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent pursuant to Section 10.04;

Fourth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer pursuant to Section 10.04 (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Fourth payable to them;

Fifth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting accrued and unpaid interest on any Permitted Overadvances, ratably among the Lenders in proportion to the amounts described in this clause Fifth payable to them;

Sixth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal on any Permitted Overadvances, ratably among the Lenders in proportion to the amounts described in this clause Sixth payable to them;

Seventh, on the respective dates when such amounts are due and payable pursuant to this Agreement, to the extent that Swing Line Loans have not been refinanced by a Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans;

Eighth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to the extent that Swing Line Loans have not been refinanced by a Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting principal on the Swing Line Loans;

Ninth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Revolving Loans (including Revolving Loans made in respect of the Bridge Commitments) and other Obligations in respect to the Revolving Commitments (other than principal and Other Liabilities), and fees in respect to the Revolving Commitments (including Letter of Credit Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause *Ninth* payable to them;

Tenth, on the respective dates when such amounts are due and payable pursuant to this Agreement (or, during Cash Dominion, whether or not due and payable), to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, ratably among the Revolving Lenders in proportion to the respective amounts described in this clause *Tenth* held by them; provided, that such amounts shall be applied first, to Base Rate Loans and then to Eurodollar Rate Loans;

Eleventh, on the respective dates when such amounts are due and payable pursuant to this Agreement, to the Agent for the account of each L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the L/C Issuers in proportion to the respective amounts described in this clause *Eleventh* held by them;

Twelfth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to pay all other amounts then due and owing and remaining unpaid in respect of the Obligations (other than Obligations relating to Cash Management Services, Bank Products or any Incremental Term Loan), pro rata among the Revolving Lenders according to the amounts of the Obligations (other than Obligations relating to Cash Management Services, Bank Products or any Incremental Term Loan) then due and owing and remaining unpaid to the Revolving Lenders;

Thirteenth, on the respective dates when such amounts are due and payable, to the Agent or its Affiliates and any other applicable Revolving Lender or its Affiliates towards the payment of amounts then due and owing and remaining unpaid in respect of certain Cash Management Services programs provided to the Borrower including the ACH line provided by the Agent (or any successor programs thereto) and the prepayment, settlement and termination of such Cash Management Services, pro rata among the applicable Revolving Lenders and Affiliates thereof according to the amounts then due and owing and remaining unpaid in respect of such Cash Management Services;

Fourteenth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to payment of that portion of the Obligations (if any) constituting unpaid interest and fees on any Incremental Term Loans to the extent such Incremental Term Loans are secured by Liens on the Collateral on a *pari passu* basis with the Obligations in respect of the Revolving Commitments, ratably among the Incremental Term Lenders providing such Incremental Term Loans in proportion to the respective amounts described in this clause *Fourteenth* payable to them;

Fifteenth, on the respective dates when such amounts are due and payable pursuant to this Agreement, to payment of that portion of the Obligations (if any) constituting unpaid principal of any Incremental Term Loans to the extent such Incremental Term Loans are secured by Liens on the Collateral on a *pari passu* basis with the Obligations in respect of the Revolving Commitments, ratably among the Incremental Term Lenders providing such Incremental Term Loans in proportion to the respective amounts described in this clause Fifteenth payable to them;

Sixteenth, to pay all other amounts then due and owing and remaining unpaid in respect of the Obligations relating to the Incremental Term Loan (other than, while any Default or Event of Default under Section 8.01(f) is continuing, amounts referred to in clause Seventeenth below), pro rata among the Incremental Term Lenders according to the amounts of the Obligations relating to any Incremental Term Loan, then due and owing and remaining unpaid to the Incremental Term Lenders;

Seventeenth, while any Default or Event of Default under Section 8.01(f) is continuing, to pay all amounts then due and owing and remaining unpaid in respect of the Obligations relating to any premium due with respect to the Incremental Term Loan, pro rata among the Incremental Term Lenders according to the amounts of the Obligations relating to any Incremental Term Loan then due and owing and remaining unpaid to the Incremental Term Lenders; provided, that no such amount shall be paid until the payment in full in cash of all Obligations in respect of the Revolving Commitments, the termination of all Revolving Commitments and termination or cash collateralization of all Letters of Credit (and, in the event that any such Obligations in respect of the Revolving Commitments, Commitments or obligations with respect to Letters of Credit are replaced or refinanced by any debtor-in-possession facility, the repayment in full in cash and/or termination or cash collateralization thereof in accordance with the terms of such debtor-in-possession facility and any related orders (including financing and cash collateral orders));

Eighteenth, [reserved];

Nineteenth, to payment of all Other Liabilities consisting of Bank Product Obligations to the extent secured under the Security Documents, ratably among the Credit Parties providing such Bank Products in proportion to the respective amounts described in this clause Nineteenth held by them;

Twentieth, if required by the Borrower, at the direction of the Funding and Notice Agent to be applied towards such payment, the payment of such invoices for costs of goods sold as specified by the Borrower ("Vendor Invoices") in an amount equal to the lesser of (x) up to the aggregate amount of such outstanding Vendor Invoices and (y) all funds remaining after giving effect to the payments in clauses First through Nineteenth above;

Twenty First, to the Loan Parties an amount equal to the lesser of (x) all operating expenses of the Borrower and the Parent due but not paid to the extent not paid in full pursuant to clause First above and (y) all funds remaining after giving effect to the distributions in clauses First through Twentieth above;

Twenty Second. to payment of the Incentive Consignment Commission then due and unpaid, based on a certification provided by the Funding and Notice Agent to the Borrower (with a copy to the Agent), in an aggregate amount equal to the lesser of (x) an amount that would not result in a failure of any Note Payment Condition, (y) such amount due but unpaid and (z) up to an amount not exceeding all funds remaining after giving effect to the distributions in clauses *First* through *Twenty First* above; provided, that any amounts to be paid in accordance with this clause *Twenty Second* shall be deposited in the SPE Disbursement Account (and the Borrower shall, at the direction of the Funding and Notice Agent, pay the Incentive Consignment Commission deposited into the SPE Disbursement Account by ACH or wire transfer to an account of the applicable Operating Company(ies) in accordance with the terms of the Master Agency Agreement;

Twenty Third. to payment of any interest and principal then due and payable under the Master Intercompany Purchase Note in an amount equal to the lesser of (x) such amount due but unpaid and (y) all funds remaining after giving effect to the distributions in clauses *First* through *Twenty Second* above; and

Twenty Fourth. any funds remaining after giving effect to the distributions in clauses *First* through *Twenty Third* above shall be deposited in the SPE Storage Account.

(B) No amount that has been deposited into the SPE Collection Account shall be otherwise returned to the Borrower or any other Person at any time, other than in accordance with the Priority of Payments Waterfall, except in the case of manifest error as determined in good faith by the Agent or as required by operation of law or by a final and non-appealable judgment of a court of competent jurisdiction.

(k) SPE Storage Account.

(i) So long as Full Cash Dominion has not occurred and is not continuing, in addition to amounts deposited in the SPE Storage Account pursuant to the Priority of Payments Waterfall or in accordance with Section 6.13(g), the Borrower may deposit Borrowings in the SPE Storage Account.

(ii) To the extent on any Waterfall Payment Date, any amounts in the Priority of Payments Waterfall then due and payable have not been paid in full, then the Borrower may at its election apply available amounts on deposit in the SPE Storage Account to make such payments on such Waterfall Payment Date (whether out of proceeds from a Borrowing or out of amounts previously deposited pursuant to the Priority of Payments Waterfall).

(i i i) Subject to satisfaction of the Note Payment Conditions, amounts on deposit in the SPE Storage Account may be transferred by the Borrower, at the direction of the Funding and Notice Agent, from the SPE Storage Account by ACH or wire transfer into the SPE Disbursement Account, and:

(A) be paid in the form of the repayment of all or a portion of the principal or interest due and payable by the Borrower to the applicable Operating Company pursuant to the terms of its Master Intercompany Purchase Note by ACH or wire transfer from the SPE Disbursement Account to the applicable Operating Company; or

(B) be paid in the form of a return of capital or a distribution of income pursuant to the terms of its Master Intercompany Income Note by ACH or wire transfer from the SPE Disbursement Account to the applicable Operating Company; or

(C) be paid by the Borrower in the form of a Restricted Payment by ACH or wire transfer from the SPE Disbursement Account to the Parent, and be subsequently paid by the Parent in the form of a Restricted Payment to its immediate parent company by ACH or wire transfer to its immediate parent company (in an amount not exceeding the amount of the Restricted Payment received from the Borrower).

(iv) Amounts on deposit in the SPE Storage Account may at any time be transferred by the Borrower, at the direction of the Funding and Notice Agent, from the SPE Storage Account by ACH or wire transfer and deposited into the SPE Disbursement Account, and promptly applied by the Borrower on the same day or the subsequent Business Day, at the direction of the Funding and Notice Agent in payment of Vendor Invoices or other operating expenses of the Borrower by transferring the amount due in respect of such Vendor Invoices or other operating expenses by ACH or wire transfer to an account of the applicable vendor or person charging such operating expenses.

(v) Amounts on deposit in the SPE Storage Account may at any time be transferred by the Borrower, at the direction of the Funding and Notice Agent, by ACH or wire transfer and deposited into the SPE Disbursement Account, and promptly applied by the Borrower on the same day or the subsequent Business Day, at the direction of the Funding and Notice Agent, in payment of any Obligations whether or not then due or owing by transferring the amount due in respect thereof by ACH or wire transfer to an account of the applicable recipient of such payment.

(vi) Upon the occurrence and during the continuance of Full Cash Dominion, all amounts remaining in the SPE Storage Account at the specified time agreed between the Borrower and the Cash Management Bank where such account is located will automatically be transferred to the SPE Collection Account for application in accordance with the Priority of Payments Waterfall on the next Waterfall Payment Date.

(l) SPE Disbursement Account.

(i) During any period of Full Cash Dominion, with respect to the payment of any amounts to an Operating Company or the making of a Restricted Payment to the Parent, subject to meeting the conditions for Borrowing in Section 4.02 and subject to satisfaction of the Note Payment Conditions, the Borrower may instruct the Agent to deposit Borrowings in the SPE Disbursement Account, and pay such amounts by ACH or wire transfer:

(A) in the form of the repayment of all or a portion of the principal or interest due and payable by the Borrower to the applicable Operating Company pursuant to the terms of its Master Intercompany Purchase Note to the applicable Operating Company; or

(B) in the form of a return of capital or a distribution of income pursuant to the terms of its Master Intercompany Income Note to the applicable Operating Company; or

(C) in the form of a Restricted Payment to the Parent, and the Parent may subsequently make a Restricted Payment to its immediate parent company (in an amount not exceeding the amount of the Restricted Payment received from the Borrower).

(ii) During any period of Full Cash Dominion, with respect to the payment of any amounts to an Operating Company or the making of a Restricted Payment to the Parent, subject to meeting the conditions for Borrowing in Section 4.02, the Borrower may instruct the Agent to deposit Borrowings in the SPE Disbursement Account, and the Borrower, at the direction of the Funding and Notice Agent, may promptly apply such amounts in payment of Vendor Invoices by transferring the amount due in respect of such Vendor Invoices by ACH or wire transfer to an account of the applicable vendor.

(iii) Notwithstanding anything to the contrary set forth herein, with respect to any transfer, payment or distribution required by the terms hereof to pass from any account other than the SPE Collection Account or any other Blocked Account (the "Originating Account") through the SPE Disbursement Account, so long as Full Cash Dominion has not occurred and is not continuing, the Borrower may make (or direct the Agent to make, as applicable) such payment, transfer or distribution directly from the Originating Account with the consent of the Agent.

(m) Account Acknowledgements. The SPE Collection Account shall at all times be a Blocked Account, the SPE Proceeds Accounts and the SPE Storage Account shall at all times be a Controlled Account subject to a Control Agreement and each DDA shall at all times be a Controlled Account subject to a Control Agreement except as permitted in this Section 6.13 or Section 6.19. The Borrower hereby acknowledges and agrees that (i) at all times, the Borrower shall have no right of withdrawal from the SPE Collection Account other than in accordance with the Priority of Payments Waterfall set forth in clause (j) above, (ii) upon the occurrence and during the continuation of Full Cash Dominion, the Borrower shall have no right of withdrawal from the SPE Storage Account, (iii) the funds on deposit in the SPE Collection Account and the SPE Storage Account shall at all times be collateral security for all of the Obligations, (iv) the funds on deposit in the SPE Collection Account shall be applied as provided in this Agreement, and (v) upon the occurrence and during the continuation of a Cash Dominion Event, the funds on deposit in the SPE Storage Account and any other Blocked Account shall be applied as provided in this Agreement. In the event that, notwithstanding the provisions of this Section 6.13, if at any time during the continuation of a Cash Dominion Event, any Loan Party receives or otherwise has dominion and control of any proceeds or collections, except as expressly permitted in this Section 6.13, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be deposited in any account of such Loan Party (other than a Blocked Account), and shall, not later than the Business Day after receipt thereof, be deposited into the SPE Collection Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent.

(n) Statements and Certifications.

(i) Upon the written request of the Agent at any time that a Cash Dominion Event exists, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than weekly (in the case of Intermediate Cash Dominion) or daily or as otherwise directed by the Agent (in the case of Full Cash Dominion (or, in the case of bank statements and/or other reports provided by a Cash Management Bank, at such other intervals as the applicable Cash Management Bank customarily provides such bank statements and/or other reports)).

(ii) Within seven (7) Business Days (or such later date as the Agent, in its reasonable discretion, may agree) after the end of each Fiscal Month during the term of this Agreement, commencing with an initial delivery for the Fiscal Month ending July 4, 2020, the Borrower shall deliver to the Agent and, thereafter, Agent shall furnish to the Lenders a report as to the amount of Excluded Payments and Sales Tax Amounts, the amount of Pre-Cash Dominion Excluded Amounts, Intermediate Cash Dominion Excluded Amounts or Full Cash Dominion Excluded Amounts (as applicable), and the amount of any Base Consignment Commission and Incentive Consignment Commission paid during the prior calendar month, provided that after the occurrence and during the continuance of a Cash Dominion Event, the Borrower shall provide such reports weekly on the Thursday of each week (or such later date as the Agent, in its reasonable discretion, may agree), commencing on the first Thursday occurring after the commencement of the applicable Cash Dominion Event (or such later date as the Agent, in its reasonable discretion, may agree) and provide information on such amounts paid during the prior week. Any Excluded Payments and Sales Tax Amounts, the amount of Pre-Cash Dominion Excluded Amounts, Intermediate Cash Dominion Excluded Amounts or Full Cash Dominion Excluded Amounts in excess of the amounts previously paid may be paid out of the SPE Proceeds Accounts or the SPE Storage Account from funds available therein at such time at the Borrower's direction without restriction (in the case of the SPE Storage Account, until delivery of a Control Notice by the Agent). The Agent may make available to Lenders via email, ftp site or internet website, all statements and reports described herein, but only with the use of a password provided by the Agent. The Agent will make no representation or warranties as to the accuracy or completeness of such statements or reports accurately posted and will assume no responsibility therefor. In connection with providing access to any ftp or internet website, the Agent may require registration and the acceptance of a disclaimer. The Agent shall not be liable for the dissemination of information in accordance with this clause.

(o) Replacement Accounts. So long as no Cash Dominion Event has occurred and is continuing, the Borrower may add or replace a DDA or Cash Management Bank (other than in relation to the SPE Proceeds Accounts, the SPE Collection Account, the SPE Storage Account or the SPE Disbursement Account, which shall at all times be maintained with the Agent); provided, that, no later than thirty (30) days (or such later date as the Agent, in its reasonable discretion, may agree) after the time of the opening of such deposit account, the Borrower and such applicable Cash Management Bank shall have executed and delivered to the Agent a Control Agreement (including any acknowledgement and agreement of the Cash Management Bank or securities intermediary with respect thereto).

(p) Replacement Payment Processor. The Operating Companies may add or replace Payment Processors and Credit Card Issuers to the extent permitted under the terms of the Master Agency Agreement; provided that the applicable Payment Processor, the applicable Operating Companies and the Borrower enter into a Payment Processing Agreement that provides for such rights for the Borrower and the Agent as are set forth in the Existing Payment Processor Agreements (substantially consistent with the Processing Agreement Amendments) *ceteris paribus*.

Section 6.14 Information Regarding the Collateral.

(a) Furnish to the Agent within fifteen (15) Business Days written notice (or such longer period as the Agent may reasonably agree) of any change in: (i) the location of any Loan Party's chief executive office or its principal place of business; (ii) any Loan Party's type of organization or jurisdiction of organization (subject to Section 7.04); or (iii) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization.

(b) Furnish to the Agent prompt written notice of any change in any trade name used to identify it in the conduct of its business or in the ownership of its properties.

Section 6.15 Information Regarding Servicing Agreement. For purposes of delivery of any information to the Agent and Lenders hereunder, the Loan Parties shall request all information as set forth in Section 4.07 of the Master Agency Agreement and promptly provide a copy of any such information to the Agent to the extent requested by the Agent.

Section 6.16 [Reserved].

Section 6.17 Further Assurances.

(a) Subject to the exceptions and limitations set forth in the applicable Loan Documents, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording (or authorizing the Agent to file and record) of financing statements and other documents), that may be required under any applicable Law, or which the Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, including the delivery of Control Agreements in respect of Blocked Accounts and other Controlled Accounts as may be reasonably requested by the Agent, all at the expense of the Loan Parties.

(b) If any assets constituting Collateral (subject to the limits on perfection requirements contained in the Loan Documents) are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the Lien under the Security Documents upon acquisition thereof), notify the Agent thereof, and, after the acquisition thereof, the applicable Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions (or provide the Agent with the information and documents necessary to take such actions) as shall be necessary to grant and perfect such Liens, including actions described in subsection (a) of this Section 6.17, all at the expense of the Loan Parties.

Section 6.18 Compliance with Terms of Servicing Agreements. Except as otherwise permitted hereunder, (a) make all payments and otherwise perform all material obligations in respect of all Servicing Agreements to which any Loan Party is a party, keep such Servicing Agreements in full force and effect, and (b) not allow such Servicing Agreements to lapse or be terminated or any rights to renew such Servicing Agreements to be forfeited or cancelled.

Section 6.19 Post-Closing Matters. Perform, or cause to be performed, the covenants and agreements set forth on Schedule 6.19 within the time frame set forth therein, in each case, as such time frame may be extended by the Agent in its reasonable discretion.

Section 6.20 Separateness from Operating Companies. Not become a Subsidiary of any Operating Company.

ARTICLE VII NEGATIVE COVENANTS

Until payment in full of the Obligations and termination of the Commitments, no Loan Party shall (limited to the Parent with respect to Section 7.13 and the Borrower with respect to Section 7.14):

Section 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than, as to all of the above, Permitted Encumbrances.

Section 7.02 Investments. Make any Investments, except Permitted Investments.

Section 7.03 Indebtedness; Disqualified Stock. (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness or (b) issue Disqualified Stock.

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person.

Section 7.05 Dispositions. Make any Disposition except Permitted Dispositions.

Section 7.06 Restricted Payments. Make any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom the Loan Parties may make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(b) [reserved];

(c) Subject to satisfaction of the Note Payment Conditions, the Borrower may make any Restricted Payment in cash to the Parent and the Parent may make any Restricted Payment in cash to its immediate parent company in accordance with Sections 6.13(k) and (l);

(d) the Borrower may make any Restricted Payment in cash to the Parent and the Parent may make any Restricted Payment in cash to its immediate parent company in respect of Permitted Tax Distributions; and

(e) Subject to satisfaction of the Note Payment Conditions, the Loan Parties may make Restricted Payments under the Master Intercompany Income Note in accordance with Sections 6.13(k) and (l).

Section 7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Subordinated Indebtedness, or make any payment in violation of any subordination terms of such Subordinated Indebtedness, except (i) subject to the Note Payment Conditions, the Borrower may make any payments on the Master Intercompany Purchase Note in accordance with Sections 6.13(k) and (l), (ii) payments of Subordinated Indebtedness with the proceeds of issuances of Equity Interests in Parent or the conversion of any Subordinated Indebtedness into Equity Interests (other than Disqualified Stock) of the Parent or any of its direct or indirect parents that are not Loan Parties.

Section 7.08 Change in Nature of Business. In the case of each of the Loan Parties, engage in any line of business substantially different from the Business conducted by the Loan Parties on the Closing Date or any business substantially related, complementary, ancillary or incidental thereto.

Section 7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable, taken as a whole, to the Loan Parties as would be obtainable by the Loan Parties at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided, that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, (b) payments made on any of the Subordinated Notes, (c) transactions, arrangements, reimbursements and indemnities permitted between or among such parties under this Agreement, (d) transactions described on Schedule 7.09 hereto, (e) [reserved], (f) [reserved], (g) the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Parent or the Borrower, (h) [reserved], (i) [reserved], (j) the transactions contemplated by the Servicing Agreements and any amendments, restatements, amendments and restatements, supplements or other modifications thereto not prohibited by this Agreement, (i) [reserved], (j) transactions with affiliates that are 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, which are fair to the Loan Parties in the reasonable determination of the board of directors or the senior management of the Borrower, and are on terms at least as favorable as might reasonably have been obtained at such time from a Person that is not an Affiliate, (k) transactions permitted pursuant to Sections 7.04 and 7.06, (l) transactions entered into in good faith which provide for shared employees, services and/or facilities arrangements and which provide cost savings and/or other operational efficiencies, (m) sales and purchase arrangements, joint purchasing arrangements and other service agreements in the ordinary course of business between the Borrower and any Person under common control with the Borrower, for the sale and purchase, at cost, of inventory, equipment and supplies, and leases between such Persons and the Borrower and are on terms at least as favorable as might reasonably have been obtained at such time from a Person that is not an Affiliate, and (n) any transaction or series of related transactions involving aggregate consideration not to exceed \$5,000,000.

Section 7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document and except in the case of restrictions and conditions imposed by law) that limits the ability (a) of any Loan Party to make Restricted Payments or other distributions to any other Loan Party or to otherwise transfer property to or invest in a Loan Party, (b) of any Loan Party to make or repay loans to any other Loan Party, or (c) of the Loan Parties to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, that, this Section 7.10 shall not prohibit (i) agreements with third parties regarding Intellectual Property licensing relating to Inventory which expressly prohibit the pledging of such Inventory as Collateral or restrict the terms of sale or resale of such Inventory covered thereby which are entered into in the ordinary course of business, (ii) customary anti-assignment provisions in licenses and other contracts entered into in the ordinary course of business restricting the assignment thereof or in contracts for the Disposition of any assets; provided, that the restrictions in any such contract shall apply only to the assets or Subsidiary that is subject to such contract or to be Disposed of, (iii) [reserved]; or (iv) any encumbrance or restriction contained in any agreement of a Person acquired in a Permitted Investment, which encumbrance or restriction was in existence at the time of such Permitted Investment (but not created in connection therewith or in contemplation thereof) and 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 and assets of the Person so acquired.

Section 7.11 Amendment of Material Documents; Exercise of Rights under the Servicing Agreements

(a) (i) Amend, modify or waive any of a Loan Party's rights under (x) its Organization Documents in a manner materially adverse to the Credit Parties (it being understood that amendments to Sections 5(b), 5(c), 7, 8, 9, 10, 16, 21, 22, 23, 24, 25, 26, 31 or 35, or the definitions of "Independent Director" or "Material Action" of the Borrower LLC Agreement and/or the Parent LLC Agreement shall be deemed to be materially adverse to the Credit Parties), or (y) obligations under any Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would (A) result in an Event of Default under any of the Loan Documents or (B) otherwise would be reasonably likely to have a Material Adverse Effect or (ii) no Loan Party may remove the independent director pursuant to Section 9 of the Borrower LLC Agreement and/or the Parent LLC Agreement without the consent of the Required Lenders.

(b) Amend, modify or waive any of the Loan Parties' rights under the Servicing Agreements (other than Section 10.01 of the Master Agency Agreement (solely as such amendment or waiver relates to the consent rights of the Agent to amendments of Article VII, Article VIII, Section 10.09, Section 10.10 or Annex A of the Master Agency Agreement) or Annex A of the Master Agency Agreement) in a manner adverse to the Credit Parties in any material respect, taken as a whole.

(c) Demand return of any Inventory consigned pursuant to Section 3.06(b) of the Master Agency Agreement without the consent of the Agent acting on the instructions of the Lenders.

(d) Remove the Inventory Management Agent and/or Funding and Notice Agent under the Master Agency Agreement or terminate the appointment of any Operating Company as treasury agent pursuant to Section 4.02 of the Master Agency Agreement; provided that nothing in this Section 7.11(d) shall prohibit the Loan Parties from replacing the Inventory Management Agent, any treasury agent and/or Funding and Notice Agent under the Master Agency Agreement with another Macy's Party or any other Restricted Subsidiary that has become party to the Master Agency Agreement in accordance with Section 10.11 of the Master Agency Agreement.

(e) Provide consent to the Macy's Parties to amend, modify or waive any of the Macy's Parties' rights under the Payment Processing Agreements pursuant to Sections 4.03(b) and 4.03(c) of the Master Agency Agreement.

(f) Terminate any of the Macy's Parties' appointment, rights or obligations under the Master Agency Agreement pursuant to Section 9.02 of the Master Agency Agreement.

Section 7.12 Fiscal Year. Either (a) change the Fiscal Year of any Loan Party, or (b) change the accounting policies or reporting practices of the Loan Parties, except as required or permitted by GAAP (subject to Section 1.03 hereof).

Section 7.13 Permitted Activities of the Parent Solely with respect to the Parent, (a) engage in any business activity or own any material assets other than (i) holding 100% of the capital stock of the Borrower, (ii) performing its obligations under the Loan Documents and the Servicing Agreements and the Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder, (iii) issuing its own capital stock, (iv) making Restricted Payments permitted hereunder, (v) filing tax reports and paying Taxes in the ordinary course (and contesting any Taxes), (vi) preparing reports to Governmental Authorities and to its equityholders, (vii) holding director and equityholder meetings, preparing corporate records and other corporate activities required to maintain its separate corporate structure or to comply with applicable Law, (viii) holding cash and other assets received in connection with contributions to, or proceeds from the issuance of, capital stock of the Parent, pending the application thereof in a manner not prohibited by this Agreement, (ix) providing indemnification for its officers, directors or members of management, (x) participating in tax, accounting and other administrative matters, including, but not limited to, preparing the financial reports and related certificates required to be delivered to the Agent and the Lenders pursuant to Sections 6.01 and 6.02 and (x) activities incidental to the foregoing; or (b) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Section 7.14 Permitted Activities of the Borrower. Solely with respect to the Borrower, (a) engage in any business activity or own any material assets other than (i) (A) purchasing and owning Inventory and proceeds thereof, (B) accepting payment for the sale of such Inventory, (C) the Subordinated Notes, (D) paying any fees or other amounts owed to any Macy's Entity pursuant to the Servicing Agreements and (E) completing the Closing Date Purchases and assuming the corresponding vendor payables, (ii) performing its obligations under the Loan Documents and the Servicing Agreements and the Indebtedness, Liens (including the granting of Liens) and Guarantees permitted under this Agreement, (iii) making Permitted Investments, Permitted Dispositions and Restricted Payments permitted hereunder, (iv) issuing its own capital stock, (v) filing tax reports and paying Taxes in the ordinary course (and contesting any Taxes), (vi) preparing reports to Governmental Authorities and to its equityholders, (vii) holding director and equityholder meetings, preparing corporate records and other corporate activities required to maintain its separate corporate structure or to comply with applicable Law, (viii) holding cash and other assets received in connection with the transactions contemplated in the Servicing Agreements or contributions to, or proceeds from the issuance of, capital stock of the Borrower, in each case, pending the application thereof in a manner not prohibited by this Agreement, (ix) providing indemnification for its officers, directors or members of management, (x) participating in tax, accounting and other administrative matters, including, but not limited to, preparing the financial reports and related certificates required to be delivered to the Agent and the Lenders pursuant to Sections 6.01 and 6.02 and (x) activities incidental to the foregoing or (b) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Section 7.15 Financial Covenant.

(a) Minimum Availability. Prior to April 30, 2021, permit Availability plus Suppressed Availability to be lower than the greater of (x) ten percent (10%) of the Loan Cap and (y) \$250,000,000.

(b) Consolidated Fixed Charge Coverage Ratio. During the Covenant Compliance Period, permit the Consolidated Fixed Charge Coverage Ratio for (i) the last day of the most recently ended Measurement Period prior to the beginning of such Covenant Compliance Period for which financial statements of Pubco and its Restricted Subsidiaries have been, or are required to be, delivered to the Agent pursuant to Section 6.01, or (ii) the last day of any Measurement Period ended during such Covenant Compliance Period for which financial statements of Pubco and its Restricted Subsidiaries have been, or are required to be, delivered to the Agent pursuant to Section 6.01, to be less than 1.00 to 1.00. To the extent required to be tested with respect to any Measurement Period pursuant to the preceding sentence, compliance with this Section 7.15 shall be calculated in the Compliance Certificate for the applicable Measurement Period delivered pursuant to Section 6.02(a).

Section 7.16 Limitations on Employees. The Loan Parties shall not employ any employees other than as required by any provisions of applicable Law or the Organization Documents of such Loan Parties and may not establish, sponsor or maintain any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) or contribute to any “multiemployer plan” as defined in Section 4001(a)(3) of ERISA.

Section 7.17 Changes to Name. The Borrower and the Parent will not change, amend or alter its legal name at any time except following fifteen (15) Business Days’ notice given by the Borrower or the Parent, as applicable, to the Agent.

Section 7.18 Subsidiaries. The Borrower shall not have any Subsidiaries and the Parent shall not have any Subsidiaries other than the Borrower.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. The occurrence and continuance of any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay when and as required to be paid herein:

- (i) any amount of principal of any Loan or any L/C Obligation, or deposit any funds as Cash Collateral in respect of L/C Obligations,
- (ii) any interest on any Loan or on any L/C Obligation, or any fee due hereunder, which failure continues for three (3) Business Days, or
- (iii) any other amount payable hereunder or under any other Loan Document, which failure continues for three (3) Business Days.

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.02(b), 6.03(a), 6.05(a), 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.19, 6.20 or Article VII, provided, that, no Event of Default shall be deemed to have arisen herein with respect to Section 6.02(b), 6.07, or 6.10 unless such failure continues for five (5) consecutive Business Days (or, with respect to Section 6.02(b) during an Accelerated Borrowing Base Delivery Event, two (2) consecutive Business Days); or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after notice thereof from the Agent or the Required Lenders to the Borrower; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate), shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such payment is not made within any applicable grace period in respect of any Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement, but excluding any Swap Contract), or (B) after the expiration of all applicable grace periods relating thereto, fails to observe or perform any other agreement or condition relating to any such Material Indebtedness (other than a Swap Contract) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided, that this clause (i) (B) shall not apply to secured Indebtedness of a Loan Party permitted hereunder that becomes due upon the sale or transfer by such Loan Party of the assets securing such Indebtedness or upon the casualty or condemnation of the assets securing such Indebtedness; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined in such Swap Contract) under such Swap Contract as to which a Loan Party is an Affected Party (as so defined in such Swap Contract) and, in either event, the Swap Termination Value owed by the Loan Party as a result thereof is greater than \$250,000,000 and such Loan Party is unable to pay such amount upon such termination or (iii) an "Event of Default" (as such term is defined in the Master Agency Agreement) under the Master Agency Agreement shall have occurred and is continuing (after giving effect to any applicable grace periods thereunder); or

(f) Insolvency Proceedings, Etc. Any Loan Party or Macy's Entity (other than any Unrestricted Subsidiary (as defined in the Master Agency Agreement) that is not a Loan Party) institutes, consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) calendar days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$250,000,000 and such judgment(s) or order(s) shall continue unsatisfied, unvacated, undischarged or unstayed for a period of thirty (30) consecutive days (to the extent not covered by third party insurance as to which the applicable insurer has been notified of the claim and has not disputed coverage), or (ii) any one or more non-monetary judgments that have, or would reasonably be expected to have a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) such judgment or order, by reason of a pending appeal or otherwise, shall not have been satisfied, vacated, discharged, stayed or bonded for a period of thirty (30) consecutive days; or

(i) ERISA. An ERISA Event occurs which would be reasonably likely to result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party thereof or any Governmental Authority contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document (other than as permitted pursuant to the terms thereof); or (ii) any Lien purported to be created under any Security Document ceases to be (other than pursuant to the terms thereof or as a result of an act or failure to Act by the Agent or any other Credit Party), or shall be asserted by any Loan Party or any Governmental Authority, not to be, a valid and perfected Lien on any Collateral (other than an immaterial portion of the Collateral), with the priority required by the applicable Security Document, except to the extent resulting from the failure of the Agent to file UCC continuation statements or to maintain “control” (as such term is defined in the UCC), as applicable; or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except (i) as otherwise expressly permitted hereunder or (ii) the consignment of all or substantially of any Loan Party’s assets pursuant to and in accordance with the terms of the Servicing Agreements, any Loan Party shall take any action to liquidate all or substantially all of their personal property assets utilized in the operation of their Business, or employ an agent or other third party to conduct a program of closings, liquidations or “Going-Out-Of-Business” sales of all or substantially all of its business; or

(m) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(n) Guaranty. The termination or attempted termination of the Facility Guaranty by any Loan Party except as expressly permitted hereunder or under any other Loan Document; or

(o) Subordination. (i) The subordination provisions of any Subordinated Note or other Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against the holder of such Subordinated Note or other Subordinated Indebtedness or (ii) the Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of the subordination provisions of any Subordinated Note or other Subordinated Indebtedness (B) that the subordination provisions of any Subordinated Note or other Subordinated Indebtedness exist for the benefit of the Credit Parties; or

(p) Master Agency Agreement. (i) All Inventory Management Agents and/or the Funding and Notice Agent under the Master Agency Agreement shall have resigned without adequate replacements having been appointed in accordance with the Master Agency Agreement, (ii) the Master Agency Agreement has been terminated and not concurrently restated or replaced with a substantially similar arrangement, which arrangement is acceptable to the Agent and the Required Lenders in their reasonable discretion, (iii) a Master Agency Agreement Termination Event has occurred or (iv) a Servicer Specified Event of Default has occurred.

Section 8.02 Remedies Upon Event of Default

If any Event of Default occurs and is continuing, the Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation shall be terminated;

(i i) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations (other than Other Liabilities) to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(iii) require that the Loan Parties Cash Collateralize the L/C Obligations;

(i v) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties; and

(v) in the event that the Obligations shall have been accelerated pursuant hereto, remove the Inventory Management Agent and/or Funding and Notice Agent under the Master Agency Agreement;

provided, that, upon the occurrence of any Event of Default with respect to any Loan Party under Section 8.01(f), the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Loan Parties to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

Each of the Credit Parties agrees that, notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, no Credit Party shall have any right individually to commence any legal or equitable proceedings to enforce any Loan Document against any Loan Party (including, without limitation, the Facility Guaranty) or to foreclose any Lien on, or otherwise enforce any security interest in, or other rights to, any of the Collateral; it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Agent on behalf of the Credit Parties in accordance with the terms hereof, and all powers, rights and remedies hereunder and under the other Loan Documents with respect thereto may be exercised solely by the Agent. In furtherance of the foregoing, each Lender agrees that it shall not, and hereby waives any right to, take or institute any actions or proceedings, judicial or otherwise, for any right or remedy or asset any other cause of action against any Loan Party (including the exercise of any right of set-off, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings or any other cause of action, or otherwise commence any remedial procedures, against Parent, the Borrower and/or any parent companies with respect to the Loans or any Collateral or any other property of any such Person, in each case, relating to or arising out of this Agreement or the other Loan Documents, without the prior written consent of the Agent.

Section 8.03 Application of Funds. After the exercise of remedies provided for in Sections 8.02(i) and 8.02(ii) (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent pursuant to Section 10.04;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the L/C Issuer pursuant to Section 10.04 (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting accrued and unpaid interest on any Permitted Overadvances, ratably among the Lenders in proportion to the amounts described in this clause Third payable to them;

Fourth, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal on any Permitted Overadvances, ratably among the Lenders in proportion to the amounts described in this clause Fourth payable to them;

Fifth, to the extent that Swing Line Loans have not been refinanced by a Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting accrued and unpaid interest on the Swing Line Loans;

Sixth, to the extent that Swing Line Loans have not been refinanced by a Revolving Loan, payment to the Swing Line Lender of that portion of the Obligations constituting principal on the Swing Line Loans;

Seventh, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Revolving Loans (including Revolving Loans made in respect of the Bridge Commitments) and other Obligations in respect to the Revolving Commitments (other than principal and Other Liabilities), and fees in respect to the Revolving Commitments (including Letter of Credit Fees), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, ratably among the Revolving Lenders in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to the Agent for the account of each L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the L/C Issuers in proportion to the respective amounts described in this clause Ninth held by them;

Tenth, to pay all other amounts then due and owing and remaining unpaid in respect of the Obligations (other than Obligations relating to Cash Management Services, Bank Products or any Incremental Term Loan), pro rata among the Revolving Lenders according to the amounts of the Obligations (other than Obligations relating to Cash Management Services, Bank Products or any Incremental Term Loan) then due and owing and remaining unpaid to the Revolving Lenders;

Eleventh, to the Agent or its Affiliates and any other applicable Revolving Lender or its Affiliates towards the payment of amounts then due and owing and remaining unpaid in respect of certain Cash Management Services programs provided to the Borrower including the ACH line provided by the Agent (or any successor programs thereto) and the prepayment, settlement and termination of such Cash Management Services, pro rata among the applicable Revolving Lenders and Affiliates thereof according to the amounts then due and owing and remaining unpaid in respect of such Cash Management Services;

Twelfth, to payment of that portion of the Obligations (if any) constituting unpaid interest and fees on any Incremental Term Loans to the extent such Incremental Term Loans are secured by Liens on the Collateral on a *pari passu* basis with the Obligations in respect of the Revolving Commitments, ratably among the Incremental Term Lenders providing such Incremental Term Loans in proportion to the respective amounts described in this clause Twelfth payable to them;

Thirteenth, to payment of that portion of the Obligations (if any) constituting unpaid principal of any Incremental Term Loans to the extent such Incremental Term Loans are secured by Liens on the Collateral on a *pari passu* basis with the Obligations in respect of the Revolving Commitments, ratably among the Incremental Term Lenders providing such Incremental Term Loans in proportion to the respective amounts described in this clause Thirteenth payable to them;

Fourteenth, to pay all other amounts then due and owing and remaining unpaid in respect of the Obligations relating to the Incremental Term Loan (other than, while any Default or Event of Default under Section 8.01(f) is continuing, amounts referred to in clause Fifteenth below), pro rata among the Incremental Term Lenders according to the amounts of the Obligations relating to any Incremental Term Loan, then due and owing and remaining unpaid to the Incremental Term Lenders;

Fifteenth, while any Default or Event of Default under Section 8.01(f) is continuing, to pay all amounts then due and owing and remaining unpaid in respect of the Obligations relating to any premium due with respect to the Incremental Term Loan, pro rata among the Incremental Term Lenders according to the amounts of the Obligations relating to any Incremental Term Loan then due and owing and remaining unpaid to the Incremental Term Lenders; provided, that no such amount shall be paid until the payment in full in cash of all Obligations in respect of the Revolving Commitments, the termination of all Revolving Commitments and termination or cash collateralization of all Letters of Credit (and, in the event that any such Obligations in respect of the Revolving Commitments, Commitments or obligations with respect to Letters of Credit are replaced or refinanced by any debtor-in-possession facility, the repayment in full in cash and/or termination or cash collateralization thereof in accordance with the terms of such debtor-in-possession facility and any related orders (including financing and cash collateral orders));

Sixteenth, [reserved];

Seventeenth, to payment of all Other Liabilities consisting of Bank Product Obligations to the extent secured under the Security Documents, ratably among the Credit Parties providing such Bank Products in proportion to the respective amounts described in this clause Seventeenth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

Subject to Section 2.03(c) amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Ninth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Other Liabilities shall be excluded from the application described above if the Agent has not received written notice thereof, together with such supporting documentation as the Agent may request, from the applicable provider of Bank Products or Cash Management Services, as the case may be. Each provider of Bank Products or Cash Management Services not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX THE AGENT

Section 9.01 Appointment and Authority. Each of the Lenders, L/C Issuers, and the Swing Line Lender hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents (other than the Swap Contracts) and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions (except with respect to the Borrower's right to consent to a replacement Agent to the extent set forth in Section 9.06 and the Loan Parties rights to receive evidence of releases to the extent set forth in Section 9.10). It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or Affiliate thereof as if such Person were not the hereunder and without any duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions. The 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, the Agent:

(a) 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;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law, including, for the avoidance of doubt, any action that may be in violation of an automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) 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 concerning the business, prospects, operations, property, financial and other condition or creditworthiness relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct, each as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties, a Lender or the L/C Issuer. Upon the occurrence of a Default or Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The 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 Agent.

Section 9.04 Reliance by the Agent.

The 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, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed 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 the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received written notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for any Loan Party), 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.

Section 9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

Section 9.06 Resignation of the Agent. The Agent may at any time give written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States provided, that such Affiliate is a “U.S. person” and a “financial institution” within the meaning of Treasury Regulations section 1.1441-1. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the L/C Issuer and with the consent of the Borrower, appoint a successor Agent meeting the qualifications set forth above; provided, that, if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment within thirty (30) days after the resigning Agent gives notice of its resignation, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as the Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as the Agent hereunder.

Any resignation by Bank of America as the Agent pursuant to this Section shall also constitute its resignation as Swing Line Lender and the resignation of Bank of America as L/C Issuer. Upon the acceptance of a successor’s appointment as the Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

Section 9.07 Non-Reliance on Agent and Other Lenders. Each Lender and each L/C Issuer expressly acknowledges that none of the Agent nor the Arranger has made any representation or warranty to it, and that no act by the Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Agent or the Arranger to any Lender or the L/C Issuer as to any matter, including whether the Agent or the Arranger have disclosed material information in their possession. Each Lender and each L/C Issuer represents to the Agent and the Arranger that it has, independently and without reliance upon the Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

Section 9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents or Co-Documentation Agents listed on the cover page hereof shall have any powers, rights, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent, a Lender or the L/C Issuer hereunder.

Section 9.09 Agent May File Proofs of Claim; Credit Bidding In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer the Agent and such Credit Parties under Sections 2.03(i) and 2.03(j), as applicable, 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, administrator, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer or to authorize the Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

The Credit Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations (as defined in the Security Agreement) pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Credit Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof) shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (k) of Section 10.01 of this Agreement, (C) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Credit Party or acquisition vehicle to take any further action and (D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, and the Agent shall release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon payment in full of the Obligations, (ii) constituting property being sold or otherwise Disposed of in accordance with the Loan Documents (provided, that, if requested by the Agent, the Borrower shall certify to the Agent that such sale or other Disposition is a Permitted Disposition (and the Agent may rely conclusively on any such certificate, without further inquiry)), (iii) constituting property in which any Loan Party did not own an interest at the time the security interest, mortgage or lien was granted or at any time thereafter, (iv) [reserved], (v) if required or permitted under the terms of any of the other Loan Documents, or any subordination or other intercreditor agreement, or (vi) if approved, authorized or ratified in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) in accordance with Section 10.01.

Upon request by the Agent at any time, the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release Parent from its obligations under the Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will (and each Lender irrevocably authorizes the Agent to), at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment, Lien and security interest granted under the Security Documents or to subordinate its interest in such item, or to release Parent from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Section 9.11 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

Section 9.12 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) agrees to furnish the Agent at such frequency as the Agent may reasonably request with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender;

(b) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all Borrowing Base Certificates and financial statements required to be delivered by the Loan Parties hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Reports, and shall not be liable for any information contained in any Report;

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

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

Section 9.13 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable Law of the United States can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

Section 9.14 Indemnification of the Agent. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agent, the L/C Issuer and any Related Party, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, the L/C Issuer and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, the L/C Issuer and their Related Parties in connection therewith; provided, that, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, the L/C Issuer's and their Related Parties' gross negligence, bad faith or willful misconduct, in each case, as determined by a final and nonappealable judgment of a court of competent jurisdiction.

Section 9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

Section 9.16 Defaulting Lenders.

(a) Notwithstanding the provisions of Section 2.14 hereof, the Agent shall not be obligated to transfer to a Defaulting Lender any payments made by the Borrower to the Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, the Agent shall transfer any such payments (i) first, to the Swing Line Lender to the extent of any Swing Line Loans that were made by the Swing Line Lender and that were required to be, but were not, paid by the Defaulting Lender, (ii) second, to the L/C Issuer, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (iii) third, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (iv) to the Cash Collateral Account, the proceeds of which shall be retained by the Agent and may be made available to be re-advanced to or for the benefit of the Borrower (upon the request of the Borrower and subject to the conditions set forth in Section 4.02) as if such Defaulting Lender had made its portion of the Loans (or other funding obligations) hereunder, and (v) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender. Subject to the foregoing, the Agent may hold and, in its discretion, re-lend to the Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by the Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Applicable Percentages in connection therewith) and for the purpose of calculating the fee payable under Section 2.09(a), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that, the foregoing shall not apply to any of the matters governed by Section 10.01(a) through (c). The provisions of this Section 9.16 shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, the Agent, the L/C Issuer, and the Borrower shall have waived, in writing, the application of this Section 9.16 to such Defaulting Lender, or (z) the date on which such Defaulting Lender pays to the Agent all amounts owing by such Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by the Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by the Agent pursuant to Section 9.16(b) shall be released to the Borrower). The operation of this Section 9.16 shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by the Borrower or any Loan Party of its duties and obligations hereunder to the Agent, the L/C Issuer, the Swing Line Lender, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrower, at its option, upon written notice to the Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to the Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Assumption in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than any Other Liabilities, but including (1) all interest, fees (except any Commitment Fees or Letter of Credit Fees not due to such Defaulting Lender in accordance with the terms of this Agreement), and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Applicable Percentage of its participation in the Letters of Credit); provided, that, any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Credit Parties' or the Loan Parties' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 9.16 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 9.16 shall control and govern.

(b) If any Swing Line Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(i) such Defaulting Lender's Applicable Percentage of the Outstanding amount of all L/C Obligations or any Swing Line Loan shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent the Outstanding Amount of all Non-Defaulting Lenders' Applicable Percentages of the Outstanding Amount of all L/C Obligations and Swing Line Loans, plus such Non-Defaulting Lender's Loans does not exceed the total of all Non-Defaulting Lenders' Revolving Commitments;

(ii) if the reallocation described in clause (b)(i) above cannot, or can only partially, be effected, the Borrower shall, within one (1) Business Day following notice by the Agent, (x) first, prepay such Defaulting Lender's participation in any outstanding Swing Line Loans (after giving effect to any partial reallocation pursuant to clause (b)(i) above) and (y) second, cash collateralize such Defaulting Lender's participation in Letters of Credit (after giving effect to any partial reallocation pursuant to clause (b)(i) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such L/C Obligations are outstanding; provided, that, the Borrower shall not be obligated to cash collateralize any Defaulting Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations if such Defaulting Lender is also the L/C Issuer;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's participation in Letters of Credit pursuant to this Section 9.16(b), the Borrower shall not be required to pay any Letter of Credit Fees to the Agent for the account of such Defaulting Lender pursuant to Section 2.03 with respect to such cash collateralized portion of such Defaulting Lender's participation in Letters of Credit during the period such participation is cash collateralized;

(iv) to the extent the participation by any Non-Defaulting Lender in the Letters of Credit is reallocated pursuant to this Section 9.16(b), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.03 shall be adjusted in accordance with such reallocation;

(v) to the extent any Defaulting Lender's participation in Letters of Credit is neither cash collateralized nor reallocated pursuant to this Section 9.16(b), then, without prejudice to any rights or remedies of the L/C Issuer or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.03 with respect to such portion of such participation shall instead be payable to the L/C Issuer until such portion of such Defaulting Lender's participation is cash collateralized or reallocated; and

(vi) so long as any Lender is a Defaulting Lender, the Swing Line Lender shall not be required to make any Swing Line Loan and the L/C Issuer shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Applicable Percentage of such Swing Line Loans or Letter of Credit cannot be reallocated pursuant to this Section 9.16(b) or (y) the Swing Line Lender or the L/C Issuer, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Line Lender or the L/C Issuer, as applicable, and the Borrower to eliminate the Swing Line Lender's or L/C Issuer's risk with respect to the Defaulting Lender's participation in Swing Line Loans or Letters of Credit.

(c) Without limitation of any claims, damages, liabilities or remedies the Loan Parties may have with respect to any Defaulting Lender, each Defaulting Lender shall indemnify the Agent and each non-Defaulting Lender from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by the Agent or by any non-Defaulting Lender, on account of a Defaulting Lender's failure to timely fund its Applicable Percentage of a Loan or to otherwise perform its obligations under the Loan Documents.

(d) The Agent may release any cash collateral provided by the Borrower pursuant to Section 9.16(b) to the L/C Issuer and the L/C Issuer may apply any such cash collateral to the payment of such Defaulting Lender's Applicable Percentage of any Letter of Credit Disbursement that is not reimbursed by the Borrower pursuant to Section 2.03.

Section 9.17 Other Liabilities.

(a) Except as otherwise expressly set forth herein or in any other Loan Documents, no Lender or any Affiliate of a Lender that is owed any Other Liabilities under any Cash Management Services shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender or an L/C Issuer and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Other Liabilities under Cash Management Services. Each Person (other than Bank of America, unless requested by the Agent) providing Bank Products or Cash Management Services will provide written notice of the Bank Product Obligations or the obligations under such Cash Management Services, as the case may be, pursuant to a Bank Product Provider Letter Agreement or Cash Management Provider Letter Agreement, as applicable to the Agent, together with such supporting documentation with respect thereto as the Agent may request, including the amounts owing in respect thereof. Each Person that is owed any Bank Product Obligations or Other Liabilities in respect of Cash Management Services will from time to time, promptly upon the request of the Agent, provide a summary of all Other Liabilities in respect of Cash Management Services, as the case may be, owing to it or its Affiliates. The Borrower and each Person at any time providing Bank Products or Cash Management Services consents to the disclosure of any information concerning such Bank Products or Cash Management Services to any other Lender or the Agent at any time and from time to time, provided, that, in no event shall such disclosure be deemed a representation or warranty by the Agent of the accuracy or completeness of such information.

(b) Each Lender hereby agrees that the benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Person that is a Lender (and to its Affiliates) at the time that it establishes a Bank Product or Cash Management Service until such time as it ceases to be a Lender so long as, by accepting such benefits, such Person agrees, as among Agent and all other Credit Parties, that such Person is bound by (and, if requested by the Agent, shall confirm such agreement in a writing in form and substance reasonably acceptable to the Agent) this Article IX and Sections 3.01, 10.04, 10.07, 10.08, 10.16, and the decisions and actions of the Agent, or the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders or other parties hereto as required herein) to the same extent a Lender is bound; provided, that, notwithstanding the foregoing in this clause (b), (i) such Person shall be bound by Section 10.04 only to the extent of liabilities, reimbursement obligations, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements with respect to or otherwise relating to the Liens and Collateral held for the benefit of such Person, in which case the obligations of such Person thereunder shall not be limited by any concept of *pro rata* share or similar concept, (ii) each of the Agent, the Lenders and the L/C Issuers party hereto shall be entitled to act in its sole discretion, without regard to the interest of such Person, regardless of whether any Obligation to such Person thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Person or any such Obligation and (iii) such Person shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

Section 9.18 Co-Syndication Agent; and Arrangers. Notwithstanding the provisions of this Agreement or any of the other Loan Documents, no Person who is or becomes a Co-Syndication Agent or a Co-Documentation Agent, nor the Arrangers, shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement or any of the other Loan Documents.

Section 9.19 Disqualified Institutions. The Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

Section 9.20 ERISA Representation.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(i i) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in subclause (iv) in the immediately preceding clause (a), or (2) Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agents and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Agent or the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by any Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

ARTICLE X MISCELLANEOUS

Section 10.01 Amendments, Etc. Except as provided in Section 2.15 and 2.16, no amendment or waiver of any provision of this Agreement, any other Loan Document, Section 10.01 of the Master Agency Agreement (solely as such amendment or waiver relates to the consent rights of the Agent to amendments of Article VII, Article VIII, Section 10.09, Section 10.10 or Annex A of the Master Agency Agreement) or Annex A to the Master Agency Agreement, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing with the consent of the Required Lenders, and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that, no such amendment, waiver or consent shall:

(a) extend or, increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents to the applicable Lenders (or any of them) without the written consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Revolving Commitments hereunder or under any other Loan Document without the written consent of such Lender; provided, that (x) only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate and (y) only the consent of the Required Lenders shall be necessary to waive any mandatory prepayment required under Section 2.05(c) or 2.05(d);

(c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iii) or (vi) of the proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written consent of each Lender entitled to such amount; provided, that, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate;

(d) as to any Lender, change (i) Section 2.05(e), (ii) Section 2.13, (iii) Section 6.13(j) (other than as provided for in Section 2.15(b)(v)), (iv) Section 8.03 (other than as provided for in Section 2.15(b)(v)), (v) Section 9.09 or (vi) Section 2.06(c), in a manner that would alter the pro rata sharing of payments required, or commitment terminations permitted, respectively thereby without the written consent of such Lender;

(e) change any provision of this Section or the definition of "Required Lenders", "Supermajority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender whose Loans or Commitments would otherwise be included in such determination;

(f) except as permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party in each case, without the written consent of each Lender;

(g) release all or substantially all of the Collateral from the Liens of the Security Documents or the Parent from the Facility Guaranty except (x) as expressly provided in the Loan Documents or (y) in connection with a "credit bid" undertaken by the Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted in accordance with Section 9.09 (in which case with respect to this clause (y), only the consent of the Required Lenders will be needed for such release) without the written consent of each Lender;

(h) 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 would be increased without the written consent of the Supermajority Lenders, provided, that, the foregoing shall not limit the discretion of the Agent to change, establish eliminate or reduce any Reserves;

(i) (x) amend, modify or waive Section 4.03 of the Master Agency Agreement or Section 7.11 (other than Section 7.11(c)) of this Agreement, without the consent of the Supermajority Lenders or (y) amend, modify, waive, or terminate any provision of, the consignment arrangements set forth in Article III of the Master Agency Agreement as they relate to the true consignment of Consigned Inventory and/or the Borrower's ownership of such Consigned Inventory or amend waive or modify Section 7.11(c) of this Agreement, in each case without the written consent of each Lender;

(j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written consent of each Revolving Lender; and

(k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written consent of each Lender

and, provided, that, (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; (iv) [reserved], (v) in connection with any increase in Commitments pursuant to Section 2.15, the Borrower and the Agent may effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Agent, to effect the provisions of Section 2.15, and this clause (v) shall supersede any provisions of this Agreement to the contrary (for the avoidance of doubt, the consent of the Required Lenders shall not be required in respect of this clause (v)), (vi) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto (for the avoidance of doubt, the consent of the Required Lenders shall not be required in respect of this clause (vi)) and (vii) no amendment or waiver shall, unless signed by the Agent and the Required Lenders (or by the Agent with the consent of the Required Lenders), (A) amend or waive compliance with the conditions precedent to the obligations of the Revolving Lenders to make any Revolving Loan (or of any L/C Issuer to issue any Letter of Credit) in Section 4.02 or (B) waive any Default or Event of Default for purposes of satisfying the conditions precedent to the obligations of the Revolving Lenders to make any Revolving Loan (or of any L/C Issuer to issue any Letter of Credit) in Section 4.02. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the foregoing shall not apply to (x) any of the matters governed by clause (a) through clause (c) above and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) (i) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party, and (ii) any instrument or agreement relating to Bank Products or Cash Management Services may be amended by the parties thereto without the consent of any other Person, and (y) any Loan Document may be amended and waived with the consent of the Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to correct, amend or cure ambiguities, internal inconsistencies or defects, or to correct any typographical error or other manifest error, (iii) make technical and conforming modifications to the Loan Documents necessary to integrate any (x) Incremental Term Loan Facility (subject to the FILO Intercreditor Provisions), (y) any Commitment Increase or (z) LIBOR Successor Rate Conforming Changes (subject to Section 3.03(a)) or (iv) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

If any Lender does not approve (a “Non-Consenting Lender”) any proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender or each affected Lender and that has been approved by the Required Lenders, the Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided, that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

Section 10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or other electronic communication as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties, the Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(i i) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

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 telecopier shall be deemed to have been given when sent (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 subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Loan Parties, the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that, the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The 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.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of the Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of, or breach of a Loan Document by, such Agent Party; provided, that, in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties, the Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number or electronic address for notices and other communications hereunder, by notice to the other parties hereto. Each other Lender may change its address, telecopier number or electronic address for notices and other communications hereunder by notice to the Borrower, the Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by the Agent, L/C Issuer and Lenders. The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, all requests for Credit Extensions) purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties (including, without limitation, pursuant to any requests for Credit Extensions). All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

Section 10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay all Credit Party Expenses (subject to the limitations set forth in this Agreement, including without limitation, in Section 6.10).

(b) Indemnification by the Loan Parties. Without duplication of any Credit Party Expenses or any amounts under Section 2.03, the Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all actual losses (excluding lost profits), claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, any bank advising or confirming a Letter of Credit or any other nominated person with respect to a Letter of Credit seeking to be reimbursed or indemnified or compensated, and any third party seeking to enforce the rights of the Borrower, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds, or holder of an instrument or document related to any Letter of Credit), (iii) [reserved], (iv) any claims of, or amounts paid by any Credit Party to, a Cash Management Bank or other Person which has entered into a Control Agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Loan Parties’ directors, shareholders or creditors, and regardless of whether any Indemnatee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnatee; provided, that, such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, material breach, bad faith or willful misconduct of such Indemnatee or any of its Related Parties, (B) result from a claim brought by the Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (C) relate to a dispute solely among Indemnitees and their Related Parties, other than claims against the Agent in such capacity fulfilling its agency role hereunder; provided, further, that the Loan Parties’ obligations pursuant to this Section 10.04(b) with respect to fees and expenses of counsel shall be limited to the reasonable and documented fees, disbursements and other charges of out-of-pocket fees and legal expenses of one (1) firm of counsel for all Indemnitees and, if necessary, one (1) firm of local counsel in each appropriate jurisdiction and one (1) firm of special counsel, in each case for all Indemnitees (and, in the case of an actual or perceived conflict of interest where the Indemnatee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of one (1) additional firm of counsel for such affected Indemnatee).

(c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, each of the parties hereto shall not assert, and hereby waives, any claim against any Indemnitee, or any Loan Party or any of their Related Parties, as applicable, 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 Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee nor any Loan Party or any Related Party thereof shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee, or Loan Party or any Related Party thereof, as applicable, 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 other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee, or Loan Party or any Related Party thereof, as applicable, as determined by a final and nonappealable judgment of a court of competent jurisdiction; provided that the foregoing shall not limit the Loan Party's indemnification obligations to the Indemnitee pursuant to Section 10.04(b), to the extent that any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients are included in any claim by a third party unaffiliated with any of the Indemnitee with respect to which the applicable Indemnitee is entitled to indemnification under Section 10.04(b).

(e) Payments. All amounts due under this Section shall be payable on demand (accompanied by back-up documentation to the extent available) therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Agent and the L/C Issuer, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.06 Successors and Assigns.

(a) Successors and Assigns Generally. 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 no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder (it being understood that a merger or consolidation not prohibited by this Agreement shall not constitute an assignment or transfer) or under any other Loan Document without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). 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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 10.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided, that, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of such Trade Date, shall not be less than \$10,000,000 in the case of Revolving Commitments, unless each of the Agent and, so long as no Event of Default pursuant to clauses (a) or (f) of Section 8.01 has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned or delayed); provided, that, concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(i i) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) an Event of Default pursuant to clauses (a) or (f) of Section 8.01 has occurred and is continuing at the time of such assignment; provided, that, the Borrower shall be deemed to have consented to any such assignment unless it objects thereto by written notice to the Agent within ten (10) Business Days after having received notice thereof; provided, further, that, no assignment shall be made to a Competitor or any Disqualified Institution without the Borrower's consent at any time, (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or (3) such assignment is made to any Person (excluding any Competitor or Disqualified Institution) to whom any Lender assigns its rights and obligations under this Agreement in connection with any merger, consolidation, amalgamation, or similar business combination to which such Lender is a party and/or any sale, transfer, or other disposition of all or any substantial portion of the business (or any particular line of business) or loan portfolio (or any particular subgroup of the loan portfolio) of such Lender; and

(B) the consent of the Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of any Revolving Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of the assignment of any Revolving Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

Notwithstanding the foregoing, no such assignment shall be made (i) to a natural Person, Competitor, Disqualified Institution or Defaulting Lender and (ii) with respect to the Revolving Loans and Revolving Commitments, the Parent or Pubco and its Subsidiaries or any of their respective Affiliates (including, for the avoidance of doubt, the Operating Companies).

(i v) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, provided, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; and provided, further, that it is hereby agreed that no such fee shall be payable in connection with the initial syndication hereof (notwithstanding that such initial syndication may not be completed until after the Closing Date). The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, 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 Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption 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 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the Closing Date of such assignment. Upon request from any assignee Lender, the Borrower (at its expense) shall execute and deliver a Note to such assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations 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 Loan Parties, the 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 Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. This Section 10.06(c) shall be construed so that the Loans and L/C Obligations are at all times maintained in "registered form" within the meaning of section 163(f), 871(h)(2) and 881(c) of the Code.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person, a Competitor, a Disqualified Institution or the Loan Parties or any of the Loan Parties' Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line 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 Loan Parties, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (it being understood that the documentation required under Section 3.01(e) shall be delivered solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b); provided, that such Participant agrees to be subject to the provisions of Section 3.06 as though it were a Lender. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Sections 3.06 and 10.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided, that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a register on which it records the name and address of each participant and the principal amounts of each participant's interest (and stated interest with respect thereto) in the Loans and Commitments (each, a "Participant Register"). No Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any commitments, loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, 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 the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Participant Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. For the avoidance of doubt, the Agent (in its capacity as the Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 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 that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. This Agreement may be in the form of an electronic record and may be executed using electronic signatures (including, without limitation, facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Agreement may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Agreement. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Agent of a manually signed paper communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed communication converted into another format, for transmission, delivery and/or retention.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (i) upon ten (10) Business Days’ notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon ten (10) Business Days’ notice to the Borrower, Bank of America may resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, that, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the Closing Date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

Section 10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); provided that no Credit Party may share any Information with any of its Affiliates that provide or may provide vendor financing or factoring arrangements to any Macy's Entity or any vendors of any Macy's Entity. (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source (only if such Credit Party has no knowledge that such source itself is not in breach of a confidentiality obligation) other than the Loan Parties. It is hereby acknowledged and agreed that with respect to any disclosure pursuant to clauses (b) or (c) above, the disclosing Credit Party shall to the extent practicable and legally permissible provide reasonable advance notice to the Borrower of any such required disclosure to facilitate the Borrower's contesting such disclosure or limiting the scope of such disclosure, provided, that in any event, such disclosing party shall use commercially reasonable efforts to limit such disclosure to that required in any such proceeding.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Affiliate thereof relating to the Loan Parties or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Affiliate thereof, (provided, that, if such information is furnished by a source known to such Credit Party to be subject to a confidentiality obligation, such source, to the knowledge of such Credit Party, is not in violation of such obligation by such disclosure) in the case of information received from any Loan Party or any Affiliate after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

Section 10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmaturing or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided, that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided, that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than any contingent obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities and (z) any Obligations (other than contingent indemnification obligations for which no claim has been asserted) that may thereafter arise under Section 10.04.

Section 10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04 or if any Lender delivers a notice described in Section 3.02, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06(b)), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided, that:

(a) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, together with accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(b) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(c) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

In connection with any such replacement, if any such Lender does not execute and deliver to the Agent a duly executed Assignment and Assumption reflecting such replacement within two (2) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Lender, then such Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of such Lender. Such purchase and sale shall be effective on the date of the payment of such amount to such Lender.

Section 10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE EXCLUSIVELY GOVERNED (WITHOUT REGARD TO RULES OR PRINCIPLES RELATING TO CONFLICTS OF LAWS) BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF, BUT INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION 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 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 IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY HERETO MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY HERETO OR SUCH LOAN PARTY'S PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY 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 LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY 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.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.15 Waiver of Jury Trial. EACH PARTY HERETO 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 LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (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 LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

Section 10.17 USA PATRIOT Act Notice . Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “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 Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Act.

Section 10.18 [Reserved].

Section 10.19 Acknowledgement and Consent to Bail-In of Affected 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 Affected 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 the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected 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

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.20 [Reserved].

Section 10.21 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by applicable Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) To the fullest extent permitted by applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the 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 indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party 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 Loan Party against any other Loan Party, as the case may be, or any security.

(d) Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Loan Party shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to the Borrower hereunder or other Obligations incurred directly and primarily by any other Loan Party (an "Accommodation Payment"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Parties in an amount, for each of such other Loan Parties, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Loan Parties. As of any date of determination, the "Allocable Amount" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without (a) rendering such Loan Party "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 Loan Party 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 Loan Party 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.

Section 10.22 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 10.23 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

Section 10.24 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 Loan Party to honor all of its obligations under the Facility Guaranty in respect of Swap Obligations (provided, that each Qualified ECP Guarantor shall only be liable under this Section 10.24 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.24, or otherwise under the Facility Guaranty, 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 shall remain in full force and effect until payment in full of the Obligations. Each Qualified ECP Guarantor intends that this Section 10.24 constitute, and this Section 10.24 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 10.25 Intercreditor Provisions.

(a) The FILO Intercreditor Provisions are hereby incorporated by reference in this Agreement and apply to each Incremental Term Lender, and to all Incremental Term Loans at any time incurred or outstanding hereunder, as fully as if set forth herein in their entirety. Each Incremental Term Lender, by extending Incremental Term Loans or acquiring the same by assignment, agrees to be bound by the FILO Intercreditor Provisions. Furthermore, each Revolving Lender hereby authorizes the Agent to enter into (i) any amendments to any intercreditor agreements, and (ii) any other intercreditor arrangements, in the case of clauses (i), and (ii) to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by Section 2.15(b) of this Agreement, subject to the FILO Intercreditor Provisions. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

(b) Each of the Credit Parties (including in its capacities as a potential Cash Management Bank) irrevocably authorizes and directs the Agent to enter into any subordination, intercreditor, collateral trust and/or similar agreement contemplated hereunder, including with respect to Indebtedness that is (i) required or permitted to be subordinated in right of payment hereunder and/or (ii) secured by Liens and required or permitted to be *pari passu* with or junior to the Liens securing the Obligations (including, for the avoidance of doubt, any Liens incurred pursuant to Section 7.01), and with respect to which Indebtedness, an intercreditor, subordination, collateral trust or similar agreement is contemplated under this Agreement (each, an “Additional Agreement”), and the Credit Parties party hereto acknowledge that any Additional Agreement is binding upon them. Each Credit Party party hereto hereby (a) agrees that they will be bound by, and will not take any action contrary to, the provisions of any Additional Agreement and (b) authorizes and instructs the Agent to enter into any Additional Agreement and to subject the Liens on the Collateral securing the Obligations to the provisions thereof.

Section 10.26 Acknowledgement Regarding Supported QFCs To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract 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):

(a) 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.

(b) As used in this Section 10.26, the following terms have the following meanings:

“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.

“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).

“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.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

BORROWER:

MACY'S INVENTORY FUNDING LLC,
a Delaware limited liability company

By: /s/ Brooke Major-Reid
Name: Brooke Major-Reid
Title: President

PARENT:

MACY'S INVENTORY HOLDINGS LLC,
a Delaware limited liability company

By: /s/ Brooke Major-Reid
Name: Brooke Major-Reid
Title: President

[Signature Page to Credit Agreement]

BANK OF AMERICA, N.A.,
as Agent, L/C Issuer and Swing Line Lender

By: /s/ Brian Lindblom
Name: Brian Lindblom
Title: Senior Vice President

[Signature Page to Credit Agreement]

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as a Lender and L/C Issuer

By: /s/ Lingzi Huang
Name: Lingzi Huang
Title: Authorized Signatory

By: /s/ Brady Bingham
Name: Brady Bingham
Title: Authorized Signatory

[Signature Page to Credit Agreement]

JPMORGAN CHASE BANK, N.A.,
as a Lender and L/C Issuer

By: /s/ Tony Yung
Name: Tony Yung
Title: Executive Director

[Signature Page to Credit Agreement]

Wells Fargo Bank, National Association,
as a Lender and L/C Issuer

By: /s/ Cory Loftus

Name: Cory Loftus

Title: Managing Director

[Signature Page to Credit Agreement]

Fifth Third Bank, National Association,
as a Lender and L/C Issuer

By: /s/ Mark Pienkos
Name: Mark Pienkos
Title: Managing Director

[Signature Page to Credit Agreement]

US Bank National Association,
as a Lender and L/C Issuer

By: /s/ Christopher W. Rupp
Name: Christopher W. Rupp
Title: Senior Vice President

[Signature Page to Credit Agreement]

PNC BANK, NATIONAL ASSOCIATION,
as a Lender and L/C Issuer

By: /s/ Jeffrey Penno
Name: Jeffrey Penno
Title: Senior Vice President

[Signature Page to Credit Agreement]

MUFG Union Bank, N.A.,
as a Lender and L/C Issuer

By: /s/ Edward Dridge
Name: Edward Dridge
Title: Director

[Signature Page to Credit Agreement]

CITIBANK, N.A.,
as a Lender

By: /s/ David Smith
Name: David Smith
Title: VP

[Signature Page to Credit Agreement]

CIT BANK, N.A.,
as a Lender and L/C Issuer

By: /s/ Anthony Masci
Name: Anthony Masci
Title: Director

[Signature Page to Credit Agreement]

Goldman Sachs Bank USA,
as a Lender and L/C Issuer

By: /s/ Thomas M. Manning
Name: Thomas M. Manning
Title: Authorized Signatory

[Signature Page to Credit Agreement]

AMENDMENT NO. 1 TO CREDIT AGREEMENT

THIS AMENDMENT NO. 1 TO CREDIT AGREEMENT dated as of June 8, 2020 (this "Amendment") is entered into among Macy's Retail Holdings, LLC, a Delaware limited liability company (f/k/a Macy's Retail Holdings, Inc.) ("Borrower"), Macy's, Inc., a Delaware corporation ("Parent"), the Lenders party hereto, and Bank of America, N.A., as Administrative Agent. All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Credit Agreement (as defined below).

RECITALS

WHEREAS, Borrower, Parent, the Lenders, the Administrative Agent, and the other persons party thereto entered into that certain Credit Agreement dated as of May 9, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Amendment No. 1 Effective Date, the "Existing Credit Agreement"; the Existing Credit Agreement, as amended pursuant to this Amendment, the "Credit Agreement"; and

WHEREAS, Borrower has requested that the Lenders party hereto (which constitute the Required Lenders) and Administrative Agent amend the Existing Credit Agreement as set forth below;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments. Effective as of the Amendment No. 1 Effective Date (as defined below) and subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Credit Agreement is hereby amended by incorporating the changes shown on the marked copy of the Credit Agreement attached hereto as Exhibit A (it being understood that language which appears "struck out" has been deleted and language which appears as "double-underlined" has been added).
 2. Conditions Precedent. This Amendment shall become effective only upon satisfaction or waiver of the following conditions precedent (the date such conditions precedent are satisfied, the "Amendment No. 1 Effective Date"):
 - (a) Receipt by the Administrative Agent of executed counterparts of this Amendment, executed and delivered by Borrower, Parent, Administrative Agent and the Required Lenders (provided that the requirements of this clause (i) may be satisfied by customary written evidence reasonably satisfactory to Administrative Agent (which may include electronic transmission of a signed signature page) that such party has signed a counterpart to this Amendment); and
 - (b) All Loans outstanding under the Existing Credit Agreement prior to the Amendment No. 1 Effective Date shall have been repaid in full in cash along with all accrued interest and all other fees, costs and other expenses due and owing under the Existing Credit Agreement on or immediately prior to the Amendment No. 1 Effective Date.
 - (c) Receipt by the Administrative Agent of a customary opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and this Amendment as the Administrative Agent may reasonably request.
-

3. Miscellaneous.

(a) The Existing Credit Agreement (as amended hereby), and the obligations of the Loan Parties thereunder and under the other Loan Documents, are hereby ratified and confirmed and shall remain in full force and effect according to their terms. Except as expressly set forth herein, this Amendment shall not be deemed to be an amendment or modification of any other provisions of the Existing Credit Agreement or any other Loan Document or any right, power or remedy of the Lenders, nor constitute a waiver of any provision of the Existing Credit Agreement, any other Loan Document, or any other document, instrument and/or agreement executed or delivered in connection therewith or of any Default or Event of Default under any of the foregoing, in each case, whether arising before or after the date hereof or as a result of performance hereunder or thereunder. On and after the Amendment No. 1 Effective Date, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended by this Amendment.

(b) Parent (a) acknowledges and consents to all of the terms and conditions of this Amendment, (b) affirms all of its obligations under the Loan Documents and (c) agrees that this Amendment and all documents executed in connection herewith do not operate to reduce or discharge its obligations under the Credit Agreement or the Loan Documents.

(c) After giving effect to this Amendment, the Borrower reaffirms and restates the representations and warranties set forth in the Existing Credit Agreement (as amended hereby) and all such representations and warranties shall be true and correct on the date hereof in all respects with the same force and effect as if made on such date, except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects as of such earlier date. Each Loan Party represents and warrants to the Administrative Agent and the Lenders that, on and as of the Amendment No. 1 Effective Date:

(i) Each Loan Party has taken all necessary corporate or limited liability company action, as applicable, to authorize the execution, delivery and performance of this Amendment.

(ii) This Amendment has been duly executed and delivered by each of the Loan Parties and constitutes each of the Loan Parties' legal, valid and binding obligations, enforceable in accordance with its terms, except as such enforceability may be limited by debtor relief laws and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) No consent, approval, authorization or order of, or filing, registration or qualification with, any Governmental Authority is required in connection with the execution, delivery or performance by any Loan Party of this Amendment other than those that have already been obtained and are in full force and effect or the failure of which to have obtained would not reasonably be expected to have a Material Adverse Effect.

(iv) No Default or Event of Default has occurred and is continuing.

(d) This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopy shall be effective as an original and shall constitute a representation that an executed original shall be delivered. This Amendment may be executed using electronic signatures (including, without limitation, facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by any party hereto of a manually signed paper signature which has been converted into electronic form (such as scanned into PDF format), or an electronically signed signature converted into another format, for transmission, delivery and/or retention.

(e) **THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. SECTIONS 9.09(b)-(d) AND 9.10 OF THE CREDIT AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN AS IF SUCH SECTIONS APPEARED HEREIN, *MUTATIS MUTANDIS*.**

(f) This Amendment shall constitute a “Loan Document” for all purposes of the Credit Agreement and the other Loan Documents.

(g) Section 9.07 of the Credit Agreement is incorporated by reference herein as if such Section appeared herein,*mutatis mutandis*.

[remainder of page intentionally left blank]

Each of the parties hereto has caused a counterpart of this Amendment to be duly executed and delivered as of the date first above written.

MACY’S, INC.,
a Delaware corporation

By: /s/ Elisa D. Garcia
Name: Elisa D. Garcia
Title: Executive Vice President

MACY’S RETAIL HOLDINGS, LLC,
a Delaware limited liability company

By: /s/ Elisa D. Garcia
Name: Elisa D. Garcia
Title: President

[Signature Page to Amendment No. 1 to Credit Agreement]

BANK OF AMERICA, N.A.,
as an Administrative Agent

By: /s/ Teresa Weirath
Name: Teresa Weirath
Title: Vice President

[Signature Page to Amendment No. 1 to Credit Agreement]

BANK OF AMERICA, N.A.,
as a Lender

By: /s/ Brian Lindblom
Name: Brian Lindblom
Title: Senior Vice President

[Signature Page to Amendment No. 1 to Credit Agreement]

CIT BANK, N.A.,
as a Lender

By: /s/ Anthony Masci
Name: Anthony Masci
Title: Director

[Signature Page to Amendment No. 1 to Credit Agreement]

CITIBANK, N.A.,
as a Lender

By: /s/ Alvaro De Velasco
Name: Alvaro De Velasco
Title: Vice-President

[Signature Page to Amendment No. 1 to Credit Agreement]

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as a Lender

By: /s/ Lingzi Huang
Name: Lingzi Huang
Title: Authorized Signatory

By: /s/ Brady Bingham
Name: Brady Bingham
Title: Authorized Signatory

[Signature Page to Amendment No. 1 to Credit Agreement]

FIFTH THIRD BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Miranda C. Stokes
Name: Miranda C. Stokes
Title: Managing Director

[Signature Page to Amendment No. 1 to Credit Agreement]

GOLDMAN SACHS BANK USA,
as a Lender

By: /s/ Jamie Minieri
Name: Jamie Minieri
Title: Authorized Signatory

[Signature Page to Amendment No. 1 to Credit Agreement]

JPMORGAN CHASE BANK, N.A.,
as a Lender

By: /s/ Tony Yung
Name: Tony Yung
Title: Executive Director

[Signature Page to Amendment No. 1 to Credit Agreement]

MUFG Union Bank, N.A.,
as a Lender

By: /s/ Megan R. Webster
Name: Megan R. Webster
Title: Director

[Signature Page to Amendment No. 1 to Credit Agreement]

PNC Bank, National Association,
as a Lender

By: /s/ Cary M. Sierzputowski
Name: Cary M. Sierzputowski
Title: Senior Vice President

[Signature Page to Amendment No. 1 to Credit Agreement]

U.S. Bank National Association,
as a Lender

By: /s/ Christopher W. Rupp
Name: Christopher W. Rupp
Title: Senior Vice President

[Signature Page to Amendment No. 1 to Credit Agreement]

WELLS FARGO BANK, NATIONAL ASSOCIATION
as a Lender

By: /s/ Reginald Dawson
Name: Reginald Dawson
Title: Managing Director

[Signature Page to Amendment No. 1 to Credit Agreement]

EXHIBIT A
(Attached)

CUSIP Numbers:
Deal: 55616TAJ5
Facility: 55616TAK2

CREDIT AGREEMENT

dated as of

May 9, 2019,

among

MACY'S, INC.,

MACY'S RETAIL HOLDINGS, INC.

The Lenders Party Hereto

BANK OF AMERICA, N.A.,
as Administrative Agent

CREDIT SUISSE LOAN FUNDING LLC, FIFTH THIRD BANK, U.S. BANK NATIONAL ASSOCIATION and WELLS FARGO BANK, NATIONAL ASSOCIATION, as
Syndication Agents

MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, CREDIT SUISSE LOAN FUNDING LLC, FIFTH THIRD BANK, U.S. BANK NATIONAL
ASSOCIATION and WELLS FARGO SECURITIES, LLC, as Joint Bookrunners and Lead Arrangers

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Exhibit C -- Form of Guarantee Agreement
Exhibit D -- Form of U.S. Tax Certificate

CREDIT AGREEMENT dated as of May 9, 2019, among MACY'S, INC.; MACY'S RETAIL HOLDINGS, INC.; the LENDERS party hereto; and BANK OF AMERICA, N.A. as Administrative Agent.

The parties hereto 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 Credit Agreement" means the Credit Agreement, dated as of the Amendment No. 1 Effective Date, by and among the ABL Loan Parties, the lenders party thereto from time to time and the ABL Agent.

"ABL Loan Parties" means Macy's Inventory Holdings LLC, a Delaware limited liability company, and Macy's Inventory Funding LLC, a Delaware limited liability company.

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Administrative Agent" means Bank of America, N.A., in its capacity as administrative agent for the Lenders hereunder and under the other Loan Documents.

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

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, 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.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate on such day plus 1/2 of 1.0% per annum and (c) the Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0% per annum; provided that, for the avoidance of doubt, for purposes of calculating the Alternate Base Rate, the Eurodollar Rate for any day shall be based on the Eurodollar Rate determined at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.13(b) hereof, then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Amendment No. 1 Effective Date” means June 8, 2020.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery, money laundering or corruption.

“Applicable Percentage” means, with respect to any Lender, the percentage (carried out to the ninth decimal place) of the Total Commitments represented by such Lender’s Commitment; provided that if any Defaulting Lender exists at such time, the Applicable Percentages shall be calculated disregarding such Defaulting Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Rate” means, for any day, with respect to any Eurodollar Revolving Loan or ABR Loan, or with respect to the facility fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Eurodollar Spread”, “ABR Spread” or “Facility Fee Rate”, as the case may be, based upon either the Public Debt Ratings or the Leverage Ratio in effect on such date, with the Applicable Rate being determined by reference to the Level more favorable to the Borrower; provided that the Applicable Rate may never be based upon a Level that is more favorable to the Borrower than the Level that is one Levels above that of the Public Debt Ratings:

<u>Level</u>	<u>Public Debt Rating S&P/Moody’s</u>	<u>Leverage Ratio</u>	<u>Eurodollar Spread</u>	<u>ABR Spread</u>	<u>Facility Fee Rate</u>
1	A-/A3	≤1.0 to 1.0	0.910%	0.00%	0.090%
2	BBB+/Baa1	≤ 1.5 to 1.0	1.015%	0.015%	0.110%
3	BBB/Baa2	≤ 2.0 to 1.0	1.100%	0.100%	0.150%
4	BBB-/Baa3	≤ 2.5 to 1.0	1.200%	0.200%	0.175%
5	Lower	> 2.5 to 1.0	1.400%	0.400%	0.225%

Initially, the Applicable Rate shall be determined based upon Level 3. Thereafter, for purposes of the foregoing, (i) the Leverage Ratio shall be determined as of the end of the fiscal quarter for the Parent for which consolidated financial statements have theretofore been most recently delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to any such delivery, Section 5.01(a) or 5.01(b) of the Existing Credit Agreement), (ii) if the Parent and the Borrower fail to deliver the consolidated financial statements required to be delivered pursuant to Section 5.01(a) or 5.01(b) within the time period specified herein for such delivery then, during the period commencing on and including the date such financial statements were required to have been delivered and until the delivery thereof, the Applicable Rate shall be determined by reference to the Public Debt Ratings, (iii) if either Moody's or S&P shall not have in effect a Public Debt Rating (other than by reason of the circumstances referred to in the last sentence of this definition), then the Level established based on the Public Debt Rating shall be determined by reference to the remaining Public Debt Rating and the rating assigned to the Parent's senior unsecured debt obligations by Fitch if Fitch is then rating the Parent's senior unsecured debt obligations, and if neither Moody's nor S&P has in effect a Public Debt Rating (other than by reason of the circumstances referred to in the last sentence of this definition), then the Applicable Rate shall be determined by reference to the Leverage Ratio and/or the rating assigned to the Parent's senior unsecured debt obligations by Fitch if Fitch is then rating the Parent's senior unsecured debt obligations; (iv) if the Public Debt Ratings established or deemed to have been established by Moody's and S&P shall fall within different Levels, then the Level established based on the Public Debt Rating shall be based on the higher of the two Public Debt Ratings unless one of the two Public Debt Ratings is two or more Levels lower than the other, in which case the Level established based on the Public Debt Rating shall be determined by reference to the Level next below that of the higher of the two Public Debt Ratings; and (v) if the Public Debt Ratings established or deemed to have been established by Moody's, S&P and Fitch shall be changed (other than as a result of a change in the ratings system of Moody's, S&P or Fitch), such change shall be effective as of the date on which it is first announced by the applicable rating agency, irrespective of when notice of such change shall have been furnished pursuant to Section 5.01 or otherwise. Each change in the Applicable Rate (a) resulting from a change in the Leverage Ratio shall apply during the period commencing on and including the Business Day following the date of delivery pursuant to Section 5.01(a) or 5.01(b) of the consolidated financial statements indicating such change and (b) resulting from a change in the Public Debt Ratings shall apply during the period commencing on the effective date of such change and, in each case, ending on the date immediately preceding the effective date of the next such change. If the rating system of Moody's, S&P or Fitch shall change, or if any such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment (unless two of such rating agencies are unaffected by the foregoing), the Applicable Rate shall be determined by reference to the Leverage Ratio.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit B or any other form approved by the Administrative Agent.

"Augmenting Lender" has the meaning set forth in Section 2.19(a).

"Auto-Extension Letter of Credit" has the meaning set forth in Section 2.05(o).

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“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 ~~such EEA~~ an Affected Financial Institution.

“Bail-In Legislation” means, (a) 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 ~~and~~ (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America Commitment” means the commitment of Bank of America, N.A. to make Revolving Loans in the amount of \$1,000,000, as such commitment may be reduced from time to time pursuant to Section 2.08; provided that, for the avoidance of doubt, Bank of America, N.A. shall not be required to provide Letters of Credit hereunder or acquire participations in Letters of Credit hereunder.

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“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.

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

“Borrower” means Macy’s Retail Holdings, Inc., a New York corporation.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (b) a Competitive Loan or group of Competitive Loans of the same Type made on the same date and as to which a single Interest Period is in effect.

“Borrowing Request” means a notice of a Borrowing, which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer or Financial Officer of the Borrower.

“Business” means, at any time, a collective reference to the businesses engaged in by the Parent and the Borrower and the Subsidiaries on the Amendment No. 1 Effective Date (after giving effect to the transactions on the Amendment No. 1 Effective Date) and similar, corollary, ancillary, incidental, complementary or related businesses.

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

“Change in Control” means an (a) event or series of events by which any “change in control” or similar event as defined in any document governing Material Indebtedness would be triggered or (b) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities-Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the Amendment No. 1 Effective Date hereof), of Equity Interests representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Parent; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Parent by Persons who were not (i) nominated by the board of directors of the Parent (ii) appointed by directors so nominated or (iii) approved by the board of directors of the Parent as director candidates prior to their election; or (c) after the Effective Date the Borrower ceases to be a direct, wholly owned subsidiary of the Parent.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption of any rule, regulation, treaty or other law, (b) any change in any rule, regulation, treaty or other law or in the administration, interpretation, implementation, or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) of any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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 regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, promulgated or issued.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Competitive Loans.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$1,500,000,000.

“Commitment Increase” has the meaning set forth in Section 2.19(b).

“Competitive Bid” means an offer by a Lender to make a Competitive Loan in accordance with Section 2.04.

“Competitive Bid Rate” means, with respect to any Competitive Bid, the Margin or the Fixed Rate, as applicable, offered by the Lender making such Competitive Bid.

“Competitive Bid Request” means a request by the Borrower for Competitive Bids in accordance with Section 2.04.

“Competitive Loan” means a Loan made pursuant to Section 2.04.

“Consenting Lenders” has the meaning set forth in Section 2.21(b).

“Consolidated EBITDA” means, for any period, (a) the sum of (without duplication and in the case of clauses (ii) through (viii) to the extent deducted in calculating Consolidated Net Income) (i) Consolidated Net Income (or net loss), (ii) interest expense, (iii) income tax expense, (iv) depreciation expense, (v) amortization expense (including amortization of (A) excess of cost over net assets acquired, (B) reorganization value in excess of amounts allocable to identifiable assets and (C) unearned restricted stock), (vi) non-cash charges for such period (including non-cash charges arising from impairment of goodwill, impairment of intangibles, impairments/write downs of real estate or other long-term assets and post-retirement settlement charges), (vii) extraordinary losses and (viii) non-recurring cash charges in an aggregate amount for all periods commencing on or after the Effective Date, not to exceed \$200,000,000 (and not more than 20% of which shall be inventory valuation adjustments pursuant to clause (D) below), in respect of (A) store, corporate office and support function closings, eliminations, relocations and divisional realignments, (B) employee severance costs, (C) fees, costs and expenses resulting from, or incurred in connection with, any of the foregoing and (D) inventory valuation adjustments resulting from, or incurred in connection with, any of the foregoing, less (b) the sum of (i) non-recurring or extraordinary gains, (ii) interest income and (iii) any payments made during such period that were added as a non-cash charge in a previous period pursuant to clause (a)(vi) above, in each case in clauses (a) and (b) of the Parent and the Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income or loss of the Parent and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Interest Expense” means, for any period, the amount (if any) by which (a) interest payable on all Indebtedness (including the interest component of Finance Lease Obligations, but excluding tender and open market repurchase premiums) and amortization of deferred financing fees and debt discount in respect of all Indebtedness exceeds (b) interest income, in each case in clauses (a) and (b), of the Parent and the Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Tangible Assets” means, at any date of determination, (a) the aggregate amount of assets (less applicable reserves and other properly deductible items), minus (b) all current liabilities, minus (c) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, in each case in clauses (a), (b) and (c) of the Parent and the Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“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.

“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).

“Covered Party” has the meaning set forth in Section 9.22.

“Declining Lender” has the meaning set forth in Section 2.21(b).

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“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.

“Defaulting Lender” means any Lender, as determined by the Administrative Agent, that has (a) failed to fund any portion of its Loans or participations in Letters of Credit within three Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent, the Parent and the Borrower in writing that such failure is the result of such Lender’s 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, (b) notified the Parent, the Borrower, the Administrative Agent, an Issuing Bank or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) failed, within three Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit; provided that confirmation received by the Administrative Agent beyond three Business Days shall remedy the default under this clause (c), (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, (e)(i) been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or has a parent company that has been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a direct or indirect parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment (the events described in this clause (e) each, a “Bankruptcy Event”); provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority; provided, however, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any agreements made by such Person, or (f) become the subject of a Bail-In Action, or has a direct or indirect parent company that has, become the subject of a Bail-In Action.

“Documentary LC” means any letter of credit (other than a Letter of Credit) that is issued by a Person that is not an Affiliate of the Parent for the benefit of a supplier of inventory to the Parent or any Subsidiary to effect payment for such inventory.

“dollars” or “\$” refers to lawful money of the United States of America.

“Economic Development Transaction” means a conveyance of real property (which may include improvements thereon and related assets) made by the Parent or a Subsidiary to a Governmental Authority (or related industrial development agency) in order to obtain tax exemptions or other inducements or accommodations in connection with economic development activity; provided that (a) the Parent or applicable Subsidiary retains possession and control of the applicable property pursuant to a lease or similar arrangement, (b) payments due by the Parent or applicable Subsidiary in connection therewith are made in order to obtain reduced obligations the Parent or such Subsidiary would otherwise incur or other economic benefits, or offset by corresponding payments owed by the transferee and (c) title to the applicable property reverts to the Parent or applicable Subsidiary upon termination of such lease or similar arrangement.

“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, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any member state 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means May 9, 2019.

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

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

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

“ERISA Event” means: (a) ~~any “a Reportable Event”, as defined in Section 4043 of ERISA or the regulations issued thereunder~~ with respect to a Pension Plan ~~(other than an event for which the 30-day notice period is waived)~~; (b) ~~any~~ failure by any Pension Plan to ~~meet/satisfy~~ the minimum funding standards ~~(as defined in within the meaning of~~ Section 412 of the Code or Section 302~~3~~ of ERISA) ~~applicable to such Plan, in each case~~, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; ~~(d) the incurrence by the Parent or any of its ERISA Affiliates of~~ Pension Plan, the failure of a Loan Party to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or the failure of a Loan Party to make any required contribution to a Multiemployer Plan; (d) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension 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 that is treated as such a withdrawal under Section 4062(e) of ERISA; (e) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan; (f) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination of a Pension Plan or a Multiemployer Plan under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (g) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (h) the imposition of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Parent, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Parent or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or; (i) the determination that any Pension Plan is considered to be an “at-risk” plan, or that any Multiemployer Plan; ~~or (g) the receipt by the~~ is considered to be in “endangered” or “critical” status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 or 305 of ERISA; (j) the engagement by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent or any ERISA Affiliate of any notice, concerning a transaction that would reasonably be expected to be subject to Sections 4069 or 4212(c) of ERISA; or (k) the imposition of ~~Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV~~ a Lien upon any Loan Party pursuant to Section 403(k) of the Code or Section 303(k) of ERISA.

“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.

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

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be 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; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and

(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Taxes” means, with respect to any payment made by any Loan Party under any Loan Document, any of the following Taxes imposed on or with respect to a Recipient: (a) income or franchise Taxes imposed on (or measured by) its net income (i) that are imposed by the United States of America, or by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or (ii) that are Other Connection Taxes, (b) any branch profits Taxes imposed by the United States of America or any similar Taxes imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 2.18(b)), any U.S. Federal withholding Taxes resulting from any law in effect on the date such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Taxes pursuant to Section 2.16(a), (d) Taxes attributable to such Recipient’s failure to comply with Section 2.16(f) and (e) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means the Credit Agreement dated as of May 6, 2016, among the Parent, the Borrower, the lenders party thereto, JPMorgan Chase Bank, N.A. and Bank of America, N.A., as administrative agents and JPMorgan Chase Bank, N.A., as paying agent.

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

“Existing Letter of Credit” means any letter of credit issued for the account of the Parent or the Borrower and outstanding on the Effective Date under the Existing Credit Agreement; provided that the issuer of such letter of credit is a Lender and such Lender becomes an Issuing Bank under this Agreement pursuant to Section 2.05.

“Existing Maturity Date” has the meaning set forth in Section 2.21(c).

“Extension Date” has the meaning set forth in Section 2.21(b).

“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) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“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, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent; provided that if the Federal Funds Rate, determined as provided above, would be less than zero, the Federal Funds Rate shall for all purposes of this Agreement be zero.

“Finance Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other 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 leases on a balance sheet of such Person under GAAP, the amount of such obligations shall be the capitalized amount thereof, to be determined in accordance with GAAP.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Parent or the Borrower, as applicable.

“Fitch” means Fitch Ratings Inc. or any successor thereto.

“Fixed Rate” means, with respect to any Competitive Loan (other than a Eurodollar Competitive Loan), the fixed rate of interest per annum specified by the Lender making such Competitive Loan in its related Competitive Bid.

“Fixed Rate Loan” means a Competitive Loan bearing interest at a Fixed Rate.

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

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

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

“Guarantee Agreement” means the Guarantee Agreement among the Parent, the Borrower and the Administrative Agent substantially in the form of Exhibit C.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments (other than performance, surety and appeals bonds arising in the ordinary course of business), (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (other than obligations for property (excluding real property, capital stock and property subject to capital leases) and services purchased, and expense accruals and deferred compensation items arising in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Finance Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor under applicable law as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Initial Loans” has the meaning set forth in Section 2.19(b).

“Interest Coverage Ratio” means, at any date of determination, the ratio of (a) Consolidated EBITDA for the Measurement Period then most recently ended to (b) Consolidated Net Interest Expense for such Measurement Period.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.07.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and (c) with respect to any Fixed Rate 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 Fixed Rate Borrowing with an Interest Period of more than 90 days’ duration (unless otherwise specified in the applicable Competitive Bid Request), each day prior to the last day of such Interest Period that occurs at intervals of 90 days’ duration after the first day of such Interest Period, and any other dates that are specified in the applicable Competitive Bid Request as Interest Payment Dates with respect to such Borrowing.

“Interest Period” means (a) with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is seven days or one, two, three or six months thereafter, as the Borrower may elect and (b) with respect to any Fixed Rate Borrowing, the period (which shall not be less than seven days or more than 180 days) commencing on the date of such Borrowing and ending on the date specified in the applicable Competitive Bid Request; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, if such Interest Period is measured in months and in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period measured in months pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“IRS” means the United States Internal Revenue Service.

“ISP 98” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuing Bank” means, as the context may require, (a) Bank of America, N.A., (b) Fifth Third Bank, (c) U.S. Bank National Association, (d) Wells Fargo Bank, National Association, (e) solely in respect of any Existing Letter of Credit, the Person that is the issuer thereof and (f) any other Lender that becomes an Issuing Bank pursuant to Section 2.05(k), in each case, in its capacity as an issuer of Letters of Credit hereunder, and each such Person’s successors in such capacity as provided in Section 2.05(i). Any 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” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Issuing Bank Agreement” means an agreement referred to in Section 2.05(k) under which a Lender becomes an Issuing Bank.

“LC Commitment” means, as to any Issuing Bank, the maximum permitted amount of the LC Exposure that may be attributable to Letters of Credit issued by such Issuing Bank. The initial amount of each Issuing Bank’s LC Commitment is set forth in Schedule 2.01 or in the agreement referred to in such Issuing Bank’s Issuing Bank Agreement. The LC Commitment of any Issuing Bank may be increased or decreased by an agreement between the Borrower and such Issuing Bank.

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

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

“Lender Parent” means, with respect to any Lender, any Person in respect of which such Lender is a Subsidiary.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit” means each Existing Letter of Credit and any letter of credit issued pursuant to this Agreement.

“Letter of Credit Expiration Date” has the meaning set forth in Section 2.05(c).

“Leverage Ratio” means, at any date of determination, the ratio of (a) Total Indebtedness as of such date to (b) Consolidated EBITDA for the Measurement Period (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter of the Parent most recently ended prior to such date).

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

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

“Loan Documents” means this Agreement, the Guarantee Agreement and any promissory notes delivered pursuant to Section 2.09(e).

“Loan Parties” means the Parent and the Borrower.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Margin” means, with respect to any Competitive Loan bearing interest at a rate based on the Eurodollar Rate, the marginal rate of interest, if any, to be added to or subtracted from the Eurodollar Rate to determine the rate of interest applicable to such Loan, as specified by the Lender making such Loan in its related Competitive Bid.

“Material Adverse Effect” means ~~an effect that causes or results in or has a reasonable likelihood of causing or resulting in any~~ (a) a material adverse change in ~~(a) the business, condition (financial or otherwise), operations, performance or properties of the Parent and the Subsidiaries, or a material adverse effect upon, the operations, business or financial condition of the Loan Parties taken as a whole; (b) a material impairment of the ability of the Loan Parties, taken as a whole, (b) to perform their payment obligations under the Loan Documents; or (c) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document; (e) the ability of the Loan Parties, taken as a whole, to perform their obligations under any Loan Document or (d) or a material adverse effect upon~~ the legality, validity, binding effect or enforceability of any Loan Document against any Loan Party of the Loan Documents to which it is a party. Notwithstanding anything in paragraph (a) to the contrary, any change in or effect upon the operations, business or financial condition of any Loan Party substantially and directly relating to the impacts of COVID-19 shall not be considered to be a Material Adverse Effect during the period from and including the Amendment No. 1 Effective Date through and including July 31, 2021.

“Material Indebtedness” means Indebtedness (other than the ~~Loans and Letters of Credit), or~~ Obligations in respect of one or more Swap Agreements, of any one or more of the Parent and its Subsidiaries) of the Loan Parties in an aggregate principal amount exceeding \$~~275~~275,000,000. For purposes of determining the amount of Material Indebtedness, at any time, (i) the “principal amount” of the obligations of the Parent or any Subsidiary in respect of any Swap Agreement at any such time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Parent or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time calculated at the Swap Termination Value thereof, and (ii) undrawn committed or available amounts shall be included.

“Material Subsidiary” means, as of any date of determination, (a) the Borrower and (b) any other Subsidiary having (i) assets with a value of not less than 5.0% of the total value of the assets of the Parent and its consolidated subsidiaries, taken as a whole, or (ii) Consolidated EBITDA of not less than 5.0% of the Consolidated EBITDA of the Parent and its consolidated subsidiaries, taken as a whole, in each case as of the end of or for the most recently completed fiscal year of the Parent.

“Maturity Date” means the date that is five years after the Effective Date, as such date may be extended pursuant to Section 2.21; provided that, if such date is not a Business Day, then the Maturity Date shall be the next succeeding Business Day.

“Maturity Date Extension Request” has the meaning set forth in Section 2.21(a).

“Measurement Period” means, as of any date of determination, the period of four fiscal quarters of the Parent most recently ended on or prior to such date of determination.

“Minor Subsidiary” means any Subsidiary that is not a Material Subsidiary.

“MNPI” means material information concerning the Parent, the Borrower and the Subsidiaries and their securities that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD under the Securities Act of 1933 and the Securities Exchange Act of 1934.

“Moody’s” means Moody’s Investors Service, Inc. or any successor thereto.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Non-Defaulting Lender” means, at any time, any Lender that is not a Defaulting Lender at such time.

“Non-Extension Notice Date” has the meaning set forth in Section 2.05(o).

“Non-U.S. Lender” means a Lender that is not a U.S. Person.

“Obligations” has the meaning assigned to such term in the Guarantee Agreement.

“OFAC” means the United States Treasury Department Office of Foreign Assets Control.

“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 Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or 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 or documentary taxes or any other excise or property Taxes arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, 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 under Section 2.18(b)).

“Parent” means Macy’s, Inc., a Delaware corporation.

“Parent Materials” has the meaning set forth in Section 9.17(a).

“Participant” has the meaning set forth in Section 9.04.

“Participant Register” has the meaning set forth in Section 9.04(c).

“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)).

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

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years if any Loan Party would have liability thereto.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.03;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in good faith by proper proceedings;
- (c) Liens (if any) arising by operation of law and pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, old-age pensions and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not materially detract from the value of the affected property to the Parent or any Subsidiary or interfere with the ordinary conduct of business of the Parent or any Subsidiary;

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

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

~~“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, sponsored, maintained or contributed to by the Borrower or any ERISA Affiliate.~~

“Platform” has the meaning set forth in Section 9.17(b).

“Prime Rate” means the rate of interest per annum publicly announced from time to time by Bank of America, N.A., as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate.

“Private Side Lender Representatives” means, with respect to any Lender, representatives of such Lender that are not Public Side Lender Representatives.

“Public Debt Ratings” means, as of any date of determination, (a) the Parent’s “Senior Unsecured Rating” most recently announced by Moody’s and (b) the Parent’s “Corporate Credit Rating” most recently announced by S&P. If Moody’s or S&P shall change the basis on which such ratings are established, then the foregoing references shall be to the then equivalent rating by Moody’s or S&P, as the case may be, as determined by the Administrative Agent.

“Public Side Lender Representatives” means, with respect to any Lender, representatives of such Lender that do not wish to receive MNPI.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning set forth in Section 9.22.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank.

“Register” has the meaning set forth in Section 9.04.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and such Person’s Affiliates.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Required Lenders” means, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures and unused Commitments at such time; provided that, for purposes of declaring the Loans to be due and payable pursuant to Article VII, and for all purposes after the Loans become due and payable pursuant to Article VII and the Commitments expire or terminate, the outstanding Competitive Loans of the Lenders shall be included in their respective Revolving Credit Exposures in determining the Required Lenders.

“Responsible Officer” means any executive officer of the Parent or any Subsidiary or any other officer of the Parent or any Subsidiary responsible for overseeing or reviewing compliance with this Agreement or any other Loan Document.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans and its LC Exposure at such time.

“Revolving Loan” means a Loan made pursuant to Section 2.03.

“S&P” means S&P Global Ratings or any successor thereto.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Parent other than the ABL Loan Parties

“Supported OFC” has the meaning set forth in Section 9.22.

“Swap 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; 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 Parent or the Subsidiaries shall be a Swap Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

“Syndication Agents” means each of Credit Suisse Loan Funding LLC, Fifth Third Bank, U.S. Bank National Association and Wells Fargo Bank, National Association, each in its capacity as syndication agent hereunder.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Commitments” means, at any time, the aggregate amount of the Lenders’ Commitments at such time.

“Total Indebtedness” means, as of any date, the aggregate principal amount of Indebtedness of the Parent and the Subsidiaries outstanding as of such date, in the amount that would be reflected on a balance sheet prepared as of such date on a consolidated basis in accordance with GAAP.

“Trade Letter of Credit” means any Letter of Credit that is issued for the benefit of a supplier of inventory to the Parent or any Subsidiary to effect payment for such inventory, the conditions to drawing under which include the presentation to the applicable Issuing Bank of negotiable bills of lading, invoices and related documents sufficient, in the judgment of such Issuing Bank, to create a valid and perfected lien on or security interest in such inventory, bills of lading, invoices and related documents in favor of such Issuing Bank.

“Transactions” means the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Eurodollar Rate, the Alternate Base Rate or, in the case of a Competitive Loan or Borrowing, the Eurodollar Rate or a Fixed Rate.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regimes” has the meaning set forth in Section 9.22.

“U.S. Tax Certificate” has the meaning assigned to such term in Section 2.16(f)(ii)(D)(2).

“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, (a) 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; and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type e.g., a “Eurodollar Revolving Borrowing”).

SECTION 1.03 Terms Generally. The definitions of terms herein 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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (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 Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, 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.

Any reference herein to a merger, transfer, consolidation, amalgamation, 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, assignment, sale, disposition 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).

SECTION 1.04 Accounting Terms: GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that (a) if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith and (b) notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification Topic 825, or any successor thereto, to value any Indebtedness of the Parent or any Subsidiary at “fair value”, as defined therein.

SECTION 1.05 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuing Bank Agreement related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall 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.

ARTICLE II

The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower in dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the total Revolving Credit Exposures plus the aggregate principal amount of outstanding Competitive Loans exceeding the Total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02 Loans and Borrowings. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. Each Competitive Loan shall be made in accordance with the procedures set forth in Section 2.04. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments and Competitive Bids of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13, (i) each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith, and (ii) each Competitive Borrowing shall be comprised entirely of Eurodollar Loans or Fixed Rate Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$5,000,000 and not less than \$5,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$5,000,000 and not less than \$5,000,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Each request for a Competitive Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 Eurodollar Revolving Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall 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 2.03 Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent, which notice may be given by (A) telephone or (B) a Borrowing Request; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Borrowing Request. Each such Borrowing Request must be received by the Administrative Agent (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time on the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e) may be given not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing. Each Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall 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, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Competitive Bid Procedure. (a) Subject to the terms and conditions set forth herein, from time to time during the Availability Period the Borrower may request Competitive Bids and may (but shall not have any obligation to) accept Competitive Bids and borrow Competitive Loans; provided that the sum of the total Revolving Credit Exposures plus the aggregate principal amount of outstanding Competitive Loans at any time shall not exceed the Total Commitments. To request Competitive Bids, the Borrower shall notify the Administrative Agent of such request by telephone, in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, four Business Days before the date of the proposed Borrowing and, in the case of a Fixed Rate Borrowing, not later than 10:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing; provided that the Borrower may submit up to (but not more than) three Competitive Bid Requests on the same day, but a Competitive Bid Request shall not be made within five Business Days after the date of any previous Competitive Bid Request, unless any and all such previous Competitive Bid Requests shall have been withdrawn or all Competitive Bids received in response thereto rejected. Each such telephonic Competitive Bid Request shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Competitive Bid Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Competitive Bid Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a Eurodollar Borrowing or a Fixed Rate Borrowing;
- (iv) the Interest Period to be applicable to such Borrowing, which shall be a period contemplated by the definition of the term "Interest Period";
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of

and

Section 2.06.

Promptly following receipt of a Competitive Bid Request in accordance with this Section, the Administrative Agent shall notify the Lenders of the details thereof by telecopy, inviting the Lenders to submit Competitive Bids.

(b) Each Lender may (but shall not have any obligation to) make one or more irrevocable Competitive Bids to the Borrower in response to a Competitive Bid Request. Each Competitive Bid by a Lender must be in a form approved by the Administrative Agent and must be received by the Administrative Agent by telecopy, in the case of a Eurodollar Competitive Borrowing, not later than 9:30 a.m., New York City time, three Business Days before the proposed date of such Competitive Borrowing, and in the case of a Fixed Rate Borrowing, not later than 9:30 a.m., New York City time, on the proposed date of such Competitive Borrowing. Competitive Bids that do not conform substantially to the form approved by the Administrative Agent may be rejected by the Administrative Agent, and the Administrative Agent shall notify the applicable Lender as promptly as practicable. Each Competitive Bid shall specify (i) the principal amount (which shall be a minimum of \$5,000,000 and an integral multiple of \$1,000,000 and which may equal the entire principal amount of the Competitive Borrowing requested by the Borrower) of the Competitive Loan or Loans that the Lender is willing to make, (ii) the Competitive Bid Rate or Rates at which the Lender is prepared to make such Loan or Loans (expressed as a percentage rate per annum in the form of a decimal to no more than four decimal places) and (iii) the Interest Period applicable to each such Loan and the last day thereof.

(c) The Administrative Agent shall notify the Borrower by telecopy of the Competitive Bid Rate and the principal amount specified in each Competitive Bid and the identity of the Lender that shall have made such Competitive Bid, in the case of a Eurodollar Competitive Borrowing, not later than 10:00 a.m., New York City time, three Business Days before the proposed date of such Competitive Borrowing, and in the case of a Fixed Rate Borrowing, not later than 10:00 a.m., New York City time, on the proposed date of such Competitive Borrowing.

(d) Subject only to the provisions of this paragraph, the Borrower may accept or reject any Competitive Bid. The Borrower shall notify the Administrative Agent by telephone, confirmed by telecopy in a form approved by the Administrative Agent, whether and to what extent it has decided to accept or reject each Competitive Bid, in the case of a Eurodollar Competitive Borrowing, not later than 1:00 p.m., New York City time, three Business Days before the date of the proposed Competitive Borrowing, and in the case of a Fixed Rate Borrowing, not later than 10:30 a.m., New York City time, on the proposed date of the Competitive Borrowing; provided that (i) the failure of the Borrower to give such notice shall be deemed to be a rejection of each Competitive Bid, (ii) the Borrower shall not accept a Competitive Bid made at a particular Competitive Bid Rate if the Borrower rejects a Competitive Bid made at a lower Competitive Bid Rate, (iii) the aggregate amount of the Competitive Bids accepted by the Borrower shall not exceed the aggregate amount of the requested Competitive Borrowing specified in the related Competitive Bid Request, (iv) to the extent necessary to comply with clause (iii) above, the Borrower may accept Competitive Bids at the same Competitive Bid Rate in part, which acceptance, in the case of multiple Competitive Bids at such Competitive Bid Rate, shall be made pro rata in accordance with the amount of each such Competitive Bid, and (v) except pursuant to clause (iv) above, no Competitive Bid shall be accepted for a Competitive Loan unless such Competitive Loan is in a minimum principal amount of \$5,000,000 and an integral multiple of \$1,000,000; provided further that if a Competitive Loan must be in an amount less than \$5,000,000 because of the provisions of clause (iv) above, such Competitive Loan may be for a minimum of \$1,000,000 or any integral multiple thereof, and in calculating the pro rata allocation of acceptances of portions of multiple Competitive Bids at a particular Competitive Bid Rate pursuant to clause (iv) the amounts shall be rounded to integral multiples of \$1,000,000 in a manner determined by the Borrower. A notice given by the Borrower pursuant to this paragraph shall be irrevocable.

(e) The Administrative Agent shall promptly notify each bidding Lender by telecopy whether or not its Competitive Bid has been accepted (and, if so, the amount and Competitive Bid Rate so accepted), and each successful bidder will thereupon become bound, subject to the terms and conditions hereof, to make the Competitive Loan in respect of which its Competitive Bid has been accepted.

(f) If the Administrative Agent shall elect to submit a Competitive Bid in its capacity as a Lender, it shall submit such Competitive Bid directly to the Borrower at least one quarter of an hour earlier than the time by which the other Lenders are required to submit their Competitive Bids to the Administrative Agent pursuant to paragraph (b) of this Section.

SECTION 2.05 Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. 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, any Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. On the Effective Date, each Existing Letter of Credit shall be deemed to be a Letter of Credit for all purposes hereof and shall be deemed to have been issued hereunder on the Effective Date. All Letters of Credit shall provide for drawings thereunder to be denominated in dollars. An Issuing Bank shall not be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which such Issuing Bank in good faith deems material to it or (ii) the issuance of the Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally. No Issuing Bank shall be under any obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the relevant Issuing Bank) to the relevant Issuing Bank and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and such Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be, a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit, and such Issuing Bank shall promptly deliver a copy of such notice by telecopy to the Administrative Agent. If requested by the applicable Issuing Bank, the Borrower also shall 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 shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$400,000,000, (ii) the portion of the LC Exposure attributable to Letters of Credit issued by any Issuing Bank shall not exceed the LC Commitment of such Issuing Bank; and (iii) the sum of the total Revolving Credit Exposures plus the aggregate principal amount of outstanding Competitive Loans shall not exceed the Total Commitments.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date (the "Letter of Credit Expiration Date").

(d) 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 Lenders, the Issuing Bank in respect of such Letter of Credit hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each 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 shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit, the occurrence and continuance of a Default, the reduction or termination of the Commitments or any *force majeure* or other event that under any rule of law or uniform practices to which any Letter of Credit is subject (including Section 3.14 of ISP 98 or any successor publication of the International Chamber of Commerce) permits a drawing to be made under such Letter of Credit after the expiration thereof or of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. On the Effective Date and without any further action by any party hereto, each Issuing Bank that has issued an Existing Letter of Credit shall be deemed to have granted to each Lender, and each Lender shall be deemed to have acquired from such Issuing Bank, a participation in each such Existing Letter of Credit in accordance with the foregoing provisions of this paragraph (d).

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, New York City time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (c) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) 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, (iii) payment by an 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, (iv) any *force majeure* or other event that under any rule of law or uniform practices to which any Letter of Credit is subject (including Section 3.14 of ISP 98 or any successor publication of the International Chamber of Commerce) permits a drawing to be made under such Letter of Credit after the expiration thereof or of the Commitments or (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. None of the Administrative Agent, the Lenders or any Issuing Bank, or any of their Related Parties, shall 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 any Issuing Bank; provided that the foregoing shall not be construed to excuse an Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are 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. Unless otherwise separately agreed in writing between the Borrower and the applicable Issuing Bank, (A) the parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of such Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination, and (B) 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, such 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.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.12(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the applicable Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. An Issuing Bank's obligations to issue additional Letters of Credit hereunder may be terminated at any time by written agreement among the Borrower, the Administrative Agent and such Issuing Bank; provided that after giving effect thereto there is at least one remaining Issuing Bank obligated to issue Letters of Credit. The Administrative Agent shall notify the Lenders of any such replacement or termination of an Issuing Bank. At the time any such replacement or termination shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced or terminated Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter. After the replacement or termination of an Issuing Bank hereunder, the replaced or terminated Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or termination, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to either Loan Party described in clause (h) or (i) of Article VII. The Borrower shall also deposit cash collateral in accordance with this paragraph as and to the extent required by Section 2.22. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall 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 shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse any Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other obligations of the Borrower 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) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Additional Issuing Banks. Any Lender may at any time become an Issuing Bank hereunder by written agreement between the Borrower and such Lender subject to notice to the Administrative Agent. From and after the effective date of any such Lender becoming an Issuing Bank, such Lender shall have the rights and obligations of an Issuing Bank under this Agreement. Any Lender that becomes an Issuing Bank shall not cease to be an Issuing Bank hereunder if it later ceases to be a Lender hereunder.

(l) Certain Notices by Issuing Banks. Each Issuing Bank that is not the same Person as the Person serving as the Administrative Agent shall notify the Administrative Agent of (i) the amount and expiration date of each Letter of Credit issued by such Issuing Bank at or prior to the time of issuance thereof (or in the case of an Existing Letter of Credit, such notice shall be provided on the Effective Date), (ii) any amendment or modification to, or LC Disbursement under, any such Letter of Credit at or prior to the time of such amendment, modification or LC Disbursement and (iii) any termination, surrender, cancellation or expiry of any such Letter of Credit at or prior to the time of such termination, surrender, cancellation or expiration.

(m) [Reserved].

(n) Auto-Extension Letters of Credit. If the Borrower so requests in relation to the issuance of a Letter of Credit, the Issuing Bank may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the Issuing Bank to prevent any such extension at least once in each twelve- month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Issuing Bank shall not permit any such extension if it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (i) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (ii) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the Issuing Bank not to permit such extension.

(o) Applicability of ISP and UCP. Unless otherwise expressly agreed by the Issuing Bank and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of ISP98 shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

SECTION 2.06 Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.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 Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in New York City and designated by the Borrower in the applicable Borrowing Request or Competitive Bid Request; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have 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 (a) of this Section and may, in reliance upon such assumption, make available to the Borrower 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 severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.07 Interest Elections. (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Revolving Borrowing, shall 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 Eurodollar Revolving Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Competitive Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

- (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 shall be specified for each resulting Borrowing);
- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
- (iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Revolving 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 shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Revolving Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments, including the Bank of America Commitment, shall terminate on the Maturity Date. Notwithstanding anything to the contrary contained herein, this Agreement and the Total Commitments shall not terminate in full without the prior written acknowledgement of such termination by the Administrative Agent and the Borrower (other than on the Maturity Date).

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments on a pro-rata basis or non-pro rata basis among the Lenders at the sole option of the Borrower; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of ~~\$4,000,000~~ and not less than ~~\$251,000,000~~ (or such other amount as agreed by the Administrative Agent in its sole discretion), and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.10, the sum of the Revolving Credit Exposures plus the aggregate principal amount of outstanding Competitive Loans would exceed the Total Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction (or such shorter period as agreed by the Administrative Agent in its sole discretion) specifying such election and the effective date thereof and providing a revised Schedule 2.01 setting forth the revised Commitments, in form and substance reasonably acceptable to the Administrative Agent. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. ~~Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.~~

SECTION 2.09 Repayment of Loans; Evidence of Debt (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date and (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Competitive Loan on the last day of the Interest Period applicable to such Loan.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall 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 shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein and its registered assigns.

SECTION 2.10 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section; provided that the Borrower shall not have the right to prepay any Competitive Loan without the prior consent of the Lender thereof.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment (or such shorter period as agreed by the Administrative Agent in its sole discretion) or (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment (or such shorter period as agreed by the Administrative Agent in its sole discretion). Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12.

SECTION 2.11 Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue at the Applicable Rate on the greater of (i) the amount of the Commitment (used or unused) of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates and (ii) the amount of such Lender's Revolving Credit Exposure. Accrued facility fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans (or in the case of a Trade Letter of Credit, 50% of such Applicable Rate) on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank a fronting fee separately agreed upon between the Borrower and such Issuing Bank. In addition, the Borrower shall pay directly to the applicable Issuing Bank for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable. Participation fees accrued through and including the last day of March, June, September and December of each year shall be payable on the fifth Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(c) The Borrower agrees to pay to the Administrative Agent, for its own account or for the account of the Lenders, as applicable, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees, participation fees and other fees separately agreed upon to be payable to the Lenders, to the Lenders. Fees paid shall not be refundable under any circumstances, except to the extent that the Borrower demonstrates that any amounts paid represent overpayments.

SECTION 2.12 Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest (i) in the case of a Eurodollar Revolving Loan, at the Eurodollar Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate, or (ii) in the case of a Eurodollar Competitive Loan, at the Eurodollar Rate for the Interest Period in effect for such Borrowing plus (or minus, as applicable) the Margin applicable to such Loan.

(c) Each Fixed Rate Loan shall bear interest at the Fixed Rate applicable to such Loan.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.0% per annum plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2.0% per annum plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate (including the Alternate Base Rate determined by reference to the Eurodollar Rate) shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Eurodollar Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13 Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders (or, in the case of a Eurodollar Competitive Loan, the Lender that is required to make such Loan) that the Eurodollar Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy 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, (x) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Eurodollar Borrowing shall be ineffective, (y) if any Borrowing Request requests a Eurodollar Revolving Borrowing, such Borrowing shall be made as an ABR Borrowing and (iii) any request by the Borrower for a Eurodollar Competitive Borrowing shall be ineffective; provided that (A) if the circumstances giving rise to such notice do not affect all the Lenders, then requests by the Borrower for Eurodollar Competitive Borrowings may be made to Lenders that are not affected thereby and (B) if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "Scheduled Unavailability Date"), or

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Eurodollar Rate,

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the Eurodollar Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) (any such proposed rate, a "LIBOR Successor Rate"), together with any proposed LIBOR Successor Rate Conforming Changes (as defined below) and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment. Such LIBOR Successor Rate shall be applied in a manner consistent with market practice; *provided* that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Alternate Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans (subject to the foregoing clause (y)) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

For purposes hereof, "LIBOR Successor Rate Conforming Changes" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Alternate Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent in consultation with the Borrower, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement).

SECTION 2.14 Increased Costs. (a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any Issuing Bank;
- (ii) impose on any Lender or Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans or Fixed Rate Loans made by such Lender or any Letter of Credit or participation therein; or
- (iii) subject any Recipient to any Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (other than (A) Indemnified Taxes, (B) Excluded Taxes (other than Taxes described in clause (a) or (b) of the definition of Excluded Taxes) and (C) Other Connection Taxes imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes);

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then, from time to time upon request of such Lender, Issuing Bank or other Recipient, the Borrower will pay to such Lender, Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has had 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 held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or 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 Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) 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 the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or Issuing Bank, as the case may be, 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 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing provisions of this Section, a Lender shall not be entitled to compensation pursuant to this Section in respect of any Competitive Loan if the Change in Law that would otherwise entitle it to such compensation shall have been publicly announced prior to submission of the Competitive Bid pursuant to which such Loan was made.

SECTION 2.15 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan or Fixed Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan or Fixed Rate Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith), (d) the failure to borrow any Competitive Loan after accepting the Competitive Bid to make such Loan, or (e) the assignment of any Eurodollar Loan or Fixed Rate 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 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an 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 Loan had such event not occurred, at the Eurodollar Rate that would have been applicable to such Loan, 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, for the period that would have been the Interest Period for such 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 bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

SECTION 2.16 Withholding of Taxes; Gross-Up. (a) Each payment by or on account of any obligation of the Borrower under any Loan Document shall be made without withholding for any Taxes, unless such withholding is required by any law. If any withholding agent determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such withholding agent may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by the Borrower shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the applicable Recipient receives the amount it would have received had no such withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall 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.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.16, such Loan Party shall 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.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient for any Indemnified Taxes that are paid or payable by or required to be withheld or deducted from a payment to such Recipient in connection with any Loan Document (including amounts paid or payable under this Section 2.16(d)) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.16(d) shall be paid within 10 days after the Recipient delivers to the Borrower a certificate stating the amount of any Indemnified Taxes so paid or payable by such Recipient and describing the basis for the indemnification claim. Such certificate shall be conclusive of the amount so paid or payable absent manifest error. Such Recipient shall deliver a copy of such certificate to the Administrative Agent.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent for any Taxes (but, in the case of any Indemnified Taxes, only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so) attributable to such Lender (including Excluded Taxes and any taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register) that are paid or payable by the Administrative Agent in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.16(e) shall be paid within 10 days after the applicable Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from, or reduction of, any applicable withholding Tax with respect to any payments under this Agreement shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent and at the time or times prescribed by applicable law, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without, or at a reduced rate of, withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by 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 any withholding (including 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 2.16(f)(ii) (A) through (E) and 2.16(f)(iii) below) shall 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. Upon the reasonable request of such Borrower or the Administrative Agent, any Lender shall update any form or certification previously delivered pursuant to this Section 2.16(f). If any form or certification previously delivered pursuant to this Section expires or becomes obsolete or inaccurate in any respect with respect to a Lender, such Lender shall promptly (and in any event within 10 days after such expiration, obsolescence or inaccuracy) notify such Borrower and the Administrative Agent in writing of such expiration, obsolescence or inaccuracy and shall update the form or certification if it is legally eligible to do so or, if not legally eligible to do so, shall notify the Borrower and the Administrative Agent of such legal inability.

(ii) Without limiting the generality of the foregoing, if the Borrower is a U.S. Person, any Lender with respect to such Borrower shall, if it is legally eligible to do so, deliver to such Borrower and the Administrative Agent (in such number of copies reasonably requested by such Borrower and the Administrative Agent) on or prior to the date on which such Lender becomes a party hereto, duly completed and executed originals of whichever of the following is applicable:

(A) in the case of a Lender that is a U.S. Person, an executed original of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (1) with respect to payments of interest under this Agreement, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (2) with respect to any other applicable payments under this Agreement, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(C) in the case of a Non-U.S. Lender for whom payments under this Agreement constitute income that is effectively connected with such Lender’s conduct of a trade or business in the United States, an executed original of IRS Form W-8ECI;

(D) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code both (1) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, and (2) a certificate substantially in the form of Exhibit D (a “U.S. Tax Certificate”) to the effect that such Lender is not (a) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (b) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, (c) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (d) conducting a trade or business in the United States with which the relevant interest payments are effectively connected;

(E) in the case of a Non-U.S. Lender that is not the beneficial owner of payments made under this Agreement (including a partnership or a participating Lender) (1) an executed original of IRS Form W-8IMY on behalf of itself and (2) the relevant forms prescribed in clauses (A), (B), (C), (D) and (F) of this paragraph (f)(ii) that would be required of each such beneficial owner or partner of such partnership if such beneficial owner or partner were a Lender; provided, however, that (x) if the Lender is a partnership and one or more of its partners are claiming the exemption for portfolio interest under Section 881(c) of the Code, such Lender may provide a U.S. Tax Certificate on behalf of such partners substantially in the form of Exhibit D-2 and (y) a Participant may provide a U.S. Tax Certificate substantially in the form of Exhibit D-3 or D-4; or

(F) any other form prescribed by law as a basis for claiming exemption from, or a reduction of, U.S. Federal withholding Tax together with such supplementary documentation necessary to enable the Borrower or the Administrative Agent to determine the amount of Tax (if any) required by law to be withheld.

(iii) If a payment made to a Lender under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender 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 Lender shall 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, to determine that such Lender has or has not complied with such Lender's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.16(f)(iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) Treatment of Certain Refunds If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16 (including additional amounts paid pursuant to this Section 2.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid to such indemnifying party pursuant to the previous sentence (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.16(g), in no event will any indemnified party be required to pay any amount to any indemnifying party pursuant to this Section 2.16(g) if such payment would place such indemnified party in a less favorable position (on a net after-Tax basis) than such indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.16(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section shall 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 [or the Bank of America Commitment](#) and the repayment, satisfaction or discharge of all obligations under this Agreement.

(i) Defined Terms. For purposes of this Section, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

SECTION 2.17 Payments Generally; Pro Rata Treatment; Sharing of Set-offs (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.14, 2.15 or 2.16, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off, defense, recoupment 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. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to an Issuing Bank as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower 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 Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents 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 Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have 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 any Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(d) or (e), 2.06(b), 2.16(e) or 2.17(d), 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 2.18 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.14, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, (iii) any Lender is a Declining Lender or a Defaulting Lender or (iv) any Lender has failed to consent to a proposed amendment, waiver or modification that under Section 9.02 requires the consent of all the Lenders (or each affected Lender) and with respect to which the Required Lenders shall have granted their consent, then the Borrower may, at its 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 9.04), all its interests, rights and obligations under this Agreement (other than its existing rights to payments pursuant to Section 2.14 or 2.16 and any outstanding Competitive Loans held by it) to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (A) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans (other than Competitive Loans) and participations in LC Disbursements, 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 (in the case of all other amounts), (C) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments, (D) in the case of any assignment resulting from a Lender being a Declining Lender, the assignee shall have agreed to the applicable Maturity Date Extension Request and (E) in the case of any such assignment resulting from the failure to provide a consent, the assignee shall have given such consent. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment and delegation required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and that the Lender required to make such assignment and delegation need not be a party thereto.

SECTION 2.19 Increase in Commitments. (a) At any time after the Effective Date and no more than two times during any calendar year, the Borrower may, by written notice to the Administrative Agent, request at any time or from time to time that the Total Commitments be increased; provided that the aggregate amount of each such increase pursuant to this Section 2.19 shall not be less than \$20,000,000 and the aggregate amount of all such increases pursuant to this Section 2.19 shall not cause the aggregate amount of Total Commitments to exceed \$1,750,000,000; and provided further that if the Bank of America Commitment is effective, any increase in Commitments pursuant to this Section 2.19 shall be agreed and consented to by Bank of America, N.A. (unless, for the avoidance of doubt, the Bank of America Commitment is being terminated in connection with such increase). Any such notice shall set forth the amount of the requested increase in the Total Commitments and the date on which such increase is requested to become effective. The Borrower may arrange for one or more banks or other financial institutions (any such bank or other financial institution being called an “Augmenting Lender”), which may include any Lenders, to extend Commitments or increase their existing Commitments in an aggregate amount equal to the requested amount of the increase in the Total Commitments; provided that each Augmenting Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent (not to be unreasonably withheld). Increases of Commitments and new Commitments created pursuant to this paragraph (a) shall become effective upon the execution and delivery by the Parent, the Borrower, the Administrative Agent and any Lenders (including any Augmenting Lenders) agreeing to increase their existing Commitments or extend new Commitments, as the case may be, of an agreement providing for such increased or additional Commitments, subject to the satisfaction of any conditions set forth in such agreement. Notwithstanding the foregoing, no increase in the Total Commitments (or in the Commitment of any Lender) shall become effective under this paragraph (a) unless, on the date of such increase, (i) the conditions set forth in paragraphs (a) and (b) of Sections 4.02 shall be satisfied (as though a Borrowing were being made on such date); provided that for purposes of this Section, the representations and warranties contained in Section 3.04(a) shall be deemed to refer to the most recent audited financial statements available on the date of such increase and (ii) the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer or a Financial Officer of the Parent and the Borrower. The Borrower is not required to offer any Lender an opportunity to participate in any increase pursuant to this Section 2.19 and, if offered an opportunity to participate, a Lender shall not have any obligation to participate.

(b) At the time that any increase in the Total Commitments pursuant to paragraph (a) of this Section 2.19 (a "Commitment Increase") becomes effective, if any Revolving Loans are outstanding, the Borrower shall prepay the aggregate principal amount outstanding in respect of such Revolving Loans in accordance with Section 2.10 (the "Initial Loans"); provided that (i) nothing in this Section 2.19 shall prevent the Borrower from funding the prepayment of Initial Loans with concurrent Revolving Loans hereunder in accordance with the provisions of this Agreement, giving effect to the Commitment Increase, and (ii) no such prepayment shall be required if, after giving effect to the Commitment Increase, each Lender has the same Applicable Percentage as immediately prior to such Commitment Increase.

(c) If at any time after the Closing Date, upon the earlier of (i) the Borrower providing notice to permanently reduce all of the outstanding Commitments (other than the Bank of America Commitment) or (ii) the Borrower determining in its reasonable discretion that all remaining Commitments under the facility (other than the Bank of America Commitment) may otherwise be terminated, the Borrower may deem the Bank of America Commitment to be immediately available and effective. The Borrower shall provide Bank of America, N.A. with prompt notice upon the effectiveness of such Bank of America Commitment and shall promptly deposit, in a blocked account as directed (or previously notified for this purpose) by Bank of America, N.A., an amount in cash equal to \$1,000,000, and concurrently with such deposit, the Borrower and Bank of America, N.A. agree to use commercially reasonable efforts to replace such cash collateral with a letter of credit on terms reasonably satisfactory to Bank of America, N.A.

SECTION 2.20 [Reserved].

SECTION 2.21 Extension of Maturity Date. (a) The Borrower may, by delivery of a written request (a "Maturity Date Extension Request") to the Administrative Agent (which shall promptly deliver a copy to each of the Lenders) not less than 30 days and not more than 90 days prior to any anniversary of the Effective Date, request that the Lenders extend the Maturity Date for an additional period of one year; provided that there shall be no more than two extensions of the Maturity Date pursuant to this Section.

(b) Each Lender shall, by notice to the Borrower and the Administrative Agent given not later than the 20th day after the date of the Administrative Agent's receipt of the Borrower's Maturity Date Extension Request (or such other date as the Borrower and the Administrative Agent may agree; such date, the "Extension Date"), advise the Borrower whether or not it agrees to the requested extension (each Lender agreeing to a requested extension being called a "Consenting Lender", and each Lender declining to agree to a requested extension being called a "Declining Lender"). Any Lender that has not so advised the Borrower and the Administrative Agent by such Extension Date shall be deemed to have declined to agree to such extension and shall be a Declining Lender.

(c) If Lenders constituting the Required Lenders shall have agreed to a Maturity Date Extension Request by the Extension Date, then the Maturity Date shall, as to the Consenting Lenders, be extended to the first anniversary of the Maturity Date theretofore in effect. The decision to agree or withhold agreement to any Maturity Date Extension Request shall be at the sole discretion of each Lender. The Commitment of any Declining Lender shall terminate on the Maturity Date in effect prior to giving effect to any such extension (such Maturity Date being called the "Existing Maturity Date"). The principal amount of any outstanding Loans made by Declining Lenders, together with any accrued interest thereon and any accrued fees and other amounts payable to or for the account of such Declining Lenders hereunder, shall be due and payable on the Existing Maturity Date, and on the Existing Maturity Date the Borrower shall also make such other prepayments of Loans as shall be required in order that, after giving effect to the termination of the Commitments of, and all payments to, Declining Lenders pursuant to this sentence, the sum of the total Revolving Credit Exposures plus the aggregate principal amount of outstanding Competitive Loans would not exceed the Total Commitments.

(d) Notwithstanding the foregoing provisions of this Section 2.21, the Borrower shall have the right, pursuant to Section 2.18(b), at any time prior to the Existing Maturity Date, to replace a Declining Lender with a Lender or other financial institution that will agree to the applicable Maturity Date Extension Request, and any such replacement Lender shall for all purposes constitute a Consenting Lender.

(e) Notwithstanding the foregoing provisions of this Section 2.21, no extension of the Maturity Date pursuant to this Section 2.21 shall become effective unless, on or promptly following the Extension Date, (i) the conditions set forth in Section 4.02 shall be satisfied (with all references in such Section to a Borrowing being deemed to be references to such extension and without giving effect to the parenthetical in Section 4.02(a)); provided that for purposes of this Section, the representations and warranties contained in Section 3.04(a) shall be deemed to refer to the most recent audited financial statements available on the Extension Date and (ii) the Administrative Agent shall have received a certificate to that effect dated the Extension Date and executed by a Responsible Officer or a Financial Officer of each of the Parent and the Borrower.

SECTION 2.22 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) facility fees shall cease to accrue on the unused amount of the Commitment of such Defaulting Lender pursuant to Section 2.11(a);

(b) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders or any other requisite Lenders have taken or may take any action hereunder or under any other Loan Document (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided that any amendment, waiver or other modification requiring the consent of all Lenders or all Lenders affected thereby shall, except as otherwise provided in Section 9.02, require the consent of such Defaulting Lender in accordance with the terms hereof;

(c) if any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) so long as no Default or Event of Default has occurred and is continuing, the LC Exposure of such Defaulting Lender shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that the sum of all Non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's LC Exposure does not exceed the sum of all Non-Defaulting Lenders' Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent, cash collateralize for the benefit of the Issuing Banks the portion of such Defaulting Lender's LC Exposure that has not been reallocated in accordance with the procedures set forth in Section 2.05(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay participation fees to such Defaulting Lender pursuant to Section 2.11(b) with respect to such portion of such Defaulting Lender's LC Exposure for so long as such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if any portion of the LC Exposure of such Defaulting Lender is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.11(a) and 2.11(b) shall be adjusted to give effect to such reallocation; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment utilized by such LC Exposure) and participation fees payable under Section 2.11(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks (and allocated among them ratably based on the amount of such Defaulting Lender's LC Exposure attributable to Letters of Credit issued by each Issuing Bank) until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, amend, renew or extend any Letter of Credit, unless in each case it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be fully covered by the Commitments of the Non-Defaulting Lenders and/or cash collateral provided by the Borrower in accordance with Section 2.22(c), and participating interests in any such issued, amended, reviewed or extended Letter of Credit will be allocated among the Non-Defaulting Lenders in a manner consistent with Section 2.22(c)(i) (and such Defaulting Lender shall not participate therein).

In the event that (x) a Bankruptcy Event with respect to a Lender Parent shall have occurred following the date hereof and for so long as such Bankruptcy Event shall continue or (y) any Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, no Issuing Bank shall be required to issue, amend, renew or extend any Letter of Credit, unless such Issuing Bank shall have entered into arrangements with the Borrower or such Lender satisfactory to such Issuing Bank to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower and each Issuing Bank each agree (provided that the Borrower's agreement shall not be required if an Event of Default has occurred and is continuing) that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

ARTICLE III

Representations and Warranties

Each of the Parent and the Borrower represents and warrants to the Lenders that:

SECTION 3.01 Organization. Each of the Parent and the Borrower is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

SECTION 3.02 Powers; Authorization; No Conflicts; Enforceability. The Transactions are within each Loan Party's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene (a) any Loan Party's charter or by-laws or (b) law or any contractual restriction binding on or affecting any Loan Party. This Agreement has been, and each of the other Loan Documents to which any Loan Party is to be a party when delivered hereunder will have been, duly executed and delivered by each Loan Party that is a party hereto or thereto, as applicable. This Agreement is, and each of the other Loan Documents to which any Loan Party is to be a party when delivered will be, the legal, valid and binding obligation of each Loan Party that is a party hereto or thereto, as applicable, enforceable against each such Loan Party in accordance with its terms.

SECTION 3.03 Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for the due execution, delivery and performance by any Loan Party of any Loan Document to which it is to be a party, the borrowing of the Loans, the use of the proceeds thereof or the issuance of Letters of Credit hereunder.

SECTION 3.04 Financial Condition; No Material Adverse Change. (a) The consolidated balance sheet of the Parent and its subsidiaries as at February 2, 2019, and the related consolidated statements of income and cash flows of the Parent and its subsidiaries for the fiscal year then ended, accompanied by an opinion of KPMG LLP, independent public accountants, copies of which have been furnished to the Lenders, fairly present the consolidated financial condition of the Parent and its subsidiaries as at such date and the consolidated results of the operations of the Parent and its subsidiaries for the fiscal year ended on such date, all in accordance with GAAP consistently applied.

(b) ~~Since February 2, 2019, there has been no material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of the Parent and its Subsidiaries, taken as a whole~~ [Reserved].

SECTION 3.05 Litigation. There is no pending or threatened action, suit, investigation, litigation or proceeding affecting the Parent or any Subsidiary pending or threatened before any Governmental Authority or arbitrator that (a) would be reasonably likely to have a Material Adverse Effect or (b) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the transactions contemplated hereby.

SECTION 3.06 Investment Company Status. None of the Loan Parties is an “investment company”, within the meaning of the Investment Company Act of 1940.

SECTION 3.07 ERISA. (a) No ERISA Event has occurred or is reasonably expected to occur with respect to any Pension Plan that has resulted in or is reasonably expected to have a Material Adverse Effect.

(b) Neither the Borrower nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan that could be reasonably expected to have a Material Adverse Effect.

(c) Each Pension Plan satisfies the funding requirements under Section 302 of ERISA and there has been no change in the funding status of any such Pension Plan since the last annual actuarial valuation date that would reasonably be expected to have a Material Adverse Effect.

SECTION 3.08 Compliance with Laws. Each of the Borrower and its Subsidiaries is in compliance with all laws applicable to it, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09 Anti-Corruption Laws and Sanctions. The Parent and the Borrower have implemented and maintain in effect policies and procedures designed to ensure compliance by the Parent, the Borrower, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Parent, the Borrower, their Subsidiaries and their respective officers and directors and to the knowledge of the Parent and the Borrower their employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Parent, the Borrower, any Subsidiary or to the knowledge of the Parent or the Borrower or such Subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Parent or the Borrower, any agent of the Parent or the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

SECTION 3.10 Federal Reserve Regulations. None of the Parent, the Borrower or any Subsidiary is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U of the Board), or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of the Loans will be used, directly or indirectly, for any purpose that entails a violation (including on the part of any Lender) of any of the regulations of the Board, including Regulations U and X.

ARTICLE IV

Conditions

SECTION 4.01 Effective Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent (or its counsel) shall have received from the Parent and the Borrower either (i) a counterpart of the Guarantee Agreement (in the form attached hereto as Exhibit C) signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page of the Guarantee Agreement) that such party has signed a counterpart of the Guarantee Agreement.

(c) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated as of the Effective Date) of (i) Jones Day, counsel to the Loan Parties and (ii) Elisa D. Garcia, the Chief Legal Officer of the Parent, in each case covering such matters relating to the Loan Parties, the Transactions or the Loan Documents as the Required Lenders or the Administrative Agent shall reasonably request. The Parent and the Borrower hereby request such counsel to deliver such opinions.

(d) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Loan Parties and the authorization of the Transactions and any other legal matters relating to the Loan Parties, the Transactions or the Loan Documents, all in form and substance satisfactory to the Administrative Agent and its counsel, including all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

(e) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects as of the Effective Date, no Default shall have occurred and be continuing as of the Effective Date and the Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Responsible Officer or a Financial Officer of the Parent and the Borrower, confirming the foregoing.

(f) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower under the Loan Documents.

(g) Prior to or substantially contemporaneously with the satisfaction of the conditions set forth herein on the Effective Date, the principal of all loans or advances, and all interest, fees and other amounts accrued or otherwise owing, under the Existing Credit Agreement shall have been or shall be paid in full and the commitments thereunder shall have been or shall be terminated, and the Administrative Agent shall have received reasonably satisfactory evidence thereof.

The Administrative Agent shall notify the Borrower and the Lenders of the effectiveness of the obligations of the Lenders and the Issuing Banks, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of any Issuing Bank to issue any Letter of Credit and the incorporation of the Existing Letters of Credit as Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied or waived prior to 5:00 p.m., New York City time, on June 15, 2019 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Without limiting the generality of the provisions of the last paragraph of Section 8.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 Each Credit Event The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in this Agreement (other than those in ~~Section 3.04(b) and~~ clause (a) of Section 3.05, at such times when the Public Debt Ratings are Baa3 and BBB- or better) shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Loan Parties on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE V

Affirmative Covenants

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

SECTION 5.01 Financial Statements; Ratings Change and Other Information. The Parent or the Borrower will furnish to the Administrative Agent and each Lender:

(a) as soon as available and in any event ~~within or prior to the date that is the later of (x)~~ 90 days after the end of each fiscal year of the Parent and (y) to the extent the Parent is required to file a Form 10-K under the Exchange Act, the date on which the Parent files or is required to file its Form 10-K under the Exchange Act (after giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule)) for each fiscal year of the Parent a copy of the annual audit report for such year for the Parent and its consolidated subsidiaries, containing a consolidated balance sheet of the Parent and its consolidated subsidiaries as of the end of such fiscal year and consolidated statements of income and cash flows of the Parent and its consolidated subsidiaries for such fiscal year, in each case accompanied by an opinion by KPMG LLP or other independent public accountants of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit) ~~and certificates of a Financial Officer of the Parent (i) as to compliance with the terms of this Agreement, (ii) setting forth in reasonable detail the then applicable Public Debt Ratings and the Interest Coverage Ratio and the Leverage Ratio as of the end of such fiscal year and the calculations necessary to demonstrate compliance with Sections 6.05 and 6.06 as of the end of such fiscal year and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the last consolidated financial statements of the Parent and its consolidated subsidiaries referred to in Section 3.04(a) that materially affects the financial statements accompanying such certificate and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate; (other than any “emphasis of matter” paragraphs or any going concern or similar qualification or exception related to (A) the maturity or refinancing of Indebtedness or (B) prospective or actual compliance with the financial maintenance covenants in Section 7.15 of the ABL Credit Agreement or any other Indebtedness));~~

(b) as soon as available and in any event ~~within or prior to the date that is the later of (x)~~ 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent and (y) to the extent the Parent is required to file a Form 10-Q (including, for the avoidance of doubt, a Form 10-QT) under the Exchange Act, the date on which the Parent files or is required to file its Form 10-Q or Form 10-QT, as applicable, under the Exchange Act (after giving effect to any extension pursuant to Rule 12b-25 under the Exchange Act (or any successor rule)) for each of the first three fiscal quarters of each fiscal year of the Parent, a consolidated balance sheet of the Parent and its consolidated subsidiaries as of the end of such quarter and consolidated statements of income and cash flows of the Parent and its consolidated subsidiaries for the period commencing at the end of the previous fiscal year of the Parent and ending with the end of such quarter, duly certified (subject to year-end audit adjustments) by a Financial Officer of the Parent as having been prepared in accordance with GAAP, ~~and certificates of a Financial Officer of the Parent (i) as to compliance with the terms of this Agreement, (ii) setting forth in reasonable detail the then applicable Public Debt Ratings and the Interest Coverage Ratio and the Leverage Ratio as of the end of such fiscal quarter and the calculations necessary to demonstrate compliance with Sections 6.05 and 6.06 as of the end of such fiscal quarter and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the last consolidated financial statements of the Parent and its consolidated subsidiaries referred to in Section 3.04(a) that materially affects the financial statements accompanying such certificate and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate; and~~

~~(e) as soon as possible and in any event within five days after any Responsible Officer becomes aware of the occurrence of a Default or an event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect, in each case continuing on the date of such statement, a statement of a Financial Officer of the Parent or the Borrower setting forth details of such Default, event, development or other circumstance (including the anticipated effect thereof) and the action that the Parent or the Borrower has taken and proposes to take with respect thereto;~~

~~(d) promptly after the sending thereof, copies of all reports that the Parent or the Borrower sends to any of the holders of any class of its outstanding securities;~~

~~(e) promptly after the commencement thereof, notice of all actions, suits, investigations, litigation and proceedings before any Governmental Authority or arbitrator affecting the Parent or any Subsidiary of the type described in Section 3.05;~~

~~(f) as soon as possible and in any event within five~~two~~Business Days after any change in either Public Debt Rating, a certificate of a~~
~~Financial Responsible Officer of the Parent setting forth such Public Debt Rating; and~~or any Subsidiary obtains knowledge thereof, notice of the occurrence of any Default or
Event of Default.

~~(g) such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of the Parent or any Subsidiary as any Lender through the Administrative Agent may from time to time reasonably request.~~

The Borrower and the Parent also agree that promptly after any report or registration statement, other than a registration statement on Form S-8 or any successor form thereto, is filed by the Parent or any Subsidiary with the Securities and Exchange Commission or any national securities exchange a copy thereof will be made available on the Parent's website.

Documents required to be delivered pursuant to Section 5.01(a) or (b) ~~or Section 6.02(d)~~ (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date ~~(i)~~ on which the Parent posts such documents, or provides a link thereto on the Parent's website on the Internet at the website address listed on Schedule 9.01 ~~; or (ii) on which such documents are posted on the Parent'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 and each Lender (by facsimile or electronic mail) of the posting of any such documents.~~

SECTION 5.02 Existence. The Parent will, and will cause each of the Subsidiaries to, preserve and maintain, its corporate existence, rights (charter and statutory), permits, licenses, approvals, privileges and franchises, except, with respect to such rights, permits, licenses, approvals, privileges and franchises, where the failure to do so could not be reasonably expected to have a Material Adverse Effect; provided that the Parent and the Subsidiaries may consummate any merger or consolidation permitted under Section 6.03 and, provided, further, that, unless required in order to comply with Section 6.03, neither the Parent nor any Subsidiary shall be required to preserve or maintain (i) the corporate existence of any Minor Subsidiary if the Board of Directors of the parent of such Minor Subsidiary, or an executive officer of such parent to whom such Board of Directors has delegated the requisite authority, shall determine that the preservation and maintenance thereof is no longer desirable in the conduct of the business of such parent and that the loss thereof is not disadvantageous in any material respect to the Parent, the Borrower, such parent, the Administrative Agent, the Issuing Banks or the Lenders or (ii) any right, permit, license, approval, privilege or franchise if the Board of Directors of the Parent or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Parent or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to the Parent, such Subsidiary, the Administrative Agent, the Issuing Banks or the Lenders.

SECTION 5.03 Payment of Obligations. The Parent will, and will cause each of the Subsidiaries to, pay and discharge ~~before~~ as the same shall become delinquent, ~~(a) all Taxes imposed due and payable, all Tax liabilities, assessments and governmental charges or levies upon it or upon its properties and (b) all lawful claims that, if unpaid, might by law become a Lien upon its property; provided that neither the Parent nor any Subsidiary shall be required to pay or discharge any such Tax or claim (i) that or assets, except, in each case, where (a) the validity or amount thereof is being contested in good faith and by proper by appropriate proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors or (ii) if such non-payments, either individually or in the aggregate, could not be reasonably, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to pay pending such contest would not reasonably be expected to have result in~~ a Material Adverse Effect.

SECTION 5.04 Maintenance of Properties; Insurance. (a) Except where the failure to do so, either individually or in the aggregate, could not be reasonably expected to have a Material Adverse Effect, the Parent will, and will cause each of the Subsidiaries to, maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(b) The Parent will, and will cause each of the Subsidiaries to, maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Parent or such Subsidiary operates, except where failure to maintain such insurance could not be reasonably expected to have a Material Adverse Effect.

SECTION 5.05 Books and Records; Inspection Rights ~~(A).~~ ~~(a)~~ The Parent will, and will cause each of the Subsidiaries to, keep proper books of record and account in such detail as is necessary to allow the delivery of the reports required by Section 5.01, in which full and correct entries shall be made of all financial transactions and the assets and business of the Parent and its consolidated subsidiaries in accordance with GAAP.

~~(b) The Parent will, and will cause each of the Subsidiaries to, at any reasonable time and from time to time, upon reasonable notice, permit the Administrative Agent or any of the Lenders or any agents or representatives thereof, to examine the records and books of account of, and visit the properties of, the Parent or any Subsidiary and to discuss the affairs, finances and accounts of the Parent or any Subsidiary with any of their financial officers.~~

SECTION 5.06 Compliance with Laws. (a) The Parent will, and will cause each of the Subsidiaries to comply, in all material respects, with all applicable laws, rules, regulations and orders (including ERISA and environmental laws), except, in any case, where the failure so to comply, either individually or in the aggregate, could not be reasonably expected to have a Material Adverse Effect.

~~(b)~~ (b) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.07 Use of Proceeds and Letters of Credit (a) The proceeds of the Loans will be used only for working capital and general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Letters of Credit will be issued only for general corporate purposes.

~~(b)~~ (b) The Borrower shall not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

ARTICLE VI

Negative Covenants

Until the Commitments [or the Bank of America Commitment](#) have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, each of the Parent and the Borrower covenants and agrees with the Lenders that:

[SECTION 6.01](#) [\[Reserved\]](#).

[SECTION 6.02](#) [\[Reserved\]](#).

~~SECTION 6.01 Subsidiary Indebtedness. The Parent will not permit any Subsidiary (other than the Borrower) to create, assume or suffer to exist, any Indebtedness, other than:~~

~~(a) Indebtedness owed to the Parent or to a wholly-owned Subsidiary;~~

~~(b) Indebtedness existing on the Effective Date (whether such Indebtedness is Indebtedness of a subsidiary of the Parent or a subsidiary of the Borrower) and described on Schedule 6.01 (the “Existing Indebtedness”), and any Indebtedness extending the maturity of, or refunding or refinancing, in whole or in part, the Existing Indebtedness; provided that the principal amount of such Existing Indebtedness shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing, and the direct and contingent obligors therefor shall not be changed as a result of, or in connection with, such extension, refunding or refinancing;~~

~~(c) endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;~~

~~(d) Indebtedness of any Person that becomes a Subsidiary after the date hereof that is existing at the time such Person becomes a Subsidiary (other than Indebtedness incurred solely in contemplation of such Person becoming a Subsidiary) and any Indebtedness extending the maturity of, or refunding or refinancing, such Indebtedness, in whole or in part; provided that the principal amount of such Indebtedness shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing, and the direct and contingent obligors therefor shall not be changed as a result of, or in connection with, such extension, refunding or refinancing; and~~

(e) other Indebtedness in an aggregate principal amount at any time outstanding not to exceed \$500,000,000.

SECTION 6.02 Liens. The Parent will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Lien on or with respect to any of its assets of any character (including accounts) whether now owned or hereafter acquired, or assign any accounts or other right to receive income, except:

(a) Liens created or existing under the Loan Documents;

(b) Permitted Encumbrances;

(c) the Liens existing on the Effective Date and described on Schedule 6.02 (whether such Liens are on the assets of the Parent or any of its subsidiaries);

(d) purchase money Liens upon or in real property or equipment acquired or held in the ordinary course of business to secure the purchase price of such property or equipment or to secure Indebtedness incurred solely for the purpose of financing the acquisition, construction or improvement of any such property or equipment to be subject to such Liens, or Liens existing on any such property or equipment at the time of acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the acquisition of such property or equipment), or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount; provided that no such Lien shall extend to or cover any properties of any character other than the real property or equipment being acquired, constructed or improved (except that Liens incurred in connection with the construction or improvement of real property may extend to additional real property immediately contiguous to such property being constructed or improved) and no such extension, renewal or replacement shall extend to or cover any such properties not theretofore subject to the Lien being extended, renewed or replaced;

(e) Liens arising in connection with Finance Lease Obligations; provided that no such Lien shall extend to or cover any assets other than the assets subject to the applicable capital leases;

(f) Liens on property of a Person existing at the time such Person is merged into or consolidated with the Parent or any Subsidiary or becomes a Subsidiary; provided that such Liens (other than replacement Liens permitted under clause (j) below) were not created in contemplation of such merger, consolidation or investment and do not extend to any assets other than those of the Person merged into or consolidated with the Parent or such Subsidiary or acquired by the Parent or such Subsidiary;

(g) Liens securing Documentary LCs or Trade Letters of Credit; provided that no such Lien shall extend to or cover any assets of the Parent or any Subsidiary other than the inventory (and bills of lading and other documents related thereto) being financed by any such Documentary LCs or Trade Letter of Credit, as the case may be;

~~(h) Liens in respect of goods consigned to the Parent or any of its Subsidiaries in the ordinary course of business; provided that such Liens are limited to the goods so consigned;~~

~~(i) Liens (other than on inventory) securing Indebtedness incurred by the Parent or the Subsidiaries; provided that the sum of the aggregate amount of such Indebtedness at any time outstanding shall not exceed \$500,000,000; and~~

~~(j) the replacement, extension or renewal of any Lien permitted by clause (e) or (f) above upon or in the same property theretofore subject thereto or, in the case of Liens on real property and related personal property of the Parent or any of the Subsidiaries, upon or in substitute property of like kind of the Parent or such Subsidiary, as the case may be, determined in good faith by the Board of Directors of the Parent or such Subsidiary to be of the same or lesser value than the property theretofore subject thereto, or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;~~

SECTION 6.03 Fundamental Changes: Conduct of Business (a) The Parent will not, and will not permit the Borrower ~~or any other Material Subsidiary~~ to, merge or consolidate with or into any Person except that (i) any Subsidiary may merge or consolidate with or into any other Subsidiary (provided that, if the Borrower is a party to any such merger or consolidation, the Borrower shall be the surviving entity and shall remain a direct, wholly owned subsidiary of the Parent), (ii) any Subsidiary may merge into the Parent and the Parent may merge with any other Person, so long as in either case the Parent is the surviving corporation and (iii) in connection with any acquisition, any Subsidiary may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it, so long as the Person surviving such merger shall be a Subsidiary (provided that, if the Borrower is a party to any such merger or consolidation, the Borrower shall be the surviving entity and shall remain a direct, wholly owned subsidiary of the Parent); provided that in each case, no Event of Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(b) The Parent and the Borrower will not liquidate or dissolve, the Borrower will not reorganize in any jurisdiction located outside of the United States of America, and the Parent will not, and will not permit any Subsidiary to sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of the assets of the Parent and the Subsidiaries, taken as a whole (whether now owned or hereafter acquired).

(c) The Parent and the Borrower will not, and will not permit any Subsidiary to, engage ~~to any material extent~~ in any line of business ~~other than businesses of the type substantially different from the Business~~ conducted by the ~~Parent and its Macy's Parties and their Restricted s~~ Subsidiaries on the Closing d ~~Date of execution of this~~ (after giving effect to the transactions contemplated by the ABL Credit Agreement and the Servicing Agreements (as defined in the ABL Credit Agreement)) or any businesses ~~reasonably~~ substantially related, complementary, ancillary or incidental thereto.

SECTION 6.04 [Reserved].

SECTION 6.05 [Reserved].

SECTION 6.06 [Reserved].

~~SECTION 6.04 Sale and Leaseback Transactions. The Parent will not, and will not permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for (a) any such sale of any fixed or capital assets that is made for cash consideration in an amount not less than the cost of such fixed or capital asset and is consummated within 90 days after the Parent or such Subsidiary acquires or completes the construction of such fixed or capital asset and (b) pursuant to Economic Development Transactions and (c) any such sale of any fixed or capital assets for fair market value; provided that the fair market value of all such assets sold in reliance upon this clause (c) plus the aggregate amount of Indebtedness at any time outstanding secured by Liens in reliance on Section 6.02(i) shall not exceed 12.5% of Consolidated Net Tangible Assets, determined as of the date of any such sale.~~

~~SECTION 6.05 Leverage Ratio. The Parent will not permit the Leverage Ratio as of the last day of any Measurement Period to exceed 3.75 to 1.00.~~

~~SECTION 6.06 Interest Coverage Ratio. The Parent will not permit the Interest Coverage Ratio as of the last day of any Measurement Period to be less than 3.25 to 1.00.~~

ARTICLE VII

Events of Default

~~#~~The occurrence and continuance of any of the following ~~events (shall constitute an “Events of Default”)~~ shall occur for all purposes under this Agreement:

- (a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrower or the Parent shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party in or in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed made;

(d) either the Parent or the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section ~~5.01(e) or (e)~~, 5.02 (with respect to the Parent's or the Borrower's existence) ~~or 5.07 or in Article VI~~;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Parent or the Borrower (which notice will be given at the request of any Lender);

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

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

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

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

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

(k) (i) one or more final judgments or orders for the payment of money in an aggregate amount in excess of ~~\$150,000,000~~ \$530,000,000 shall be rendered against the Parent, ~~the Borrower, any other Subsidiary or any combination thereof and the same shall remain~~ or any Subsidiary and such judgment(s) or order(s) shall continue unsatisfied, unvacated, undischarged or unstayed for a period of 30 consecutive days ~~during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Parent, the Borrower or any other Subsidiary to enforce any such judgment; provided that any such judgments shall only result in an Event of Default under this clause (k) if and~~ (to the extent that the aggregate amount of such judgments not covered by a valid and binding policy of insurance between the defendant and the insurer covering the payment thereof exceeds \$150,000,000 so long as such insurer, which shall be rated at least "A" by A.M. Best Company, third party insurance as to which the applicable insurer has been notified of the claim and has not disputed the claim made for payment of, the amount of such judgments; coverage), or (ii) any one or more non-monetary judgments shall be rendered against the Parent or any Subsidiary and such judgment(s) have, or would reasonably be expected to have a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) such judgment or order, by reason of a pending appeal or otherwise, shall not have been satisfied, vacated, discharged, stayed or bonded for a period of 30 consecutive days;

(l) an ERISA Event ~~shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Parent, the Borrower or any other Subsidiary in an aggregate amount exceeding \$150,000,000; occurs which would be reasonably likely to result in a Material Adverse Effect;~~

(m) the Parent's Guarantee of the Obligations purported to be created under the Guarantee Agreement shall cease to be, or shall be asserted by any Loan Party not to be, in full force and effect (other than in accordance with the express terms of any Loan Document); or

(n) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Parent or the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments [\(including the Bank of America Commitment\)](#), and thereupon the Commitments [\(including the Bank of America Commitment\)](#) shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments [\(including the Bank of America Commitment\)](#) shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties.

ARTICLE VIII

The Agents

SECTION 8.01 Appointment and Authority. Each of the Lenders and the Issuing Banks hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and neither the Parent nor the Borrower shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 8.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any debtor relief law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any debtor relief law; and

(c) 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 Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.02 and Article VII) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or an Issuing Bank.

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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) 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 8.04 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) believed 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 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 the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for 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.

SECTION 8.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 8.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Parent. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent (so long as no Event of Default is continuing) of the Parent (which consent shall not be unreasonably withheld or delayed), to appoint a successor, which shall be a bank ~~with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment~~ or an independent third-party nationally-recognized agent, selected by the Borrower in consultation with the Administrative Agent within ~~30~~ 210 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the ~~Required Lenders~~ Borrower) (the "Resignation Effective Date"), ~~then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender; provided, further, that in no event shall the Administrative Agent give notice of resignation prior to the date that is 20 days after the Amendment No. 1 Effective Date.~~ Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (c) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Parent and such Person remove such Person as Administrative Agent and, with the consent (so long as no Event of Default is continuing) of the Parent (which consent shall not be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Parent or the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between such Loan Party and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Bank. If Bank of America resigns as an Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all LC Exposure with respect thereto, including the right to require the Lenders to make ABR Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.05(d). Upon the appointment by the Borrower of a successor Issuing Bank hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (b) the retiring Issuing Bank shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

SECTION 8.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

SECTION 8.09 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Parent or the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans in connection with the Loans, the Letters of Credit, [the Bank of America Commitment](#) or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the [Bank of America Commitment](#), the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the [Bank of America Commitment, the](#) Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the [Bank of America Commitment, the](#) Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the [Bank of America Commitment, the](#) Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Parent or the Borrower, that neither the Administrative Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the [Bank of America Commitment, the](#) Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

As used in this Section:

“[Benefit Plan](#)” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“[PTE](#)” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

ARTICLE IX

Miscellaneous

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

(i) if to the Parent, the Borrower or Bank of America, N.A., as Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 9.01; and

(ii) if to any other Lender or Issuing Bank, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(a) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent, the Parent 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.

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

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE PARENT MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE PARENT MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE PARENT MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Parent, the Borrower, any Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Parent’s, the Borrower’s or the Administrative Agent’s transmission of Parent Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Parent, the Borrower, the Administrative Agent and each Issuing Bank may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Parent, the Borrower, the Administrative Agent and each Issuing Bank.

(e) Reliance by Administrative Agent, Issuing Bank and Lenders. The Administrative Agent, the Issuing Bank and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Borrowing Requests and requests for Letters of Credit) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof; provided that the Administrative Agent, the Issuing Bank and the Lenders must act reasonably in determining the validity of any purported notices given by or on behalf of the Borrower. The Loan Parties shall indemnify the Administrative Agent, each Issuing Bank, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other 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 the Administrative Agent, the Issuing Banks 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 any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, 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 making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Parent, the Borrower and the Required Lenders or by the Parent, the Borrower and the Administrative Agent with the consent of the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment (including the Bank of America Commitment) of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment (including the Bank of America Commitment), without the written consent of each Lender affected thereby, (iv) change Section 2.17(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document 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 written consent of each Lender or (vi) release the Parent from its Guarantee under the Guarantee Agreement or limit its liability thereunder, without the written consent of each Lender; provided further 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, as the case may be. Notwithstanding the foregoing, (A) no consent with respect to any amendment, waiver or other modification of this Agreement or any other Loan Document shall be required of (1) any Defaulting Lender, except with respect to any amendment, waiver or other modification referred to in clause (i), (ii) or (iii) of the first proviso of this paragraph and then only in the event such Defaulting Lender shall be affected by such amendment, waiver or other modification or (2) any Lender that receives payment in full of the principal of and interest accrued on each Loan made by, and all other amounts owing to, such Lender or accrued for the account of such Lender under this Agreement and the other Loan Documents at the time such amendment, waiver or other modification becomes effective and whose Commitments terminate by the terms and upon the effectiveness of such amendment, waiver or other modification, (B) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to cure any ambiguity, omission, defect or inconsistency so long as, in each case, the Lenders shall have received at least five Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from (x) the Required Lenders stating that the Required Lenders object to such amendment or (y) any Issuing Bank affected thereby stating that it objects to such amendment, and (C) this Agreement may be amended without the consent of the Required Lenders to increase the Total Commitments pursuant to Section 2.19.

SECTION 9.03 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, each Syndication Agent and their respective Affiliates (including the reasonable fees, charges and disbursements of one outside counsel (and any local or special counsel where appropriate) and, in connection with a conflict, one additional counsel per affected party) for the Administrative Agent and Syndication Agents, collectively, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent, any Syndication Agent, any Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, any Syndication Agent, any Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, each Syndication Agent, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party, the Parent, the Borrower or any Affiliate of the Parent or the Borrower; 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 court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, liabilities or related expenses arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to an Agent or an Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or such Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that (i) the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or such Issuing Bank in its capacity as such and (ii) if an Issuing Bank separately agrees, as contemplated by the last sentence of Section 2.05(f), to be subject to a standard of care different than that set forth therein, no Lender shall be liable to such Issuing Bank hereunder for any greater amount than would have been due if such Issuing Bank had not agreed to such different standard of care.

(d) To the extent permitted by applicable law, neither the Parent nor the Borrower shall assert, and each hereby waives, 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, any Loan Document or any agreement or instrument contemplated thereby, the Transactions or the other transactions contemplated hereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04 Successors and Assigns. (a) 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 an Issuing Bank that issues any Letter of Credit), except that (i) neither the Parent nor the Borrower 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 the Parent or the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. 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 (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Parent or the Borrower; provided that no consent of the Parent or the Borrower shall be required for an assignment to a Lender or any Affiliate of a Lender (other than in respect of any assignment of the Bank of America Commitment) or, if an Event of Default has occurred and is continuing, any other assignee (other than in respect of any assignment of the Bank of America Commitment) provided further that the Parent or the Borrower shall be deemed to have consented to any such assignment unless either the Parent or the Borrower shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of a Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment or an Affiliate of any such Lender; and

(C) each Issuing Bank; provided that no consent of an Issuing Bank shall be required for an assignment of a Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment or an Affiliate of any such Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Competitive Loans, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000, unless each of the Borrower (or the Parent) and the Administrative Agent otherwise consent; provided that no such consent of the Borrower (or the Parent) shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not apply to rights in respect of outstanding Competitive Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required by Section 2.16(f).

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, 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 Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption 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 2.14, 2.15, 2.16 (subject to the requirements thereof) and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 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 (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Loan Parties, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment [\(including the Bank of America Commitment\)](#) of, and principal amount (and stated interest) of the Loans and LC Disbursements 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 Loan Parties, the Administrative Agent, the Issuing Banks 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 Administrative Agent, the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee and any tax forms required by Section 2.16(f), the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) [Notwithstanding anything to the contrary in this Agreement, no Lender shall assign all or any portion of the Bank of America Commitment without the prior written consent \(such consent not to be unreasonably withheld or delayed\) of the Borrower.](#)

(c) Any Lender may, without the consent of the Loan Parties, the Administrative Agent or the Issuing Banks, 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 Commitment (including the Bank of America Commitment) and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Loan Parties, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under the Loan Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Loan Parties agree that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 (subject to the requirements and limitations therein, including the requirements under Section 2.16(f) (it being understood that the documentation required under Section 2.16(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.17 and 2.18 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.14 or 2.16, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.17(c) as though it were a Lender. 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 to any Person (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, the Bank of America Commitment, Loans, Letters of Credit or its other obligations under any Loan Document) 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 such) shall have any obligation to maintain a Participant Register.

(d) 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 this Section 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.

(e) Notwithstanding the foregoing, no assignment or participation shall be made to (i) a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), (ii) the Borrower or (iii) any Affiliate of the Borrower.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and thereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan 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 expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, any separate letter agreements with respect to fees payable to the Administrative Agent, Lender or Issuing Bank and the provisions of the commitment letter dated April 10, 2019, among the Borrower, Bank of America, N.A., Credit Suisse AG, Fifth Third Bank, U.S. Bank National Association, Wells Fargo Bank, National Association and certain of their respective Affiliates that are acting as arrangers and bookrunners in respect of the credit facility under this Agreement (to the extent such provisions expressly survive the termination of such commitment letter) constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts 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 the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates 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 obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the obligations of such Loan Party now or hereafter existing under any Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under any Loan Document and although such obligations may be unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff.. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the Parent and the Borrower 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 the Administrative Agent, any Lender, any Issuing Bank, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the Supreme Court 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 or proceeding may 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 or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Parent, the Borrower or their respective properties in the courts of any jurisdiction.

(c) Each of the Parent and the Borrower 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 Loan Document in any court referred to in paragraph (b) of this Section. 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.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 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 ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (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.

SECTION 9.11 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 shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, third party service providers and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) with the consent of the Parent or the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Parent or the Borrower. For the purposes of this Section, "Information" means all information received from the Parent or the Borrower relating to the Parent or the Borrower or their respective businesses, other than (A) any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Parent or the Borrower and (B) information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14 Patriot Act. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender to identify the Loan Parties in accordance with the Act.

SECTION 9.15 Conversion of Currencies. (a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum due under this Agreement in dollars into another currency, the parties hereto agree, to the fullest extent that they may legally and effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase dollars with such other currency in New York, New York, on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Borrower in respect of any sum due to the Administrative Agent, any Lender or any Issuing Bank hereunder in dollars shall, to the extent permitted by applicable law, notwithstanding any judgment in a currency other than dollars, be discharged only to the extent that on the Business Day following receipt of any sum adjudged to be so due in the judgment currency, the Administrative Agent, such Lender or such Issuing Bank may in accordance with normal banking procedures purchase dollars in the amount originally due to the Administrative Agent, such Lender or such Issuing Bank with the judgment currency. If the amount of dollars so purchased is less than the sum originally due to the Administrative Agent, such Lender or such Issuing Bank, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, such Lender or such Issuing Bank against the resulting loss.

SECTION 9.16 No Fiduciary Duty. The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto.

SECTION 9.17 Non-Public Information. (a) Each Lender acknowledges that all materials and/or information provided by or on behalf of the Parent or the Borrower hereunder (collectively, “Parent Materials”), including requests for waivers and amendments, furnished by the Parent or the Borrower or information furnished by the Administrative Agent pursuant to or in connection with, or in the course of administering, this Agreement will be syndicate-level information, which may contain MNPI. Each Lender represents to the Parent, the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of MNPI and that it will handle MNPI in accordance with such procedures and applicable law, including Federal, state and foreign securities laws, and (ii) it has identified in its Administrative Questionnaire a credit contact who may receive information that may contain MNPI in accordance with its compliance procedures and applicable law, including Federal, state and foreign securities laws.

(b) Each of the Parent, the Borrower and each Lender acknowledges that, if information furnished by the Parent or the Borrower pursuant to or in connection with this Agreement is being distributed by the Administrative Agent through IntraLinks/IntraAgency, SyndTrak or another website or other information platform (the “Platform”), (i) the Administrative Agent may post any information that such Borrower has indicated as containing MNPI solely on that portion of the Platform designated for Private Side Lender Representatives and (ii) if the Parent or the Borrower has not indicated whether any information furnished by it pursuant to or in connection with this Agreement contains MNPI, the Administrative Agent shall post such information solely on that portion of the Platform designated for Private Side Lender Representatives.

(c) The Parent and the Borrower agree to specify whether any information furnished by such entity to any of the Administrative Agent pursuant to, or in connection with, this Agreement contains MNPI.

SECTION 9.18 Acknowledgement and Consent to Bail-In of EEA Affected Financial Institutions Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any EEA Affected 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~~ the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~ the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Affected Financial Institution, its parent entity, 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

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of ~~any EEA~~ the applicable Resolution Authority.

SECTION 9.19 Waiver of Notice of Termination Under Existing Credit Agreement Each Lender that is a “Lender” under (and as defined in) the Existing Credit Agreement hereby waives any requirement under the Existing Credit Agreement that notice be given prior to the prepayment of loans or termination of commitments thereunder; provided that such commitments are terminated by notice to the paying agent under the Existing Credit Agreement on the Effective Date.

SECTION 9.20 Conflict with Loan Documents. In the event of any conflict between the terms of this Agreement and the terms of any other Loan Document, the terms of this Agreement shall control.

SECTION 9.21 Electronic Execution of Assignments and Certain Other Documents. The words “execute,” “execution,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Borrowing Requests, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

SECTION 9.22 Acknowledgement Regarding Supported OFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a OFC (such support, “OFC Credit Support”, and each such OFC, a “Supported OFC”), 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 OFC and OFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported OFC 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):

(a) In the event a Covered Entity that is party to a Supported OFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported OFC and the benefit of such OFC Credit Support (and any interest and obligation in or under such Supported OFC and such OFC Credit Support, and any rights in property securing such Supported OFC or such OFC 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 OFC and such OFC 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 OFC or any OFC 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 OFC 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 OFC or any OFC Credit Support.

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