

As filed with the Securities and Exchange Commission on December 9, 2009

Registration No. 333-\_\_\_\_\_

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

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**MACY'S, INC.**  
*(Exact Name of Registrant as Specified in Its Charter)*

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**Delaware**  
*(State or Other Jurisdiction of Incorporation or Organization)*

**13-3324058**  
*(I.R.S. Employer Identification Number)*

**7 West Seventh Street  
Cincinnati, Ohio 45202  
(513) 579-7000**  
*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)*

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**MACY'S RETAIL HOLDINGS, INC.**  
*(Exact Name of Registrant as Specified in Its Charter)*

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**New York**  
*(State or Other Jurisdiction of Incorporation or Organization)*

**43-0398035**  
*(I.R.S. Employer Identification Number)*

**7 West Seventh Street  
Cincinnati, Ohio 45202  
(513) 579-7000**  
*(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)*

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**Dennis J. Broderick, Esq.**  
**Executive Vice President, General Counsel and Secretary**  
**Macy's, Inc.**

**7 West Seventh Street  
Cincinnati, Ohio 45202  
(513) 579-7000**

**and**

**151 West 34th Street  
New York, New York 10001  
(212) 494-1602**

*(Name, Address, Including Zip Code, and Telephone Number, Including Area Code of Agent For Service)*

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*With copies to:*

**Mark E. Betzen, Esq.**  
**Jones Day**  
**2727 North Harwood Street  
Dallas, Texas 75201  
(214) 220-3939**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. ☒

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

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<b>Title of Each Class of Securities to be Registered*</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Aggregate Offering Price(1)</b>	<b>Amount of Registration Fee(2)</b>
Debt Securities of Macy's Retail Holdings, Inc.			
Common Stock, par value \$0.01 per share, of Macy's, Inc.			
Preferred Stock, par value \$0.01 per share, of Macy's, Inc.			
Depository Shares of Macy's, Inc.(3)			
Warrants			
Purchase Contracts			
Units(4)			
Guarantees of Debt Securities of Macy's Retail Holdings, Inc. by Macy's, Inc.(5)			
Total			

\* Additional securities (including securities to be issued by additional registrants) may be added by automatically effective post-effective amendment pursuant to Rule 413.

- (1) An indeterminate number of the securities of each identified class is being registered as may from time to time be offered for sale at indeterminate prices. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are issued in units or represented by depository shares.
- (2) Pursuant to Rule 456(b) and Rule 457(r), payment of the registration fee is being deferred, except for \$11,107 already paid with respect to securities that were previously registered pursuant to a Registration Statement on Form S-3 (File No. 333-138376) originally filed on November 2, 2006, which remains available for future registration fees.
- (3) Each depository share will be issued under a deposit agreement, will represent an interest in a fractional share or multiple shares of preferred stock of Macy's, Inc. and will be evidenced by a depository receipt.
- (4) Each unit will be issued under a unit agreement or indenture and will represent an interest in a combination of any two or more of the securities being registered hereby or debt obligations of third parties, including U.S. Treasury securities.
- (5) Pursuant to Rule 457(n), no additional filing fee is required in connection with the guarantees of the debt securities being registered.

**PROSPECTUS**



**MACY'S, INC.**

**Common Stock  
Preferred Stock  
Depositary Shares  
Warrants  
Purchase Contracts  
Units  
Guarantees of Debt Securities**

**MACY'S RETAIL HOLDINGS, INC.**

**Debt Securities  
Warrants  
Purchase Contracts  
Units**

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Macy's, Inc., referred to as "Macy's," and/or Macy's Retail Holdings, Inc., a wholly owned subsidiary of Macy's referred to as "Macy's Holdings," may offer from time to time to sell, in one or more series, any combination of the securities described in this prospectus. Such securities may be offered and sold by us in one or more offerings in amounts, at prices and on other terms to be determined at the time of the offering.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

The principal executive offices of Macy's and Macy's Holdings are located at 7 West Seventh Street, Cincinnati, Ohio 45202, and the telephone number for each is (513) 579-7000.

This prospectus describes some of the general terms that may apply to these securities. The specific terms of any securities to be offered will be described in a supplement to this prospectus.

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Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

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**The date of this prospectus is December 9, 2009**

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**The registration statement containing this prospectus, including the exhibits to the registration statement, provides additional information about us and the securities offered under this prospectus. The registration statement, including the exhibits and the documents incorporated herein by reference, can be read on the Securities and Exchange Commission website or at the Securities and Exchange Commission offices mentioned under the heading “Where You Can Find More Information.”**

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### ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a “shelf” registration process. Under this shelf process, we may sell from time to time the securities described in this prospectus in one or more offerings in amounts, at prices and on other terms to be determined at the time of the offering.

This prospectus provides you with a general description of the securities. Each time we offer the securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also supplement, modify or supersede other information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with the information incorporated by reference as described below under the heading “Incorporation by Reference.”

Because we are a well-known seasoned issuer, as defined in Rule 405 under the Securities Act of 1933, as amended, we may add to and offer additional securities including secondary securities, by filing a prospectus supplement or term sheet with the SEC at the time of the offer.

You should rely only on the information provided in this prospectus and in any prospectus supplement, including the information incorporated by reference. We have not authorized anyone to provide you with different information. We are not offering the securities in any state where the offer is not permitted. You should not assume that the information in this prospectus, or any supplement to this prospectus, is accurate at any date other than the date indicated on the cover page of these documents.

Unless the context implies otherwise, references in this prospectus to “we,” “us” or “our” are references to either Macy’s or Macy’s Holdings or both.

## WHERE YOU CAN FIND MORE INFORMATION

Macy's files annual, quarterly and current reports, proxy statements and other information with the SEC. Macy's SEC filings are available to the public from the SEC's website at [www.sec.gov](http://www.sec.gov) or from Macy's website at [www.macysinc.com](http://www.macysinc.com). You may also read and copy any document Macy's files at the SEC's public reference room in Washington, D.C., located at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Information about Macy's is also available at Macy's website at [www.macysinc.com](http://www.macysinc.com). However, the information on that website is not part of this prospectus.

## INCORPORATION BY REFERENCE

The SEC allows us to "incorporate by reference" in this prospectus the information in the documents that Macy's files with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus. Any information that is part of this prospectus or any prospectus supplement that speaks as of a later date than any other information that is part of this prospectus or any prospectus supplement updates or supersedes such other information. We incorporate by reference in this prospectus the documents listed below and any future documents or portions thereof that Macy's files with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 on or after the date of this prospectus until we sell all of the securities that may be offered by this prospectus.

- Macy's Annual Report on Form 10-K for the fiscal year ended January 31, 2009;
- Macy's Quarterly Reports on Form 10-Q for the fiscal quarters ended May 2, 2009, August 1, 2009 and October 31, 2009;
- Macy's Current Report on Form 8-K filed on October 28, 2009; and
- Description of Macy's common stock, par value \$0.01 per share, contained in Macy's Registration Statement on Form 8-A filed on December 12, 1994.

You may obtain, free of charge, a copy of any of these documents (other than exhibits to these documents unless the exhibits are specifically incorporated by reference into these documents or referred to in this prospectus) by writing or calling us at the following address and telephone number:

Macy's, Inc.  
7 West Seventh Street  
Cincinnati, Ohio 45202  
Attention: Investor Relations  
(513) 579-7028

## FORWARD-LOOKING STATEMENTS

Some of the statements made and information contained in this prospectus and the documents we incorporate by reference, excluding historical information, are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995, the Securities Act of 1933 and the Securities Exchange Act of 1934. Forward-looking statements give our current expectations or forecasts of future events. Words such as “may,” “assume,” “forecast,” “position,” “predict,” “strategy,” “expect,” “intend,” “plan,” “estimate,” “anticipate,” “believe,” “project,” “budget,” “potential,” or “continue,” and similar expressions are used to identify forward-looking statements. They can be affected by assumptions used or by known or unknown risks or uncertainties. Consequently, no forward-looking statements can be guaranteed. Actual results may vary materially. You are cautioned not to place undue reliance on any forward-looking statements. You should also understand that it is not possible to predict or identify all such factors and should not consider the following list to be a complete statement of all potential risks and uncertainties. Any of the following factors may impact the achievement of results:

- risks and uncertainties relating to the possible invalidity of the underlying beliefs and assumptions;
- competitive pressures from department and specialty stores, general merchandise stores, manufacturers’ outlets, off-price and discount stores, and all other retail channels, including the Internet, mail-order catalogs and television;
- general consumer-spending levels, including the impact of general economic conditions, consumer disposable income levels, consumer confidence levels, the availability, cost and level of consumer debt, the costs of basic necessities and other goods and the effects of the weather or natural disasters;
- conditions to, or changes in the timing of, proposed transactions and changes in expected synergies, cost savings and non-recurring charges;
- possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions;
- actions taken or omitted to be taken by third parties, including customers, suppliers, business partners, competitors and legislative, regulatory, judicial and other governmental authorities and officials;
- adverse changes in relationships with vendors and other product and service providers;
- risks related to currency and exchange rates and other capital market, economic and geopolitical conditions;
- risks associated with severe weather and changes in weather patterns;
- risks associated with an outbreak of an epidemic or pandemic disease;
- the potential impact of national and international security concerns on the retail environment, including any possible military action, terrorist attacks or other hostilities;
- risks associated with the possible inability of Macy’s manufacturers to deliver products in a timely manner or meet quality standards;
- risks associated with Macy’s reliance on foreign sources of production, including risks related to the disruption of imports by labor disputes;
- risks related to duties, taxes, and other charges and quotas on imports; and
- system failures and/or security breaches, including any security breach that results in the theft, transfer or unauthorized disclosure of customer, employee or company information, or the failure to comply with various laws applicable to Macy’s in the event of such a breach.

This list of factors is not exhaustive, and new factors may emerge or changes to these factors may occur that would impact our business. Additional information regarding these and other factors may be contained in Macy’s filings with the SEC, especially on Forms 10-K, 10-Q and 8-K. All such risk factors are difficult to predict, contain material uncertainties that may affect actual results and may be beyond our control. No forward-looking statements should be relied upon as continuing to reflect the expectations of management or the current status of any matter referred to therein as of any date subsequent to the date on which such statements are made.

## DESCRIPTION OF DEBT SECURITIES

### General

The debt securities that we may offer by this prospectus consist of unsecured notes, debentures, or other evidences of indebtedness of Macy's Holdings, a wholly owned subsidiary of Macy's, which securities we refer to as "debt securities." Macy's Holdings may issue debt securities in one or more series under an indenture, dated as of December 9, 2009, among Macy's Holdings, as issuer, Macy's, as guarantor, and The Bank of New York Mellon Trust Company, N.A., as trustee. A copy of the indenture is filed as Exhibit 4.6 to the registration statement of which this prospectus is a part and is incorporated herein by reference. Except as otherwise defined in this prospectus, capitalized terms used in this prospectus have the meanings given to them in the indenture.

The provisions of the indenture will generally be applicable to all of the debt securities. Selected provisions of the indenture are described in this prospectus. Additional or different provisions that are applicable to a particular series of debt securities will, if material, be described in a prospectus supplement relating to the offering of debt securities of that series. These provisions may include, among other things and to the extent applicable, the following:

- the title of the debt securities;
- the extent, if any, to which the debt securities are subordinated in right of payment to other indebtedness of Macy's Holdings;
- any limit on the aggregate principal amount of the debt securities;
- any subordination provisions or other limitations applicable to guarantees of the debt securities;
- the persons to whom any interest on the debt securities will be payable, if other than the registered holders thereof on the regular record date therefor;
- the date or dates on which the principal of the debt securities will be payable;
- the rate or rates at which the debt securities will bear interest, if any, and the date or dates from which interest will accrue;
- the dates on which interest, if any, will be payable and the regular record dates for interest payment dates;
- the place or places where the principal of and any premium and interest on the debt securities will be payable;
- the period or periods, if any, within which, and the price or prices at which, the debt securities may be redeemed, in whole or in part, at the option of Macy's Holdings;
- the obligation, if any, of Macy's Holdings to redeem or purchase the debt securities pursuant to sinking fund or similar provisions and the terms and conditions of any such redemption or purchase;
- the denominations in which the debt securities will be issuable, if other than denominations of \$1,000 and any integral multiple thereof;
- the currency, currencies or currency units, if other than currency of the United States of America, in which payment of the principal of and any premium or interest on the debt securities will be payable, and the terms and conditions of any elections that may be made available with respect thereto;
- any index or formula used to determine the amount of payments of principal of and any premium or interest on the debt securities;
- whether the debt securities are to be issued in whole or in part in the form of one or more global securities and, if so, the identity of the depository, if any, for the global securities;
- the manner, if any, in which the debt securities will be exchangeable for the common stock or other securities of Macy's or any other person;



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- the principal amount (or any portion of the principal amount) of the debt securities which will be payable upon any declaration of acceleration of the maturity of the debt securities pursuant to an event of default; and
- the applicability to the debt securities of the provisions described under “— Defeasance” below.

We may issue debt securities at a discount from their stated principal amount. Federal income tax considerations and other special considerations applicable to any debt security issued with original issue discount (an “original issue discount security”) may be described in an applicable prospectus supplement.

If the purchase price of any series of the debt securities is payable in a foreign currency or currency unit or if the principal of or any premium or interest on any series of the debt securities is payable in a foreign currency or currency unit, the restrictions, elections, general tax considerations, specific terms, and other information with respect to the debt securities and the applicable foreign currency or currency unit will be set forth in an applicable prospectus supplement.

Unless otherwise indicated in an applicable prospectus supplement:

- the debt securities will be issued only in fully registered form (without coupons) in denominations of \$1,000 or integral multiples thereof; and
- payment of principal and any premium or interest on the debt securities will be payable, and the exchange and transfer of debt securities will be registrable, at Macy’s Holdings’ office or agency maintained for those purposes and at any other office or agency maintained for those purposes. No service charge will be made for any registration of transfer or exchange of the debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge imposed in connection therewith.

## **Guarantees**

Subject to the limitations described below and except as otherwise disclosed in the applicable prospectus supplement, Macy’s will fully, unconditionally and irrevocably guarantee the full and punctual payment when due, whether at maturity, by acceleration, by redemption, by repurchase, or otherwise, of all payment obligations on the debt securities of a series, whether for principal of, or any premium or interest on, the debt securities or otherwise.

In the case of subordinated debt securities of any series, Macy’s guarantee will be subordinated in right of payment to its senior debt on the same basis as the subordinated debt securities of each series are subordinated to Macy’s Holdings’ senior debt securities. No payment will be made by Macy’s under its guarantee during any period in which payments by Macy’s Holdings on any subordinated debt securities are suspended by the subordination provisions applicable to such series.

Macy’s guarantee will be limited in a manner intended to assure that the amount thereof will not exceed the maximum amount that can be guaranteed by Macy’s without rendering such guarantee voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

Macy’s guarantee will be a continuing guarantee and will:

- (1) remain in full force and effect until either (a) payment in full of all the applicable debt securities (or such debt securities are otherwise satisfied and discharged in accordance with the provisions of the applicable indenture) or (b) released in connection with a redemption, if any;
- (2) be binding upon Macy’s; and
- (3) inure to the benefit of and be enforceable by the applicable trustee, the holders and their successors, transferees and assigns.

## Global Securities

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary or its nominee identified in an applicable prospectus supplement. Unless and until it is exchanged in whole or in part for debt securities in registered form, a global security may not be registered for transfer or exchange except:

- by the depositary to a nominee of the depositary;
- by a nominee of the depositary to the depositary or another nominee of the depositary;
- by the depositary or any nominee of the depositary to a successor depositary or a nominee of the successor depositary; or
- in any other circumstances described in an applicable prospectus supplement.

The specific terms of the depositary arrangement with respect to any debt securities to be represented by a global security will be described in an applicable prospectus supplement. We expect that the following provisions will apply to depositary arrangements.

Unless otherwise specified in an applicable prospectus supplement, any global security that represents debt securities will be registered in the name of the depositary or its nominee. Upon the deposit of a global security with or on behalf of the depositary for the global security, the depositary will credit, on its book-entry registration and transfer system, the respective principal amounts of the debt securities represented by the global security to the accounts of institutions that are participants in such system. The accounts to be credited will be designated by the underwriters or agents of the debt securities or by Macy's Holdings, if the debt securities are offered and sold directly by Macy's Holdings.

Ownership of beneficial interests in debt securities represented by a global security will be limited to participants in the book-entry registration and transfer system of the applicable depositary or persons that may hold interests through those participants. Ownership of those beneficial interests by participants will be shown on, and the transfer of ownership will be effected only through, records maintained by the depositary or its nominee for such global security. Ownership of such beneficial interests by persons that hold through such participants will be shown on, and the transfer of such ownership will be effected only through, records maintained by the participants. The laws of some jurisdictions require that specified purchasers of securities take physical delivery of their securities in definitive form. These laws may impair your ability to transfer beneficial interests in a global security.

So long as the depositary for a global security, or its nominee, is the registered owner of the global security, the depositary or the nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by the global security for all purposes under the indenture. Unless otherwise specified in an applicable prospectus supplement, owners of beneficial interests in the global security will not be entitled to have any of the debt securities represented by the global security registered in their names, will not receive or be entitled to receive physical delivery of any such debt securities in certificated form, and will not be considered the owners or holders of the debt securities for any purpose under the indenture. Accordingly, each person owning a beneficial interest in debt securities represented by a global security must rely on the procedures of the applicable depositary and, if the person is not a participant in the book-entry registration and transfer system of the applicable depositary, on the procedures of the participant through which the person owns its interest, to exercise any rights of an owner or holder of debt securities under the indenture.

We understand that, under existing industry practices, if an owner of a beneficial interest in debt securities represented by a global security desires to give any notice or take any action that an owner or holder of debt securities is entitled to give or take under the indenture:

- the applicable depositary would authorize its participants to give the notice or take the action; and
- the participants would authorize persons owning the beneficial interests through the participants to give the notice or take the action or would otherwise act upon the instructions of the persons owning the beneficial interests.

Principal of and any premium and interest on debt securities represented by a global security will be payable in the manner described in an applicable prospectus supplement. Payment of principal of, and any premium or interest on, debt securities represented by a global security will be made to the applicable depositary or its nominee, as the case may be, as the registered owner or the holder of the global security. None of us, the trustee, any paying agent, or the registrar for debt

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securities represented by a global security will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in those debt securities or for maintaining, supervising, or reviewing any records relating to those beneficial ownership interests.

### **Certain Covenants of Macy's Holdings**

*Maintenance of Office or Agency.* Macy's Holdings will be required to maintain an office or agency in each place of payment for each series of debt securities for notice and demand purposes and for the purposes of presenting or surrendering debt securities for payment, registration of transfer, or exchange.

*Paying Agents, Etc.* If Macy's Holdings acts as its own paying agent with respect to any series of debt securities, on or before each due date of the principal of or any premium or interest on any of the debt securities of that series, Macy's Holdings will be required to segregate and hold in trust for the benefit of the persons entitled to payment a sum sufficient to pay the amount due and to notify the trustee promptly of Macy's Holdings action or failure to act. If Macy's Holdings has one or more paying agents for any series of debt securities, prior to each due date of the principal of or any premium or interest on any debt securities of that series, Macy's Holdings will be required to deposit with a paying agent a sum sufficient to pay the amount due and, unless the paying agent is the trustee, to promptly notify the trustee of its action or failure to act. All moneys paid by Macy's Holdings to a paying agent for the payment of principal of or any premium or interest on any debt securities that remain unclaimed for two years after the principal or any premium or interest has become due and payable may be repaid to Macy's Holdings, and thereafter the holder of those debt securities may look only to Macy's Holdings for payment thereof.

*Existence.* Macy's Holdings will be required to, and will be required to cause its subsidiaries to, preserve and keep in full force and effect its and their existence, charter rights, statutory rights, and franchises, except to the extent that the failure to do so would not have a material adverse effect.

*Restrictive Covenants.* Any restrictive covenants applicable to any series of debt securities will be described in an applicable prospectus supplement.

### **Events of Default**

The following are Events of Default under the indenture with respect to debt securities of any series:

- (1) failure to pay principal of or premium, if any, on any debt security of that series when due;
- (2) failure to pay any interest on any debt security of that series when due, which failure continues for 30 calendar days;
- (3) failure to make any sinking fund payment in respect of any debt security of that series when it becomes due and payable;
- (4) failure to perform, or breach of, any other of Macy's Holdings' covenants in the indenture (other than a covenant included in the indenture solely for the benefit of a series of debt securities other than that series), which failure or breach continues for 60 calendar days after written notice thereof has been given to Macy's Holdings as provided in the indenture;
- (5) any nonpayment at maturity or other default (beyond any applicable grace period) under any agreement or instrument relating to any other indebtedness of Macy's Holdings, the unpaid principal amount of which is not less than \$100 million, which default results in the acceleration of the maturity of the indebtedness prior to its stated maturity or occurs at the final maturity thereof;
- (6) any guarantee of the debt securities of that series ceases to be in full force and effect (except as contemplated by the terms of the indenture) or is declared in a judicial proceeding to be null and void, or Macy's denies or disaffirms in writing its obligations under its guarantee;
- (7) specified events of bankruptcy, insolvency, or reorganization involving Macy's Holdings or Macy's; and
- (8) any other Event of Default provided with respect to debt securities of that series.

Pursuant to the Trust Indenture Act of 1939, the trustee is required, within 90 calendar days after the occurrence of a default in respect of any series of debt securities, to give to the holders of the debt securities of that series notice of all uncured defaults known to it, except that:

- in the case of a default in the performance of any covenant of the character contemplated in clause (4) above, no notice will be given until at least 30 calendar days after the occurrence of the default; and

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- other than in the case of a default of the character contemplated in clause (1), (2) or (3) above, the trustee may withhold notice if and so long as it in good faith determines that the withholding of notice is in the interests of the holders of the debt securities of that series.

If an Event of Default described in clause (7) above occurs, the principal of, and any premium and accrued interest on the debt securities of that series will become immediately due and payable without any declaration or other act on the part of the trustee or any holder of the debt securities of that series. If any other Event of Default with respect to debt securities of any series occurs and is continuing, either the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of that series may declare the principal amount of all debt securities of that series to be due and payable immediately. However, at any time after a declaration of acceleration with respect to debt securities of any series has been made, but before a judgment or decree based on such acceleration has been obtained, the holders of a majority in principal amount of the outstanding debt securities of that series may, under specified circumstances, rescind and annul such acceleration. See “— Modification and Waiver” below.

Subject to the duty of the trustee to act with the required standard of care during an Event of Default, the trustee will have no obligation to exercise any of its rights or powers under the indenture at the request or direction of the holders of debt securities, unless holders of debt securities shall have offered to the trustee reasonable security or indemnity. Subject to the provisions of the indenture, including those requiring security or indemnification of the trustee, the holders of a majority in principal amount of the debt securities of any series will have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series.

No holder of a debt security of any series will have any right to institute any proceeding with respect to the indenture or for any remedy thereunder unless:

- the holder has previously given to the trustee written notice of a continuing Event of Default with respect to the debt securities of that series;
- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have requested in writing that the trustee institute a proceeding as trustee in respect of the Event of Default;
- the holder or holders have offered reasonable indemnity to the trustee to institute the proceeding as trustee;
- the trustee has not received from the holders of a majority in principal amount of the outstanding debt securities of that series a direction inconsistent with the written request; and
- the trustee has failed to institute the proceeding within 60 calendar days after receipt of the written request.

However, the limitations described above do not apply to a suit instituted by a holder of a debt security for enforcement of payment of the principal of and any premium or interest on such debt security on or after the applicable due dates for the payment of such obligations.

Macy’s Holdings is required to furnish to the trustee annually a statement as to the performance of its obligations under the indenture and as to any default in its performance.

Any additional Events of Default with respect to any series of debt securities, and any variations from the foregoing Events of Default applicable to any series of debt securities, will be described in an applicable prospectus supplement.

### **Modification and Waiver**

In general, modifications and amendments of the indenture may be made by Macy’s Holdings, Macy’s and the trustee with the consent of the holders of not less than a majority in principal amount of the outstanding debt securities of each series affected thereby. However, no modification or amendment of the indenture may, without the consent of the holder of each outstanding debt security affected thereby:

- change the stated maturity of, or any installment of principal of, or interest on, any debt security;

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- reduce the principal amount of, the rate of interest on, or the premium, if any, payable upon the redemption of, any debt security;
- reduce the amount of principal of an original issue discount security payable upon acceleration of the maturity thereof;
- change the place or currency of payment of principal of, and any premium or interest on, any debt security;
- impair the right to institute suit for the enforcement of any payment on or with respect to any debt security on or after the stated maturity or prepayment date thereof; or
- reduce the percentage in principal amount of outstanding debt securities of any series required for modification or amendment of the indenture or for waiver of compliance with certain provisions of the indenture or for waiver of certain defaults.

The holders of at least a majority in principal amount of the outstanding debt securities of any series may, on behalf of the holders of all debt securities of that series, waive Macy's Holdings' compliance with specified covenants of the indenture. The holders of at least a majority in principal amount of the outstanding debt securities of any series may, on behalf of the holders of all debt securities of that series, waive any past default under the indenture with respect to that series, except:

- a default in the payment of the principal of, any premium or interest on, any debt security of that series; or
- a default of a provision of the indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security of that series.

## **Defeasance**

Unless otherwise specified in a prospectus supplement applicable to a particular series of debt securities and except as described below, upon compliance with the applicable requirements described below, Macy's Holdings:

(1) will be deemed to have been discharged from its obligations with respect to the outstanding debt securities of that series; or

(2) will be released from its obligations to comply with certain covenants described under "— Certain Covenants of Macy's Holdings" above and from certain prohibitions against consolidations, mergers, and the transfer of its assets described under "— Limitations on Merger and Other Transactions" below with respect to the outstanding debt securities of that series, and the occurrence of an event described in any of clauses (3), (4), (5) and (8) under "— Events of Default" above will no longer be an Event of Default with respect to the debt securities of that series except to the limited extent described below.

Following any defeasance described in clause (1) or (2) above, Macy's Holdings will continue to have specified obligations under the indenture, including obligations to register the transfer or exchange of debt securities of the applicable series; replace destroyed, stolen, lost, or mutilated debt securities of the applicable series; maintain an office or agency in respect of the debt securities of the applicable series; and hold funds for payment to holders of debt securities of the applicable series in trust. In the case of any defeasance described in clause (2) above, any failure by Macy's Holdings to comply with its continuing obligations may constitute an Event of Default with respect to the debt securities of the applicable series as described in clause (4) under "— Events of Defaults" above.

In order to effect any defeasance described in clause (1) or (2) above, Macy's Holdings must irrevocably deposit with the trustee, in trust, money or specified government obligations (or depositary receipts therefor) that through the scheduled payment of principal and interest in accordance with their terms will provide, without reinvestment, money in an amount sufficient to pay all of the principal and any premium and interest on the debt securities of such series on the dates such payments are due in accordance with the terms of such debt securities. In addition, among other things:

- no Event of Default or event which with the giving of notice or lapse of time, or both, would become an Event of Default under the indenture shall have occurred and be continuing on the date of such deposit;
- no Event of Default or any event described in clause (7) under "— Events of Default" above shall have occurred and be continuing at any time on or prior to the 124<sup>th</sup> calendar day following the date of deposit;

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- in the event of any defeasance described in clause (1) above, Macy's Holdings shall have delivered to the trustee an opinion of outside counsel, stating that (a) it has received from, or there has been published by, the United States Internal Revenue Service a ruling or (b) there has been a change in applicable federal income tax law, in either case to the effect that, among other things, the holders of the outstanding debt securities of such series will not recognize gain or loss for United States federal income tax purposes as a result of such deposit or defeasance and will be subject to United States federal income tax in the same manner as if such deposit or defeasance had not occurred;
- in the event of any defeasance described in clause (2) above, Macy's Holdings shall have delivered to the trustee an opinion of outside counsel to the effect that, among other things, the holders of the outstanding debt securities of such series will not recognize gain or loss for United States federal income tax purposes as a result of such deposit or defeasance and will be subject to United States federal income tax in the same manner as if such deposit or defeasance had not occurred;
- Macy's Holdings shall have delivered to the trustee an officer's certificate to the effect that (a) the debt securities of such series, if then listed on any securities exchange, will not be delisted solely as a result of such deposit and (b) any defeasance described in clause (1) or (2) above shall not result in a breach or violation of, or constitute a default under, any agreement to which Macy's Holdings is a party or violate any law to which Macy's Holdings is subject; and
- Macy's Holdings shall have delivered to the trustee a certificate from a nationally recognized firm of independent accountants or other person acceptable to the trustee expressing their opinion that the payments of principal and interest when due on the deposited government obligations plus any deposited money will provide the cash at such times and in such amounts as will be sufficient to pay the principal of and any premium and interest when due on the debt securities of such series on the respective maturities or on any earlier date or dates on which the debt securities of such series shall be subject to redemption at the option of the holder thereof.

If Macy's Holdings fails to comply with its remaining obligations under the indenture with respect to the debt securities of the applicable series following a defeasance described in clause (2) above and the debt securities of that series are declared due and payable because of the occurrence of any undefeased Event of Default, the amount of money and government obligations on deposit with the trustee may be insufficient to pay amounts due on the debt securities of that series at the time of the acceleration resulting from such Event of Default. However, Macy's Holdings will remain liable in respect of such payments.

### **Satisfaction and Discharge**

Macy's Holdings, at its option, may satisfy and discharge the indenture (except for specified obligations of Macy's Holdings and the trustee, including, among others, the obligations to apply money held in trust) when:

- either:

(1) all of the debt securities previously authenticated and delivered under the indenture (subject to specified exceptions relating to debt securities that have otherwise been satisfied or provided for) have been delivered to the trustee for cancellation; or

(2) all of the debt securities not previously delivered to the trustee for cancellation have become due and payable, will become due and payable at their stated maturity within one year, or are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee, and Macy's Holdings has deposited or caused to be deposited with the trustee as trust funds for such purpose an amount sufficient to pay and discharge the entire indebtedness on such debt securities, for principal and any premium and interest to the date of such deposit (in the case of debt securities which have become due and payable) or to the stated maturity or redemption date, as the case may be;

- Macy's Holdings has paid or caused to be paid all other sums payable by it under the indenture; and
- Macy's Holdings has delivered to the trustee an officer's certificate and an opinion of counsel, each to the effect that all conditions precedent relating to the satisfaction and discharge of the indenture have been satisfied.

### **Limitations on Merger and Other Transactions**

Prior to the satisfaction and discharge of the indenture, Macy's Holdings may not consolidate with or merge with or into any other person, or transfer all or substantially all of its properties and assets to another person unless:

- either

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(1) Macy's Holdings is the continuing or surviving person in the consolidation or merger; or

(2) the person (if other than Macy's Holdings) formed by the consolidation or into which Macy's Holdings is merged or to which all or substantially all of the properties and assets of Macy's Holdings are transferred is a corporation, partnership, limited liability company, business trust, trust or other legal entity organized and validly existing under the laws of the United States, any State thereof, or the District of Columbia, and expressly assumes, by a supplemental indenture, all of Macy's Holdings' obligations under the debt securities and the indenture;

- immediately after the transaction and the incurrence or anticipated incurrence of any indebtedness to be incurred in connection therewith, no Default exists; and
- an officer's certificate is delivered to the trustee to the effect that both of the conditions set forth above have been satisfied and an opinion of outside counsel has been delivered to the trustee to the effect that the first condition set forth above has been satisfied.

The continuing, surviving, or successor person will succeed to and be substituted for Macy's Holdings with the same effect as if it had been named in the indenture as a party thereto, and thereafter the predecessor person will be relieved of all obligations and covenants under the indenture and the debt securities.

### **Governing Law**

The indenture is, and the debt securities will be, governed by, and construed in accordance with, the laws of the State of New York.

### **Regarding the Trustee**

The indenture and the Trust Indenture Act contain specified limitations on the right of the trustee, should it become a creditor of Macy's Holdings within three months of, or subsequent to, a default by Macy's Holdings to make payment in full of principal of or interest on any series of debt securities issued pursuant to the indenture when and as the same becomes due and payable, to obtain payment of claims, or to realize for its own account on property received in respect of any such claim as security or otherwise, unless and until such default is cured. However, the trustee's rights as a creditor of Macy's Holdings will not be limited if the creditor relationship arises from, among other things:

- the ownership or acquisition of securities issued under any indenture or having a maturity of one year or more at the time of acquisition by the trustee;
- specified advances authorized by a receivership or bankruptcy court of competent jurisdiction or by the indenture;
- disbursements made in the ordinary course of business in its capacity as indenture trustee, transfer agent, registrar, custodian, or paying agent or in any other similar capacity;
- indebtedness created as a result of goods or securities sold in a cash transaction or services rendered or premises rented; or
- the acquisition, ownership, acceptance, or negotiation of specified drafts, bills of exchange, acceptances, or other obligations.

The indenture does not prohibit the trustee from serving as trustee under any other indenture to which Macy's Holdings may be a party from time to time or from engaging in other transactions with Macy's Holdings. If the trustee acquires any conflicting interest within the meaning of the Trust Indenture Act and there is an Event of Default with respect to any series of debt securities, the trustee must eliminate the conflict or resign.



## DESCRIPTION OF MACY'S CAPITAL STOCK

### Authorized Capital Stock

Macy's is authorized to issue 1,125 million shares of capital stock, consisting of 1,000 million shares of common stock, par value \$0.01 per share, and 125 million shares of preferred stock, par value \$0.01 per share.

### Common Stock

Holders of Macy's common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Upon satisfaction of Macy's obligations to preferred stockholders, holders of Macy's common stock may receive dividends when declared by the Macy's board of directors. If Macy's liquidates, dissolves or winds-up its business, holders of Macy's common stock will share equally in the assets remaining after Macy's pays all of its creditors and satisfies all of its obligations to preferred stockholders. Holders of Macy's common stock have no conversion, preemptive, subscription or redemption rights. Macy's common stock is traded on the New York Stock Exchange under the symbol "M." The registrar and transfer agent for the common stock is The Bank of New York Mellon.

### Preferred Stock

The Macy's board of directors can, without approval of stockholders, issue one or more series of preferred stock. The board can determine the number of shares of each series and the rights, preferences and limitations of each series, including dividend rights, voting rights, conversion rights, redemption rights and any liquidation preferences and the terms and conditions of the issue. In some cases, the issuance of preferred stock could delay, defer or prevent a change in control of Macy's and make it harder to remove present management, without further action by Macy's stockholders. Under some circumstances, preferred stock could also decrease the amount of earnings and assets available for distribution to holders of Macy's common stock if Macy's liquidates or dissolves and could also restrict or limit dividend payments to holders of Macy's common stock.

Macy's has not issued any shares of preferred stock to date, and Macy's does not plan to issue any shares of preferred stock.

### Purposes and Effects of Certain Provisions of Macy's Certificate of Incorporation and By-laws

#### *General*

Macy's certificate of incorporation and by-laws contain provisions that could make more difficult the acquisition of control of Macy's by means of a tender offer, open market purchases, a proxy contest or otherwise. A description of these provisions is set forth below.

#### *Removal of Directors*

Macy's certificate of incorporation provides that, except as may be otherwise provided by the terms of any series of preferred stock, a director may only be removed at any annual or special meeting of Macy's stockholders, the notice of which states that the removal of a director or directors is among the purposes of the meeting, by the affirmative vote of the holders of at least 80% of the then-outstanding shares of its voting stock entitled to vote in the election of directors, voting together as a single class.

#### *Limitation of Director Liability*

Macy's certificate of incorporation provides that, to the full extent permitted by the Delaware General Corporation Law or any other applicable law currently or hereafter in effect, no director will be personally liable to Macy's or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a director of Macy's. This provision in Macy's certificate of incorporation may have the effect of reducing the likelihood of derivative litigation against Macy's directors and may discourage or deter stockholders or management from bringing a lawsuit against Macy's directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited Macy's and its stockholders. These provisions do not limit or affect a stockholder's ability to seek and obtain relief under federal securities laws.



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### ***No Stockholder Action by Written Consent***

Macy's certificate of incorporation provides that any action required or permitted to be taken by the Macy's stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by a written consent of Macy's stockholders. This prevents Macy's stockholders from initiating or effecting any action by written consent, thereby limiting the ability of Macy's stockholders to take actions opposed by Macy's board of directors.

### ***Special Meetings of Stockholders***

Macy's certificate of incorporation and by-laws provide that special meetings of stockholders may be called only by the chairman of the Macy's board of directors, the secretary of Macy's upon receipt of a written request from a majority of directors (assuming no vacancies) or the Macy's board of directors upon receipt of a written request from not less than 15% of Macy's voting stock entitled to vote in the election of directors, voting together as a single class.

### ***Section 203 of the Delaware General Corporation Law***

Macy's is subject to Section 203, which prohibits publicly held Delaware corporations from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time of the transaction in which the person or entity became an interested stockholder, unless:

- prior to that time, either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder is approved by the board of directors of the corporation;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the outstanding voting stock of the corporation, excluding for this purpose shares owned by persons who are directors and also officers of the corporation and by specified employee benefit plans; or
- at or after such time the business combination is approved by the board of directors of the corporation and by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

For the purposes of Section 203, a "business combination" is broadly defined to include mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. An "interested stockholder" is a person who, together with affiliates and associates, owns or within the immediately preceding three years did own 15% or more of the corporation's voting stock.

## **DESCRIPTION OF DEPOSITARY SHARES**

Macy's may offer depositary shares (either separately or together with other securities) representing fractional shares of Macy's preferred stock of any series. In connection with the issuance of any depositary shares, Macy's will enter into a deposit agreement with a bank or trust company, as depositary, which will be named in the applicable prospectus supplement. Depositary shares will be evidenced by depositary receipts issued pursuant to the related deposit agreement. Immediately following Macy's issuance of the security related to the depositary shares, Macy's will deposit the shares of its preferred stock with the relevant depositary and will cause the depositary to issue, on Macy's behalf, the related depositary receipts. Subject to the terms of the deposit agreement, each owner of a depositary receipt will be entitled, in proportion to the fraction of a share of preferred stock represented by the related depositary share, to all the rights, preferences and privileges of, and will be subject to all of the limitations and restrictions on, the preferred stock represented by the depositary receipt (including, if applicable, dividend, voting, conversion, exchange, redemption, sinking fund, repayment at maturity, subscription and liquidation rights).

## **DESCRIPTION OF WARRANTS**

We may issue warrants for the purchase of debt securities of Macy's Holdings, common stock, preferred stock or depositary shares of Macy's or any combination thereof. Warrants may be issued independently or together with any other securities offered by a prospectus supplement. Warrants may be attached to or separate from such securities. Warrants may be issued under warrant agreements to be entered into among Macy's and/or Macy's Holdings and a warrant agent specified in the applicable prospectus supplement. The warrant agent will act solely as an agent of Macy's and/or Macy's Holdings in connection with the warrants of a particular series and will not assume any obligation or relationship of agency or trust for or with holders or beneficial owners of warrants.

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The applicable prospectus supplement will describe the terms of the warrants in respect of which this prospectus is being delivered, including, where applicable, the following:

- the title of such warrants;
- the aggregate number of such warrants;
- the price or prices at which such warrants will be issued;
- the designation, number and terms of the debt securities of Macy's Holdings, the common stock, preferred stock or depositary shares of Macy's or combination thereof, purchasable upon exercise of such warrants;
- the designation and terms of the other securities, if any, with which such warrants are issued and the number of such warrants issued with each such security;
- the date, if any, on and after which such warrants and the related underlying securities will be separately transferable;
- the price at which each underlying security purchasable upon exercise of such warrants may be purchased;
- the date on which the right to exercise such warrants shall commence and the date on which such right shall expire;
- the minimum amount of such warrants which may be exercised at any one time;
- information with respect to book-entry procedures, if any;
- a discussion of any applicable federal income tax considerations; and
- any other terms of such warrants, including terms, procedures and limitations relating to the transferability, exchange and exercise of such warrants.

### **DESCRIPTION OF PURCHASE CONTRACTS**

We may issue purchase contracts, including contracts obligating holders to purchase from us, and for us to sell to holders, a specific or varying number of debt securities of Macy's Holdings, shares of common stock, preferred stock or depositary shares of Macy's, warrants, or securities of an entity unaffiliated with us, or any combination of the above, at a future date or dates. Alternatively, the purchase contracts may obligate us to purchase from holders, and obligate holders to sell to us, a specific or varying number of debt securities of Macy's Holdings, shares of common stock, preferred stock or depositary shares of Macy's, warrants, or other property, or any combination of the above. The price of the securities or other property subject to the purchase contracts may be fixed at the time the purchase contracts are issued or may be determined by reference to a specific formula described in the purchase contracts. We may issue purchase contracts separately or as a part of units each consisting of a purchase contract and one or more of the other securities of Macy's Holdings and/or Macy's described in this prospectus or securities of third parties, including U.S. Treasury securities, securing the holder's obligations under the purchase contract. The purchase contracts may require us to make periodic payments to holders or vice versa and the payments may be unsecured or pre-funded on some basis. The purchase contracts may require holders to secure the holder's obligations in a manner specified in the applicable prospectus supplement.

The applicable prospectus supplement will describe the terms of any purchase contracts in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- whether the purchase contracts obligate the holder or us to purchase or sell, or both purchase and sell, the securities subject to purchase under the purchase contract, and the nature and amount of each of those securities, or the method of determining those amounts;
- whether the purchase contracts are to be prepaid or not;
- whether the purchase contracts are to be settled by delivery, or by reference or linkage to the value, performance or level of the securities subject to purchase under the purchase contract;
- any acceleration, cancellation, termination or other provisions relating to the settlement of the purchase contracts; and

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- whether the purchase contracts will be issued in fully registered or global form.

### DESCRIPTION OF UNITS

We may issue units comprising one or more securities of Macy's Holdings and/or Macy's described in this prospectus in any combination. Units may also include debt obligations of third parties, such as U.S. Treasury securities. Each unit will be issued so that the holder of the unit also is the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately at any time or at any time before a specified date or occurrence.

The applicable prospectus supplement will describe the terms of any units in respect of which this prospectus is being delivered, including, to the extent applicable, the following:

- the designation and terms of the units and the securities included in the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provision for the issuance, payment, settlement, transfer or exchange of the units or of the securities included in the units; and
- whether the units will be issued in fully registered or global form.

### RATIO OF EARNINGS TO FIXED CHARGES

The following table shows Macy's historical ratio of earnings to fixed charges for the thirty-nine weeks ended October 31, 2009 and each of the previous five fiscal years. Macy's ratio of earnings to fixed charges for each of the periods set forth below has been computed on a consolidated basis and should be read in conjunction with the consolidated financial statements, including the notes to those financial statements, and other information set forth in the reports filed by Macy's with the SEC.

For purposes of determining the ratio of earnings (losses) to fixed charges, "earnings" (losses) consist of income (loss) from continuing operations before income taxes plus fixed charges (excluding interest capitalized). "Fixed charges" represent interest incurred, amortization of debt expenses, and that portion of rental expenses on operating leases deemed to be the equivalent of interest.

39 Weeks Ended	Fiscal Year Ended				
October 31, 2009	January 31, 2009	February 2, 2008	February 3, 2007	January 28, 2006	January 29, 2005
0.5x(1)	— (2)	2.9x	3.5x	4.7x	3.9x

(1) For the thirty-nine weeks ended October 31, 2009, our earnings were insufficient to cover our fixed charges by \$232 million.

(2) For the fiscal year ended January 31, 2009, our earnings were insufficient to cover our fixed charges by \$4.95 billion.

### USE OF PROCEEDS

We intend to use the net proceeds from the sales of the securities described in this prospectus as set forth in the applicable prospectus supplement.

### CERTAIN LEGAL MATTERS

In connection with particular offerings of the securities in the future, and if stated in the applicable prospectus supplements, the validity of those securities may be passed upon for us by Dennis J. Broderick, Macy's Executive Vice President, General Counsel and Secretary or by Jones Day, as our counsel, and for any underwriters or agents by counsel named in the applicable prospectus supplement.

## **EXPERTS**

The consolidated financial statements of Macy's, Inc. as of January 31, 2009 and February 2, 2008, and for each of the fiscal years in the three-year period ended January 31, 2009, and management's assessment of the effectiveness of internal control over financial reporting as of January 31, 2009 have been incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit report of KPMG LLP covering the January 31, 2009 consolidated financial statements refers to the adoption of the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes," and the measurement date provision of Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," in fiscal 2007, and the provisions of Statement of Financial Accounting Standards No. 123R, "Share Based Payment," and the recognition and related disclosure provisions of Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," in fiscal 2006.



## **MACY'S, INC.**

**Common Stock**  
**Preferred Stock**  
**Depository Shares**  
**Warrants**  
**Purchase Contracts**  
**Units**  
**Guarantees of Debt Securities**

## **MACY'S RETAIL HOLDINGS, INC.**

**Debt Securities**  
**Warrants**  
**Purchase Contracts**  
**Units**

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### **PROSPECTUS**

**December 9, 2009**

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**PART II.**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the estimated fees and expenses in connection with the shelf registration of the securities registered under this registration statement, other than any underwriting discounts and commissions. The actual amounts of such fees and expenses will be determined from time to time.

SEC registration fee	(1)
Legal fees and expenses	(2)
Accounting fees and expenses	(2)
Printing and engraving expenses	(2)
Rating Agency fees	(2)
Trustee's fees and expenses	(2)
Miscellaneous expenses	(2)
Total	(2)

- (1) An SEC registration fee of \$214,000 was paid in connection with the filing of a Registration Statement on Form S-3 (File No. 333-138376) on November 2, 2006. Of this fee, \$11,107 remains available for future registration fees. Additional amounts, if any, have been deferred pursuant to Rules 456(b) and 457(r).
- (2) Cannot be estimated at this time.

**Item 15. Indemnification of Directors and Officers.**

Sections 721 through 726 of Article 7 of the New York Business Corporation Law, which is applicable to Macy's Holdings, provide, in general, that a corporation may indemnify a director or officer made a party to an action (i) by a corporation or in its right in order to procure a judgment in its favor unless he shall have breached his duties, or (ii) other than an action by or in the right of the corporation in order to procure a judgment in its favor, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, if such director or officer acted in good faith and in a manner he reasonably believed to be in or, in certain cases, not opposed to such corporation's interest and additionally, in criminal actions, had no reasonable cause to believe his conduct was unlawful. The statutory provisions for indemnification and advancement of expenses are not exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled independently of the applicable statutory provision.

Section 145 of the Delaware General Corporation Law, which is applicable to Macy's, provides, in general, that each director and officer of a corporation may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed legal proceedings in which he or she is involved by reason of the fact that he or she is or was a director or officer, if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe that his or her conduct was unlawful. If the legal proceeding, however, is by or in the right of the corporation, the director or officer may not be indemnified in respect of any claim, issue or matter as to which he or she has been adjudged to be liable to the corporation unless a court determines otherwise.

Macy's Holdings' by-laws provide for the indemnification of directors and officers of Macy's Holdings to the fullest extent permitted by applicable law. Macy's certificate of incorporation and by-laws provide for the indemnification of Macy's directors and officers to the fullest extent permitted by applicable law.

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### **Item 16. Exhibits.**

The following documents are filed as exhibits to this registration statement:

<u><b>Exhibit No.</b></u>	<u><b>Description</b></u>
4.1	Certificate of Incorporation of Macy's, Inc. ("Macy's") (incorporated by reference to Exhibit 3.1 to Macy's Annual Report on Form 10-K (File No. 001-135361) for the fiscal year ended January 28, 1995)
4.2	Certificate of Amendment of Certificate of Incorporation of Macy's (incorporated by reference to Exhibit 3.1.2 to Macy's Annual Report on Form 10-K (File No. 001-13536) for the fiscal year ended February 3, 2007)
4.3	Amended and Restated Article First of the Certificate of Incorporation of Macy's (incorporated by reference to Exhibit 3.1.4 to Macy's Quarterly Report on Form 10-Q (File No. 001-13536) for the fiscal quarter ended May 5, 2007)
4.4	Amended and Restated Article Seventh of the Certificate of Incorporation of Macy's (incorporated by reference to Exhibit 3.1.1 to Macy's Annual Report on Form 10-K (File No. 001-135361) for the fiscal year ended February 2, 2008)
4.5	By-Laws of Macy's (incorporated by reference to Exhibit 3.2 to Macy's Annual Report on Form 10-K (File No. 001-13536) for the fiscal year ended February 2, 2008)
4.6	Indenture, dated as of December 9, 2009 (the "Indenture"), by and among Macy's Retail Holdings, Inc. ("Macy's Holdings"), Macy's and The Bank of New York Mellon Trust Company, N.A.
*4.7	Form of debt securities
*4.8	Certificate of designations for preferred stock of Macy's
*4.9	Form of depositary receipt
*4.10	Form of depositary agreement
*4.11	Form of warrant
*4.12	Form of warrant agreement
*4.13	Form of purchase contract
*4.14	Form of unit certificate
*4.15	Form of unit agreement
5.1	Form of Opinion of Jones Day
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges
23.1	Form of consent of Jones Day (included in Exhibit 5.1)
23.2	Consent of KPMG LLP
24.1	Powers of Attorney for certain directors and officers of Macy's
24.2	Powers of Attorney for certain directors and officers of Macy's Holdings
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, by The Bank of New York Mellon Trust Company, N.A., the trustee under the Indenture

\* To be filed by an amendment or as an exhibit to a report filed under the Securities Exchange Act of 1934, as amended, and incorporated by reference herein.

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### **Item 17. Undertakings.**

The undersigned registrants hereby undertake:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrants pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrants pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrants under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrants pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrants will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrants relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrants or used or referred to by the undersigned registrants;



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(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrants or their securities provided by or on behalf of the undersigned registrants; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrants to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrants' annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrants has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cincinnati, State of Ohio, on December 9, 2009.

**MACY'S, INC.**

By: /s/ DENNIS J. BRODERICK  
**Dennis J. Broderick**  
Executive Vice President, General Counsel and Secretary

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities indicated on December 9, 2009.

<u>Signatures</u>	<u>Title</u>
<u>*</u> Terry J. Lundgren	Chairman of the Board, President and Chief Executive Officer and Director (Principal Executive Officer)
<u>*</u> Karen M. Hoguet	Chief Financial Officer (Principal Financial Officer)
<u>*</u> Joel A. Belsky	Executive Vice President and Controller (Principal Accounting Officer)
<u>*</u> Stephen F. Bollenbach	Director
<u>*</u> Deirdre P. Connelly	Director
<u>*</u> Meyer Feldberg	Director
<u>*</u> Sara Levinson	Director

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<u>Signatures</u>	<u>Title</u>
<hr/> *	Director
<hr/> Joseph Neubauer	
<hr/> *	Director
<hr/> Joseph A. Pichler	
<hr/> *	Director
<hr/> Joyce M. Roché	
<hr/> *	Director
<hr/> Karl M. von der Heyden	
<hr/> *	Director
<hr/> Craig E. Weatherup	
<hr/> *	Director
<hr/> Marna C. Whittington	

\* The undersigned, by signing his name hereto, signs and executes this registration statement pursuant to the Powers of Attorney executed by the above-named officers and directors and filed with the Securities and Exchange Commission.

---

/s/ DENNIS J. BRODERICK

Dennis J. Broderick  
Attorney-in-Fact

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cincinnati, State of Ohio, on December 9, 2009.

**MACY'S RETAIL HOLDINGS, INC.**

By: /s/ DENNIS J. BRODERICK  
**Dennis J. Broderick**  
President

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities indicated on December 9, 2009.

<u>Signatures</u>	<u>Title</u>
<u>/s/ DENNIS J. BRODERICK</u> <b>Dennis J. Broderick</b>	President and Director (Principal Executive Officer)
<u>*</u> <b>Karen M. Hoguet</b>	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
<u>*</u> <b>Joel A. Belsky</b>	Director

\* The undersigned, by signing his name hereto, signs and executes this registration statement pursuant to the Powers of Attorney executed by the above-named officers and directors and filed with the Securities and Exchange Commission.

/s/ DENNIS J. BRODERICK  
**Dennis J. Broderick**  
Attorney-in-Fact

**EXHIBIT INDEX**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
4.1	Certificate of Incorporation of Macy's, Inc. ("Macy's") (incorporated by reference to Exhibit 3.1 to Macy's Annual Report on Form 10-K (File No. 001-135361) for the fiscal year ended January 28, 1995)
4.2	Amended and Restated Article Seventh of the Certificate of Incorporation of Macy's (incorporated by reference to Exhibit 3.1.1 to Macy's Annual Report on Form 10-K (File No. 001-135361) for the fiscal year ended February 2, 2008)
4.3	Certificate of Amendment of Certificate of Incorporation of Macy's (incorporated by reference to Exhibit 3.1.2 to Macy's Annual Report on Form 10-K (File No. 001-13536) for the fiscal year ended February 3, 2007)
4.4	Amended and Restated Article First of the Certificate of Incorporation of Macy's (incorporated by reference to Exhibit 3.1.4 to Macy's Quarterly Report on Form 10-Q (File No. 001-13536) for the fiscal quarter ended May 5, 2007)
4.5	By-Laws of Macy's (incorporated by reference to Exhibit 3.2 to Macy's Annual Report on Form 10-K (File No. 001-13536) for the fiscal year ended February 2, 2008)
4.6	Indenture, dated as of December 9, 2009 (the "Indenture"), by and among Macy's Retail Holdings, Inc. ("Macy's Holdings"), Macy's and The Bank of New York Mellon Trust Company, N.A.
*4.7	Form of debt securities
*4.8	Certificate of designations for preferred stock of Macy's
*4.9	Form of depositary receipt
*4.10	Form of depositary agreement
*4.11	Form of warrant
*4.12	Form of warrant agreement
*4.13	Form of purchase contract
*4.14	Form of unit certificate
*4.15	Form of unit agreement
5.1	Form of Opinion of Jones Day
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges
23.1	Form of consent of Jones Day (included in Exhibit 5.1)
23.2	Consent of KPMG LLP
24.1	Powers of Attorney for certain directors and officers of Macy's
24.2	Powers of Attorney for certain directors and officers of Macy's Holdings
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, by The Bank of New York Mellon Trust Company, N.A., the trustee under the Indenture

\* To be filed by an amendment or as an exhibit to a report filed under the Securities Exchange Act of 1934, as amended, and incorporated by reference herein.

MACY'S RETAIL HOLDINGS, INC., AS ISSUER

MACY'S, INC., AS GUARANTOR

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE

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INDENTURE

*Dated as of December 9, 2009*

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**DEBT SECURITIES**

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**Macy's Retail Holdings, Inc.**  
**Debt Securities**  
**Cross Reference Sheet\***

This Cross Reference Sheet shows the location in the  
Indenture of the provisions inserted pursuant to Sections 310 - 318(a),  
inclusive, of the Trust Indenture Act of 1939, as amended.

<u>Trust Indenture Act</u>	<u>Sections of Indenture</u>
§ 310(a)(1)	9.08
(a)(2)	9.08
(a)(3)	Inapplicable
(a)(4)	Inapplicable
(a)(5)	9.08
(b)	9.07 and 9.09
(c)	Inapplicable
§ 311(a)	9.12
(b)	9.12
(c)	Inapplicable
§ 312(a)	7.01 and 7.02
(b)	7.02
(c)	7.02
§ 313(a)	7.03
(b)	7.03
(c)	7.03
(d)	7.03
§ 314(a)	7.04
(a)(4)	1.01 and 6.05
(b)	Inapplicable
(c)(1)	14.05
(c)(2)	14.05
(c)(3)	14.05
(d)	Inapplicable
(e)	14.05
(f)	Inapplicable
§ 315(a)	9.01
(b)	8.08
(c)	9.01
(d)	9.01
(e)	8.07
§ 316(a)(1)(A)	8.01 and 8.06
(a)(1)(B)	8.01
(a)(2)	Inapplicable
(b)	8.09
(c)	14.11
§ 317(a)(1)	8.02
(a)(2)	8.02
(b)	6.03
§ 318(a)	14.08

\* The Cross Reference Sheet is not part of the Indenture.

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**Indenture**, dated as of December 9, 2009, by and among Macy's Retail Holdings, Inc., a corporation duly organized and existing under the laws of the State of New York (the "Company"), as Issuer, Macy's, Inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Parent"), as Guarantor, and The Bank of New York Mellon Trust Company, N.A., a national banking association (the "Trustee"), as Trustee.

**Recitals**

- A. The Company and the Guarantor have duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of the Company's unsecured debentures, notes, and other evidences of indebtedness (the "Securities"), to be issued in one or more series as in this Indenture provided.
- B. The Securities of each series will be in substantially the form set forth below, or in such other form as may be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions, and other variations as are required or permitted by this Indenture, and may have such letters, numbers, or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities.

[Form of Face of Security]

[Insert any legend required by the Internal Revenue Code and the regulations thereunder.]

**Macy's Retail Holdings, Inc.**

CUSIP No. \_\_\_\_\_

No. \_\_\_\_\_

\$ \_\_\_\_\_

Macy's Retail Holdings, Inc., a corporation duly organized and existing under the laws of the State of New York (hereinafter called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \$ \_\_\_\_\_ on \_\_\_\_\_ [if the Security is to bear interest prior to Maturity, insert: ", and to pay interest thereon from \_\_\_\_\_ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, on \_\_\_\_\_ and \_\_\_\_\_ in each year, commencing on \_\_\_\_\_, at the rate of \_\_\_\_\_% per annum, until the principal hereof is paid or made available for payment [if applicable, insert: ", and at the rate of \_\_\_\_\_% per annum on any overdue principal and premium and on any overdue installment of interest"]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business

on the Regular Record Date for such interest, which will be the \_\_\_\_\_ or \_\_\_\_\_ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof will be given to Holders of Securities of this series not less than 10 calendar days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture”].

[If the Security is not to bear interest prior to Maturity, insert: “The principal of this Security will not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption, or at Stated Maturity, and in such case the overdue principal of this Security will bear interest at the rate of \_\_\_\_\_% per annum which will accrue from the date of such default in payment to the date payment of such principal has been made or duly provided for. Interest on any overdue principal will be payable on demand. Any such interest on any overdue principal that is not so paid on demand will bear interest at the rate of \_\_\_\_\_% per annum which will accrue from the date of such demand for payment to the date payment of such interest has been made or duly provided for, and such interest will also be payable on demand.”]

Payment of the principal of (and premium, if any) and [if applicable, insert: “any such”] interest on this Security will be made at the office or agency of the Company maintained for the purpose in \_\_\_\_\_, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts [if applicable, insert: “; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address appears in the Security Register”].

Macy’s, Inc., a corporation duly organized and existing under the laws of the State of Delaware (herein called the “Parent”), has fully and unconditionally guaranteed the payment of principal, premium, if any, and interest on the Security.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS SET FORTH ON THE REVERSE HEREOF. SUCH PROVISIONS WILL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH IN THIS PLACE.

This Security will not be valid or become obligatory for any purpose until the certificate of authentication herein has been signed manually by the Trustee under the Indenture referred to on the reverse side hereof.

In Witness Whereof, this instrument has been duly executed in accordance with the Indenture.

Macy's Retail Holdings, Inc.

By: \_\_\_\_\_

[Form of Reverse of Security]

**Macy's Retail Holdings, Inc.**

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities") issued and to be issued in one or more series under an Indenture, dated as of \_\_\_\_\_, 2009 (herein called the "Indenture"), by and among the Company, as Issuer, the Parent, as Guarantor, and The Bank of New York Mellon Trust Company, N.A., a national banking association (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties, and immunities thereunder of the Company, the Guarantor, the Trustee, and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [if applicable, insert: " , limited in aggregate principal amount to \$\_\_\_\_\_"].

[If applicable, insert: "The Securities of this series are subject to redemption upon not less than 30 calendar days' notice by mail, [if applicable, insert: "(a) on \_\_\_\_\_ in each year commencing with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (b)" ] at any time [if applicable, insert: "on or after \_\_\_\_\_, \_\_\_\_\_", as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [If applicable, insert: "on or before \_\_\_\_\_, \_\_%, and if redeemed"] during the 12-month period beginning \_\_\_\_\_ of the years indicated,

<u>Year</u>	<u>Redemption Price</u>	<u>Year</u>	<u>Redemption Price</u>
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and thereafter at a Redemption Price equal to \_\_\_\_% of the principal amount, together in the case of any such redemption [if applicable, insert: "whether through operation of the sinking fund or otherwise") ] with accrued interest to the Redemption Date, but interest installments the Stated

Maturity of which is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.”]

[If applicable, insert: “The Securities of this series are subject to redemption upon not less than 30 calendar days’ notice by mail, [if applicable, insert: “(a) on \_\_\_\_\_ in each year commencing with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ through operation of the sinking fund for this series at the following Redemption Prices (expressed as percentages of the principal amount) applicable to redemption through operation of the sinking fund and (b)”] at any time [if applicable, insert: “on or after \_\_\_\_\_, \_\_\_\_”], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount) applicable to redemption otherwise than through operation of the sinking fund: If redeemed [If applicable, insert: “on or before \_\_\_\_\_, \_\_\_\_%”, and if redeemed”] during the 12-month period beginning \_\_\_\_\_ of the years indicated,

<u>Year</u>	<u>Redemption Price For Redemption Through Operation of the Sinking Fund</u>	<u>Redemption Price For Redemption Otherwise Than Through Operation of the Sinking Fund</u>

and thereafter at a Redemption Price equal to \_\_\_\_\_% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.”]

[If applicable, insert: “Notwithstanding the foregoing, the Company may not, prior to \_\_\_\_\_, redeem any Securities of this series as contemplated by [if applicable, insert: “Clause (b) of”] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than \_\_\_\_\_% per annum.”]

[If applicable, insert: “The sinking fund for this series provides for the redemption on \_\_\_\_\_ in each year beginning with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ of [if applicable, insert: “not less than \$\_\_\_\_\_ (“mandatory sinking fund”) and not more than”] \$\_\_\_\_\_ aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [if applicable, insert: “mandatory”] sinking fund payments may be credited against subsequent [if applicable, insert: “mandatory”] sinking fund payments otherwise required to be made [if applicable, insert: “in the inverse order in which they become due”].”]



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[If the Security is subject to redemption of any kind, insert: “In the event of redemption of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.”]

[If applicable, insert: “The Indenture contains provisions for defeasance at any time of (a) the entire indebtedness evidenced by this Security or (b) certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.”]

[If the Security is not an Original Issue Discount Security, insert: “If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.”]

[If the Security is an Original Issue Discount Security, insert: “If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount will be equal to [insert formula for determining the amount]. Upon payment (a) of the amount of principal so declared due and payable and (b) of interest on any overdue principal and overdue interest, all of the Company’s obligations in respect of the payment of the principal of and interest, if any, on the Securities of this series will terminate.”]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company, the Guarantor and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company, the Guarantor and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security will be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security will not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with

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such request and shall have failed to institute such proceeding for 60 calendar days after receipt of such notice, request, and offer of indemnity. The foregoing will apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture will alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, place, and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and integral multiples thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee, and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security shall be overdue, and neither the Company, the Trustee, nor any such agent will be affected by notice to the contrary.

All terms used in this Security that are defined in the Indenture will have the respective meanings assigned to them in the Indenture.

C. The Trustee's certificate of authentication will be in substantially the following form:

[Form of Trustee's Certificate Of Authentication for Securities]

Trustee's Certificate of Authentication

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

D. Every Global Security authenticated and delivered hereunder will bear a legend in substantially the following form:

[Form of Legend for Global Securities]

This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depositary or a nominee thereof. This Security may not be transferred to, or registered or exchanged for Securities registered in the name of, any Person other than the Depositary or a nominee thereof, and no such transfer may be registered, except in the limited circumstances described in the Indenture. Every Security authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, this Security will be a Global Security subject to the foregoing, except in such limited circumstances.

E. All acts and things necessary to make the Securities, when the Securities have been executed by the Company and authenticated by the Trustee and delivered as provided in this Indenture, the valid, binding, and legal obligations of the Company and to constitute these presents a valid indenture and agreement according to its terms, have been done and performed, and the execution and delivery by the Company of this Indenture and the issue hereunder of the Securities have in all respects been duly authorized; and the Company, in the exercise of legal right and power in it vested, is executing and delivering this Indenture and proposes to make, execute, issue, and deliver the Securities.

**Now, Therefore, this Indenture Witnesseth:**

In order to declare the terms and conditions upon which the Securities are authenticated, issued, and delivered, and in consideration of the premises and of the purchase and acceptance of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of the respective Holders from time to time of the Securities or of a series thereof, as follows:

#### **ARTICLE I. DEFINITIONS.**

##### **Section 1.01. Certain Terms Defined.**

(a) The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context of this Indenture otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act, either directly or by reference therein (except as herein otherwise expressly provided or unless the context of this Indenture otherwise requires), have the respective meanings assigned to such terms in the Trust Indenture Act as in force at the date of this Indenture as originally executed.

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Act:

The term “Act,” when used with respect to any Holder, has the meaning set forth in Section 14.12.

Affiliate:

The term “Affiliate” means, with respect to a particular Person, any Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, control of a 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 of the foregoing.

Agent Members

The term “Agent Members” has the meaning set forth in Section 2.05(g).

Authenticating Agent:

The term “Authenticating Agent” means any Person authorized by the Trustee pursuant to Section 9.13 to act on behalf of the Trustee to authenticate Securities of one or more series.

Board of Directors:

The term “Board of Directors” means the Board of Directors of the Company or a duly authorized committee of such Board of Directors.

Board Resolution:

The term “Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company or the Guarantor, as applicable, to have been duly adopted by the Board of Directors of the Company or the board of directors of the Guarantor, as applicable, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

Business Day:

The term “Business Day”, when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday, and Friday which is not a day on which banking institutions in that Place of Payment are authorized or required by law or executive order to close and the Federal Reserve Bank’s Fedwire Service is operating.

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Capital Lease:

The term “Capital Lease” means, with respect to any Person, any lease of property (whether real, personal, or mixed) by such Person or its Subsidiaries as lessee that would be capitalized on a balance sheet of such Person or its Subsidiaries prepared in conformity with GAAP, other than, in the case of such Person or its Subsidiaries, any such lease under which such Person or any of its Subsidiaries is the lessor.

Capital Lease Obligation:

The term “Capital Lease Obligations” means, with respect to any Person, the capitalized amount of all obligations of such Person and its Subsidiaries under Capital Leases, as determined on a consolidated basis in conformity with GAAP.

Commission:

The term “Commission” means the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

Common Stock:

The term “Common Stock” means the common stock, par value \$.01 per share, of the Parent.

Company:

The term “Company” means Macy’s Retail Holdings, Inc., a New York corporation, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” will mean such successor Person.

Company Request or Company Order:

The term “Company Request” or “Company Order” means a written request or order signed in the name of the Company by the President, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary, or an Assistant Secretary of the Company, and delivered to the Trustee.

Corporate Trust Office:

“Corporate Trust Office” means the designated office of the Trustee at which at any particular time its corporate trust business as it relates to this Indenture shall be principally administered, which office is, at the date as of which this Indenture is dated, located at 2 N. LaSalle Street, Suite 1020, Chicago, Illinois 60602, Attention: Corporate Trust Administration;

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and for purposes of Section 6.02 shall mean, 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration, or, in the case of any of such offices or agency, such other address as the Trustee may designate from time to time by notice to the Company.

Covenant Defeasance:

The term “Covenant Defeasance” has the meaning set forth in Section 5.03.

Default:

The term “Default” means any event which, with notice or passage of time or both, would constitute an Event of Default.

Defaulted Interest:

The term “Defaulted Interest” has the meaning set forth in Section 2.09.

Defeasance:

The term “Defeasance” has the meaning set forth in Section 5.02.

Defeasible Series:

The term “Defeasible Series” has the meaning set forth in Section 5.01.

Depository:

The term “Depository” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities as contemplated by Section 2.01.

Event of Default:

The term “Event of Default” has the meaning set forth in Section 8.01(a).

Exchange Act:

The term “Exchange Act” means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, as the same may be in effect from time to time.

GAAP:

The term “GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and The American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by any other entity or successor entity as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination.

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Global Security:

The term “Global Security” means a Security that evidences all or part of the Securities of any series and is authenticated and delivered to, and registered in the name of, the Depositary for such Securities or a nominee thereof.

Guarantee:

The term “Guarantee” means the Guarantor’s guarantee of the Securities as provided in Article XII.

Guarantor:

The term “Guarantor” means the Parent, as the guarantor of the Securities as provided in Article XII.

Holder:

The term “Holder” means a Person in whose name a particular Security is registered in the Security Register.

Indebtedness:

The term “Indebtedness” means, as applied to any Person, without duplication:

- (a) all obligations of such Person for borrowed money;
- (b) all obligations of such Person for the deferred purchase price of property or services (other than property and services purchased, and expense accruals and deferred compensation items arising, in the ordinary course of business);
- (c) all obligations of such Person evidenced by notes, bonds, debentures, mandatorily redeemable preferred stock, or other similar instruments (other than performance, surety, and appeals bonds arising in the ordinary course of business);
- (d) all payment obligations created or arising under any conditional sale, deferred price, or other title retention agreement with respect to property acquired by such Person (unless the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);
- (e) any Capital Lease Obligation of such Person;
- (f) all reimbursement, payment, or similar obligations, contingent or otherwise, of such Person under acceptance, letter of credit, or similar facilities (other than letters of credit in support of trade obligations or incurred in connection with public liability insurance, workers’ compensation, unemployment insurance, old-age pensions, and other social security benefits other than in respect of employee benefit plans subject to ERISA);

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(g) all obligations of such Person, contingent or otherwise, under any guarantee by such Person of the obligations of another Person of the type referred to in clauses (a) through (f) above; and

(h) all obligations referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage or security interest in property (including without limitation accounts, contract rights, and general intangibles) owned by such Person and as to which such Person has not assumed or become liable for the payment of such obligations other than to the extent of the property subject to such mortgage or security interest;

provided, however, that Indebtedness of the type referred to in clauses (g) and (h) above shall be included within the definition of “Indebtedness” only to the extent of the least of: (i) the amount of the underlying Indebtedness referred to in the applicable clause (a) through (f) above; (ii) in the case of clause (g), the limit on recoveries, if any, from such Person under obligations of the type referred to in clause (g) above; and (iii) in the case of clause (h), the aggregate value (as determined in good faith by the board of directors or similar governing body of such Person) of the property of such Person subject to such mortgage or security interest.

Indenture:

The term “Indenture” means this Indenture, as this Indenture may be amended, supplemented, or otherwise modified from time to time, including, for all purposes of this Indenture and any indenture supplemental hereto, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Indenture and any such supplemental indenture, respectively. The term “Indenture” also includes the terms of particular series of Securities established in accordance with Section 2.01.

Interest:

The term “interest,” (a) when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest which accrues from and after and is payable after Maturity and (b) when used with respect to any Security, means the amount of all interest accruing on such Security, including any default interest and any interest that would have accrued after any Event of Default but for the occurrence of such Event of Default, whether or not a claim for such interest would be otherwise allowable under applicable law.

Interest Payment Date:

The term “Interest Payment Date,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.



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Issuer:

The term “Issuer” means the Company, as the issuer of the Securities described in this Indenture.

Material Adverse Effect:

The term “Material Adverse Effect” means a material adverse effect on the business, assets, financial condition or results of operations of the Company (taken together with its Subsidiaries as a whole).

Maturity:

The term “Maturity,” when used with respect to any Security, means the date on which the principal of that Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

Notice of Default:

The term “Notice of Default” means a written notice of the kind set forth in Section 8.01(a)(iv).

Obligation:

The term “Obligation” has the meaning set forth in Section 12.01.

Officer’s Certificate:

The term “Officer’s Certificate” means a certificate executed on behalf of the Company or the Guarantor, as applicable, by a Responsible Officer and delivered to the Trustee.

Opinion of Counsel:

The term “Opinion of Counsel” means an opinion in writing signed by legal counsel, who, subject to any express provisions hereof, may be an employee of or counsel for the Company, any Subsidiary of the Company, or the Guarantor, as applicable, reasonably acceptable to the Trustee.

Original Issue Discount Security:

The term “Original Issue Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.01(b).

Outstanding:

The term “Outstanding” means, when used with reference to Securities as of a particular time, all Securities theretofore issued by the Company and authenticated and delivered by the Trustee under this Indenture, except:

- (a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

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(b) Securities for the payment or redemption of which money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company is acting as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(c) Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent, or waiver hereunder:

(i) the principal amount of an Original Issue Discount Security that will be deemed to be Outstanding will be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof to such date pursuant to Section 8.01(b);

(ii) the principal amount of a Security denominated in one or more foreign currencies or currency units will be the U.S. dollar equivalent, determined in the manner contemplated by Section 2.01 on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the date of original issuance of such Security of the amount determined as provided in clause (i) above) of such Security; and

(iii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor will be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee will be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned will be so disregarded.

Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

Parent:

The term "Parent" means Macy's, Inc., a corporation duly organized and existing under the laws of the State of Delaware.

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Paying Agent:

The term “Paying Agent” means any Person authorized by the Company to pay the principal of or any premium or interest on any Securities on behalf of the Company.

Person:

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

Place of Payment:

The term “Place of Payment,” when used with respect to the Securities of any series, means the place or places specified for the payment of the principal of and any premium and interest on the Securities of that series as contemplated by Section 2.01.

Predecessor Security:

The term “Predecessor Security,” when used with respect to any particular Security, means every previous Security evidencing all or a portion of the same debt as that evidenced by such Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.07 in exchange for or in lieu of a mutilated, destroyed, lost, or stolen Security will be deemed to evidence the same debt as the mutilated, destroyed, lost, or stolen Security.

Redemption Date:

The term “Redemption Date,” when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

Redemption Price:

The term “Redemption Price,” when used with respect to any Security to be redeemed, means the price (including premium, if any) at which it is to be redeemed pursuant to this Indenture.

Regular Record Date:

The term “Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 2.01.

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**Responsible Officer:**

The term “Responsible Officer,” when used:

(a) with respect to the Company, means the Chairman, the President, a Vice President, the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary or any other officer of the Company appointed by the Board of Directors;

(b) with respect to the Guarantor, means the Chairman, the Chief Executive Officer, the President, any officer of the Guarantor elected or designated as a “Chief,” an Executive Vice President, a Senior Vice President, the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary or any other officer of the Guarantor appointed by the board of directors of the Guarantor; and

(c) with respect to the Trustee, means any officer assigned to the Corporate Trust Division - Corporate Finance Unit (or any successor division or unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have responsibility for the administration of this Indenture, and for the purposes of Section 9.01(c)(ii) and the third sentence of Section 8.08 shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

**Securities:**

The term “Securities” has the meaning set forth in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

**Security Register and Security Registrar:**

The terms “Security Register” and “Security Registrar” have the respective meanings set forth in Section 2.05.

**Special Record Date:**

The term “Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.09.

**Stated Maturity:**

The term “Stated Maturity,” when used with respect to any Security, any installment of interest thereon, or any other amount payable under this Indenture or the Securities, means the date specified in this Indenture or such Security as the regularly scheduled date on which the principal of such Security, such installment of interest, or such other amount, is due and payable.

**Subsidiary:**

The term “Subsidiary” means, as applied with respect to any Person, any corporation, partnership, or other business entity 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

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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 such Person, by such Person and one or more of its other Subsidiaries, or by one or more of such Person's other Subsidiaries.

Trust Indenture Act:

The term "Trust Indenture Act" means the Trust Indenture Act of 1939, as amended, as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

Trustee:

The term "Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" will mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series will mean each Trustee with respect to Securities of that series.

U.S. Government Obligation:

The term "U.S. Government Obligation" means:

(a) any security that is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof; and

(b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended) as custodian with respect to any U.S. Government Obligation specified in clause (a), which U.S. Government Obligation is held by such custodian for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any such U.S. Government Obligation, 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 Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

Vice President:

The term "Vice President," when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

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(b) The words “Article” and “Section” refer to an Article and Section, respectively, of this Indenture. 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. Certain terms used principally in Articles V, VI, and IX are defined in those Articles. Terms in the singular include the plural and terms in the plural include the singular.

## **ARTICLE II. THE SECURITIES.**

### **Section 2.01. Designation and Amount of Securities.**

(a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited.

(b) The Securities may be issued in one or more series. There will be established in or pursuant to a Board Resolution and, subject to Section 2.04, set forth or determined in the manner provided in an Officer’s Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(i) the title of the Securities of the series (which will distinguish the Securities of the series from Securities of any other series);

(ii) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in the exchange for, or in lieu of, other Securities of the series pursuant to Section 2.05, 2.06, 2.07, 3.05, or 10.06 and except for any Securities which, pursuant to Section 2.04, are deemed never to have been authenticated and delivered hereunder);

(iii) the Person to whom any interest on a Security of the series will be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;

(iv) the date or dates on which the principal of the Securities of the series is payable;

(v) the rate or rates at which the Securities of the series will bear interest, if any, the date or dates from which such interest will accrue, the Interest Payment Dates on which any such interest will be payable, and the Regular Record Date for any interest payable on any Interest Payment Date;

(vi) the place or places where the principal of and any premium and interest on Securities of the series will be payable;

(vii) the period or periods within which, the price or prices at which, and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;

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(viii) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which Securities of the series will be redeemed or purchased, in whole or in part, pursuant to such obligation;

(ix) if other than denominations of \$1,000 and integral multiples thereof, the denominations in which Securities of the series will be issuable;

(x) the currency, currencies, or currency units in which payment of the principal of and any premium and interest on any Securities of the series will be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of “Outstanding” in Section 1.01;

(xi) if the amount of payments of principal of or any premium or interest on any Securities of the series may be determined with reference to an index, based upon a formula, or in some other manner, the manner in which such amounts will be determined;

(xii) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or a Holder thereof, in one or more currencies or currency units other than that or those in which the Securities are stated to be payable, the currency, currencies, or currency units in which payment of the principal of and any premium and interest on Securities of such series as to which such election is made will be payable, and the periods within which and the terms and conditions upon which such election is to be made;

(xiii) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which will be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 8.01(b);

(xiv) if applicable, that the Securities of the series will be subject to either or both of Defeasance or Covenant Defeasance as provided in Article V, provided that no series of Securities that is exchangeable into Common Stock pursuant to Section 2.01(b)(xvi) or exchangeable for any other securities pursuant to Section 2.01(b)(xvii) will be subject to Defeasance pursuant to Section 5.02;

(xv) if and as applicable, that the Securities of the series will be issuable in whole or in part in the form of one or more Global Securities and, in such case, the Depositary or Depositaries for such Global Security or Global Securities and any circumstances other than those set forth in Section 2.05 in which any such Global Security may be transferred to, and registered and exchanged for Securities registered in the name of, a Person other than the Depositary for such Global Security or a nominee thereof and in which any such transfer may be registered;

(xvi) the terms and conditions, if any, pursuant to which the Securities of the series are exchangeable into Common Stock;

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(xvii) the terms and conditions, if any, pursuant to which the Securities of the series are exchangeable for any other securities, including (without limitation) securities of Persons other than the Parent;

(xviii) any addition to or change in the Events of Default that apply to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 8.01(b);

(xix) any depositories, interest rate calculation agents or other agents with respect to Securities of the series if other than those appointed herein; and

(xx) any other terms of, or provisions, covenants, rights or other matters applicable to, the series (which terms, provisions, covenants, rights or other matters will not be inconsistent with the provisions of this Indenture, except as permitted by Section 10.01(e)).

(c) All Securities of any one series will be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to below and (subject to Section 2.04) set forth or determined in the manner provided in the Officer's Certificate referred to above or in any such indenture supplemental hereto.

(d) If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action will be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee concurrently with or prior to the delivery of the Officer's Certificate setting forth the terms of the series.

#### **Section 2.02. Form of Securities and Trustee's Certificate of Authentication.**

(a) The Securities of each series will be in substantially the form set forth in or otherwise contemplated by the recitals to this Indenture, with appropriate variations to reflect the specific terms of such series. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action will be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee concurrently with or prior to the delivery of the Company Order contemplated by Section 2.04 for the authentication and delivery of such Securities.

(b) The definitive Securities will be printed, lithographed, or engraved on steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

(c) The Trustee's certificate of authentication will be in substantially the form set forth in the recitals to this Indenture.

(d) Every Global Security authenticated and delivered hereunder will bear a legend in substantially the form set forth in the recitals to this Indenture.



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**Section 2.03. Date and Denominations.**

Each Security will be dated the date of its authentication. The Securities of each series will be issuable only in registered form without coupons in such denominations as may be specified as contemplated by Section 2.01. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series will be issuable in denominations of \$1,000 and integral multiples thereof.

**Section 2.04. Execution, Authentication and Delivery of Securities.**

(a) The Securities will be executed on behalf of the Company by any one of the President, the Chief Financial Officer, or any Vice President of the Company. The signature of any of these officers on the Securities may be manual or facsimile.

(b) Only such Securities bearing the Trustee's certificate of authentication, signed manually by the Trustee, will be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such execution of the certificate of authentication by the Trustee upon any Securities executed by the Company will be conclusive evidence that the Securities so authenticated have been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 2.08, for all purposes of this Indenture such Security will be deemed never to have been authenticated and delivered hereunder and will never be entitled to the benefits of this Indenture.

(c) Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company will bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(d) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee will authenticate and deliver such Securities in accordance with such Company Order. If the terms or form of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Sections 2.01 and 2.02, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee will be entitled to receive, and (subject to Section 9.01) will be fully protected in relying upon, an Opinion of Counsel stating:

(i) if the form of such Securities has been established by or pursuant to a Board Resolution as permitted by Section 2.02, that such form has been established in conformity with the provisions of this Indenture;

(ii) if the terms of such Securities have been established by or pursuant to a Board Resolution as permitted by Section 2.01, that such terms have been established in conformity with the provisions of this Indenture; and

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(iii) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company enforceable in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting creditors' rights and by general principles of equity.

(e) Notwithstanding the provisions of Sections 2.01 and 2.04(d), if all Securities of a series are not to be originally issued at one time, it will not be necessary to deliver the Officer's Certificate otherwise required pursuant to Section 2.01 or the Company Order and Opinion of Counsel otherwise required pursuant to Section 2.04(d) at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

#### **Section 2.05. Registration of Transfer and Exchange.**

(a) The Company will cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

(b) Upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for that series, the Company will execute, and the Trustee will authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor.

(c) At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company will execute, and the Trustee will authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

(d) Every Security presented or surrendered for registration of transfer or exchange will (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument or instruments of transfer, in form reasonably satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. No service charge will be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 2.06, 3.05, or 10.06 not involving any transfer. The Company will not be required (i) to issue, register the transfer of, or exchange Securities of any series during a period beginning at the opening of business 15

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calendar days before the mailing of a notice of redemption of Securities of that series selected for redemption under Section 3.02(c) and ending at the close of business on the day of such mailing or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any Securities to be redeemed in part, the portion thereof not being redeemed.

(e) All Securities issued upon any registration of transfer or exchange of Securities will be valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

(f) Notwithstanding any other provision in this Indenture, no Global Security may be transferred to, or registered or exchanged for Securities registered in the name of, any Person other than the Depositary for such Global Security or any nominee thereof, and no such transfer may be registered, unless:

(i) such Depositary (A) notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or (B) ceases to be a clearing agency registered under the Exchange Act;

(ii) the Company executes and delivers to the Trustee a Company Order that such Global Security shall be so transferable, registrable, and exchangeable, and such transfers shall be registrable;

(iii) there shall have occurred and be continuing an Event of Default with respect to the Securities evidenced by such Global Security; or

(iv) there shall exist such other circumstances, if any, as have been specified for this purpose as contemplated by Section 2.01.

(g) Neither any members of, or participants in, the Depositary (the “**Agent Members**”) nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Securities registered in the name of the Depositary or any nominee thereof, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Securities for all purposes whatsoever.

(h) Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Securities.

(i) None of the Company, the Guarantor, the Trustee, the Paying Agent or the Security Registrar, or any Affiliate of any of the foregoing, shall have any responsibility or obligation to any beneficial owner in a Global Security, an Agent Member or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Agent Member,

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with respect to any ownership interest in the Securities or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities and this Indenture shall be given or made only to or upon the order of the Holders (which shall be the Depositary or its nominee in the case of the Global Security). The rights of beneficial owners in the Global Security shall be exercised only through the Depositary subject to the applicable procedures of the Depositary. The Company, the Guarantor, the Trustee, the Paying Agent and the Security Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners. The Company, the Guarantor, the Trustee, the Paying Agent and the Security Registrar shall be entitled to deal with the Depositary, and any nominee thereof, that is the registered holder of any Global Security for all purposes of this Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or holder of a beneficial ownership interest in such Global Security) as the sole holder of such Global Security and shall have no obligations to the beneficial owners thereof. None of the Company, the Guarantor, the Trustee, the Paying Agent or the Security Registrar, or any Affiliate of any of the foregoing, shall have any responsibility or liability for any acts or omissions of the Depositary with respect to such Global Security, for the records of any such depositary, including records in respect of beneficial ownership interests in respect of any such Global Security, for any transactions between the Depositary and any Agent Member or between or among the Depositary, any such Agent Member and/or any holder or owner of a beneficial interest in such Global Security, or for any transfers of beneficial interests in any such Global Security.

Notwithstanding any other provision in this Indenture, a Global Security to which the restriction set forth in the preceding sentence shall have ceased to apply may be transferred only to, and may be registered and exchanged for Securities registered only in the name or names of, such Person or Persons as the Depositary for such Global Security shall have directed and no transfer thereof other than such a transfer may be registered. Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security to which the restriction set forth in the first sentence of this Section 2.05(f) shall apply, whether pursuant to this Section 2.05, Section 2.06, 2.07, 3.05, or 10.06 or otherwise, will be authenticated and delivered in the form of, and will be, a Global Security.

#### **Section 2.06. Temporary Securities.**

Pending the preparation of definitive Securities of any series, the Company may execute and register, and upon Company Order the Trustee will authenticate and deliver, temporary Securities (printed, lithographed, or typewritten) of any authorized denomination, and substantially in the form of the definitive Securities but with such omissions, insertions, and variations as may be appropriate for temporary Securities, all as may be determined by the officers of the Company executing such Securities as evidenced by their execution of such Securities; provided, however, that the Company will use reasonable efforts to have definitive Securities of that series available at the times of any issuance of Securities under this Indenture. Every temporary Security will be executed and registered by the Company and be authenticated

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by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. The Company will execute and register and furnish definitive Securities of such series as soon as practicable and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor at the office or agency of the Company in the Place of Payment for that series, and the Trustee will authenticate and deliver in exchange for such temporary Securities of such series one or more definitive Securities of the same series, of any authorized denominations, and of a like aggregate principal amount and tenor. Such exchange will be made by the Company at its own expense and without any charge to the Holder therefor. Until so exchanged, the temporary Securities of any series authenticated and delivered hereunder will be entitled to the same benefits under this Indenture as definitive Securities of the same series authenticated and delivered hereunder.

**Section 2.07. Mutilated, Destroyed, Lost, and Stolen Securities.**

(a) If any mutilated Security is surrendered to the Trustee, the Company will execute and the Trustee will authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss, or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company will execute and the Trustee will authenticate and deliver, in lieu of any such destroyed, lost, or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

(d) Upon the issuance of any new Security under this Section 2.07, the Company may require the payment of 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 the Trustee) connected therewith.

(e) Every new Security of any series issued pursuant to this Section 2.07 in exchange for any mutilated Security or in lieu of any destroyed, lost, or stolen Security will constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost, or stolen Security shall be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

(f) The provisions of this Section 2.07 are exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Securities.

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**Section 2.08. Cancellation of Surrendered Securities.**

All Securities surrendered for payment, redemption, registration of transfer or exchange, or for credit against any sinking fund payment will, if surrendered to any Person other than the Trustee, be delivered to the Trustee and will be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered will be promptly cancelled by the Trustee. No Securities will be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.08, except as expressly permitted by this Indenture. The Trustee will cancel all Securities surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy cancelled Securities (subject to applicable record retention requirements of the Exchange Act and the Trustee); provided that, in the case that the Trustee cannot destroy cancelled Securities because of applicable retention requirements of the Exchange Act and the Trustee, all Securities not so destroyed will be permanently and prominently marked by the Trustee as “cancelled”. Upon cancellation of the Securities provided for in this Section 2.08, such Securities will be null, void and of no further force or effect. Certification of the cancellation of all cancelled Securities will be delivered to the Company upon request.

**Section 2.09. Payment of Interest; Interest Rights Preserved.**

(a) Except as otherwise provided as contemplated by Section 2.01 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

(b) Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called “Defaulted Interest”) will forthwith cease to be payable to the Holder on the relevant regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company together with interest thereon (to the extent permitted by law) at the rate of interest applicable to such Security, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest (and interest thereon, if any) to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which will be fixed in the following manner. The Company will notify the Trustee in writing of the amount of Defaulted Interest (and interest thereon, if any) proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company will deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest (and interest thereon, if any) or will 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

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entitled to such Defaulted Interest (and interest thereon, if any) as in this clause (i) provided. Thereupon the Trustee will fix a Special Record Date for the payment of such Defaulted Interest (and interest thereon, if any) which will be not more than 15 calendar days and not less than 10 calendar days prior to the date of the proposed payment and not less than 10 calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee will promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest (and interest thereon, if any) and the Special Record Date therefor having been so mailed, such Defaulted Interest will be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and will no longer be payable pursuant to the following clause (ii).

(ii) The Company may make payment of any Defaulted Interest (and interest thereon, if any) on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause (ii), such manner of payment shall be deemed practicable by the Trustee.

(c) Subject to the foregoing provisions of this Section 2.09, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security will carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

#### **Section 2.10. Persons Deemed Owners.**

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 2.09) any interest on such Security and for all other purposes whatsoever, whether or not such Security shall be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee will be affected by notice to the contrary.

#### **Section 2.11. Computation of Interest.**

Except as otherwise specified as contemplated by Section 2.01 for Securities of any series, interest on the Securities of each series will be computed on the basis of a 360-day year consisting of twelve 30-day months.

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**Section 2.12. CUSIP, ISIN or Other Similar Numbers.**

The Company in issuing any series of the Securities may use CUSIP, ISIN or other similar numbers, if then generally in use, and thereafter with respect to such series, the Trustee may use such numbers in any notice of redemption or exchange with respect to such series provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP, ISIN or other similar numbers.

**ARTICLE III. REDEMPTION OF SECURITIES.****Section 3.01. Applicability of Article.**

Securities of any series which are redeemable before their Stated Maturity will be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 2.01 for Securities of any series) in accordance with this Article III.

**Section 3.02. Election to Redeem; Notice to Trustee.**

(a) The election of the Company to redeem any Securities will be evidenced by a Board Resolution. In case of any redemption at the election of the Company of less than all the Securities of any series, the Company will, at least 60 calendar days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company will furnish the Trustee with an Officer's Certificate evidencing compliance with such restriction.

(b) Notice of redemption of Securities to be redeemed at the election of the Company will be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and will be irrevocable. Notice of redemption will be given by mail, first-class postage prepaid, not less than 30 nor more than 60 calendar days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register. All notices of redemption will state:

- (i) the Redemption Date;
- (ii) the Redemption Price;
- (iii) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption of any Securities, the principal amounts) of the particular Securities to be redeemed;
- (iv) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date;



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- (v) the place or places where such Securities are to be surrendered for payment of the Redemption Price;
  - (vi) that the redemption is for a sinking fund, if such is the case; and
  - (vii) the specific provision of this Indenture pursuant to which such Securities are to be redeemed.

(c) If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed will be selected not more than 60 calendar days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee may deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. The Trustee will promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

(d) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities will relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

### **Section 3.03. Deposit of Redemption Price.**

Prior to 10:00 a.m. New York City time on any Redemption Date specified in the notice of redemption given as provided in Section 3.02, the Company will deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 6.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) any accrued interest on, all of the Securities that are to be redeemed on that date.

### **Section 3.04. Securities Payable on Redemption Date.**

(a) Notice of redemption having been given as aforesaid, the Securities so to be redeemed will, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company defaults in the payment of the Redemption Price and accrued interest) such Securities will cease to accrue interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security will be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 2.01, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates in accordance with their terms and the provisions of Section 2.09.

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(b) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium will, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

**Section 3.05. Securities Redeemed in Part.**

Any Security that is to be redeemed only in part will be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company will execute, and the Trustee will authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

**ARTICLE IV. SINKING FUNDS.**

**Section 4.01. Applicability of Article.**

The provisions of this Article IV will be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 2.01 for Securities of such series. The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Securities of any series, the amount of any sinking fund payment may be subject to reduction as provided in Section 4.02. Each sinking fund payment with respect to Securities of a particular series will be applied to the redemption of Securities of such series as provided for by the terms of Securities of such series.

**Section 4.02. Satisfaction of Sinking Fund Payments With Securities.**

The Company (a) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (b) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series, provided that such Securities have not been previously so credited. Such Securities will be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment will be reduced accordingly.

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**Section 4.03. Redemption of Securities for Sinking Fund.**

Not less than 60 calendar days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, that is to be satisfied by payment of cash and the portion thereof, if any, that is to be satisfied by delivering and crediting Securities of that series pursuant to Section 4.02 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 calendar days before each such sinking fund payment date, the Trustee will select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02(c) and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02(b). Such notice having been duly given, the redemption of such Securities will be made upon the terms and in the manner stated in Sections 3.04 and 3.05.

**ARTICLE V. DEFEASANCE AND COVENANT DEFEASANCE.****Section 5.01. Company's Option to Effect Defeasance or Covenant Defeasance.**

The Company may elect, at its option by Board Resolution at any time, to have either Section 5.02 or Section 5.03 applied to the Outstanding Securities of any series designated pursuant to Section 2.01 as being defeasible pursuant to this Article V (hereinafter called "Defeasible Series"), upon compliance with the conditions set forth below in this Article V, provided that Section 5.02 will not apply to any series of Securities that is exchangeable into Common Stock pursuant to Section 2.01(b)(xvi) or exchangeable for any other securities pursuant to Section 2.01(b)(xvii).

**Section 5.02. Defeasance and Discharge.**

Upon the Company's exercise of the option provided in Section 5.01 to have this Section 5.02 applied to the Outstanding Securities of any Defeasible Series and subject to the proviso to Section 5.01, the Company and the Guarantor will be deemed to have been discharged from their respective obligations with respect to the Outstanding Securities of such series as provided in this Section 5.02 on and after the date the conditions set forth in Section 5.04 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company will be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under the Securities of such series and this Indenture insofar as the Securities of such series are concerned (and the Trustee, at the expense of the Company, will execute proper instruments acknowledging the same), subject to the following which will survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of Securities of such series to receive, solely from the trust fund described in Section 5.04 and as more fully set forth in Section 5.04, payments in respect of the principal of and any premium and interest on such Securities of such series when payments are due;

(b) the Company's obligations with respect to the Securities of such series under Sections 2.05, 2.06, 2.07, 6.02, 6.03, and 10.06;

(c) the rights, powers, trusts, duties, and immunities of the Trustee hereunder; and

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(d) this Article V.

Subject to compliance with this Article V, the Company may exercise its option provided in Section 5.01 to have this Section 5.02 applied to the Outstanding Securities of any Defeasible Series notwithstanding the prior exercise of its option provided in Section 5.01 to have Section 5.03 applied to the Outstanding Securities of such series.

**Section 5.03. Covenant Defeasance.**

Upon the Company's exercise of the option provided in Section 5.01 to have this Section 5.03 applied to the Outstanding Securities of any Defeasible Series:

(a) the Company will be released from its obligations under Section 6.04, Section 11.01, and the provisions of any indenture supplemental hereto specified in such supplemental indenture; and

(b) the occurrence of any event specified in Sections 8.01(a)(iii), 8.01(a)(iv) (with respect to Section 6.04, Section 11.01, and the provisions of any indenture supplemental hereto specified in such supplemental indenture), 8.01(a)(v) and 8.01(a)(ix) will be deemed not to be or result in an Event of Default, in each case with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 5.04 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that the Company may omit to comply with and will have no liability in respect of any term, condition, or limitation set forth in any such specified Section (to the extent specified above in the case of Section 8.01(a)(iv) or in any such specified provision of such supplemental indenture), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or provision or by reason of any reference in any such Section or provision to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of such series will be unaffected thereby.

**Section 5.04. Conditions to Defeasance or Covenant Defeasance.**

The following will be the conditions to application of either Section 5.02 or Section 5.03 to the Outstanding Securities of any Defeasible Series:

(a) The Company or the Guarantor shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee that satisfies the requirements contemplated by Section 9.08 and agrees to comply with the provisions of this Article V applicable to it) as trust funds in trust for the benefit of the Holders of Outstanding Securities of such series

(i) money in an amount; or

(ii) U.S. Government Obligations that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, without reinvestment, not later than one day before the due date of any payment, money in an amount; or

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(iii) a combination thereof, in each case sufficient to pay and discharge, and which will be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on the Securities of such series on the respective Stated Maturities or on any earlier date or dates on which the Securities of such series shall be subject to redemption and the Company shall have given the Trustee irrevocable instructions satisfactory to the Trustee to give notice to the Holders of the redemption of the Securities of such series, all in accordance with the terms of this Indenture and the Securities of such series.

(b) In the case of an election under Section 5.02, the Company shall have delivered to the Trustee an Opinion of Counsel (from a counsel who shall not be an employee of the Company) to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or (ii) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon, such opinion shall confirm that, the Holders of the Outstanding Securities of such series will not recognize gain or loss for federal income tax purposes as a result of the deposit, Defeasance, and discharge to be effected with respect to the Securities of such series and will be subject to federal income tax on the same amount, in the same manner, and at the same times as would be the case if such deposit, Defeasance, and discharge were not to occur.

(c) In the case of an election under Section 5.03, the Company shall have delivered to the Trustee an Opinion of Counsel (from a counsel who shall not be an employee of the Company) to the effect that the Holders of the Outstanding Securities of such series will not recognize gain or loss for federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to the Securities of such series and will be subject to federal income tax on the same amount, in the same manner, and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(d) The Securities of such series, if then listed on any securities exchange, will not be delisted solely as a result of such deposit and such Defeasance or Covenant Defeasance shall not result in a material breach or violation of, or constitute a material default under, any material agreement to which the Company is a party or violate any law to which the Company is subject.

(e) No Event of Default or event that (after notice or lapse of time or both) would become an Event of Default shall have occurred and be continuing at the time of such deposit.

(f) Such Defeasance or Covenant Defeasance will not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Securities are in default within the meaning of such Act).

(g) The Company shall have delivered to the Trustee a certificate from a nationally recognized firm of independent accountants or other Person acceptable to the Trustee expressing their opinion that the payments of principal and interest when due on the deposited U.S. Government Obligations without reinvestment plus any deposited money without investment will provide the cash at such times and in such amounts as will be sufficient to pay the principal of and any premium and interest when due on the Securities of such series on the respective Stated Maturities or on any earlier date or dates on which the Securities of such series shall be subject to redemption at the option of the holder thereof.

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(h) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

(i) Such Defeasance or Covenant Defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless such trust will be qualified under such Act or will be exempt from regulation thereunder.

**Section 5.05. Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.**

(a) Subject to the provisions of Section 6.03(e), all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section 5.05 and Section 5.06, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 5.04 in respect of the Securities of any Defeasible Series will be held in trust and applied by the Trustee, in accordance with the provisions of the Securities of such series and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of Securities of such series, of all sums due and to become due thereon in respect of principal and any premium and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

(b) The Company will pay and indemnify the Trustee against any tax, fee, or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 5.04 or the principal and interest received in respect thereof other than any such tax, fee, or other charge that by law is for the account of the Holders of Outstanding Securities.

(c) Notwithstanding anything in this Article V to the contrary, the Trustee will deliver or pay to the Company from time to time upon a Company Request any money or U.S. Government Obligations held by it as provided in Section 5.04 with respect to Securities of any Defeasible Series that are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Defeasance or Covenant Defeasance with respect to the Securities of such series.

**Section 5.06. Reinstatement.**

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article V with respect to the Securities of any series by reason of any order or judgment of any court or governmental authority enjoining, restraining, or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities of such series will be revived and reinstated as though no deposit had occurred pursuant to this Article V

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with respect to Securities of such series until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 5.05 with respect to Securities of such series in accordance with this Article V; provided, however, that if the Company makes any payment of principal of or any premium or interest on any Security of such series following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of Securities of such series to receive such payment from the money so held in trust.

## **ARTICLE VI. PARTICULAR COVENANTS OF THE COMPANY.**

### **Section 6.01. Payment of Principal, Premium and Interest on Securities.**

The Company, for the benefit of each series of Securities, will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of such Securities and this Indenture.

### **Section 6.02. Maintenance of Office or Agency.**

(a) The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices, and demands may be made or served at the Corporate Trust Office, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices, and demands.

(b) The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

### **Section 6.03. Money for Securities Payments to be Held in Trust.**

(a) If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

(b) Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of or any premium or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

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(c) The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent will agree with the Trustee, subject to the provisions of this Section 6.03, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, and upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent will be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for two years after such principal, premium, or interest has become due and payable will be paid to the Company upon a Company Request (or, if then held by the Company, will be discharged from such trust); and the Holder of such Security will thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 calendar days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

#### **Section 6.04. Existence.**

The Company will, and will cause each of its Subsidiaries to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory), and franchises; provided, however, that no Subsidiary of the Company will be required to preserve its existence, and neither the Company nor any Subsidiary of the Company will be required to preserve any such right or franchise, if the Board of Directors of the Company determines that the loss thereof will not result in a Material Adverse Effect; and provided further that this Section 6.04 will not apply to any transactions of the type referred to in Article XI.



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**Section 6.05. Statement by Officers as to Default.**

The Company will deliver to the Trustee, within 120 calendar days after the end of each fiscal year of the Company ending after the date hereof, an Officer's Certificate signed by the principal executive officer, principal financial officer, or principal accounting officer of the Company stating whether or not to the knowledge of such person after due inquiry the Company is in default in the performance and observance of any of the terms, provisions, and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company is in default, specifying all such defaults and the nature and status thereof of which such person may have such knowledge.

**Section 6.06. Waiver of Certain Covenants.**

The Company may omit in any particular instance to comply with any term, provision, or condition set forth in Section 6.04 and the provisions of any supplemental indenture specified in such supplemental indenture, with respect to the Securities of any series if the Holders of a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision, or condition, but no such waiver will extend to or affect such term, provision, or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision, or condition will remain in full force and effect.

**ARTICLE VII. SECURITIES HOLDERS' LISTS AND REPORTS BY  
THE COMPANY AND THE TRUSTEE.****Section 7.01. Company to Furnish Trustee Names and Addresses of Holders.**

The Company will furnish or cause to be furnished to the Trustee (a) semi-annually, not more than 15 calendar days after the applicable Regular Record Date, a list for each series of Securities, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of such series as of such Regular Record Date and (b) at such other times as the Trustee may request in writing, within 30 calendar days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 calendar days prior to the time such list is furnished; excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

**Section 7.02. Preservation of Information; Communication to Holders.**

(a) The Trustee will preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) The rights of the Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, will be as provided by the Trust Indenture Act.

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(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them will be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

#### **Section 7.03. Reports by Trustee.**

The Trustee will transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. A copy of each such report will, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission, and with the Company. The Company will promptly notify the Trustee when any Securities are listed on any stock exchange or of any delisting thereof.

#### **Section 7.04. Reports by Company.**

The Company will file with the Commission, and deliver to the Trustee and the Holders, such information, documents, and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto; provided that any such information, documents, or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act will be delivered to the Trustee within 15 calendar days after the same is so required to be filed with the Commission; and provided further that the availability of the foregoing materials on the Commission's EDGAR service (or any successor thereto) shall be deemed to satisfy the Company's delivery obligation in respect thereof.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on Officer's Certificates).

### **ARTICLE VIII. DEFAULT.**

#### **Section 8.01. Event of Default.**

(a) "Event of Default," wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it may be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, or order of any court or any order, rule, or regulation of any administrative or governmental body):

(i) default in the payment of any interest on any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 calendar days;

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(ii) default in the payment of the principal of (or premium, if any, on) any Security of that series when it becomes due and payable;

(iii) default in the making of any sinking fund payment in respect of any Security of that series when it becomes due and payable;

(iv) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Section 8.01 specifically dealt with or which has expressly been included in this Indenture solely for the benefit of one or more series of Securities other than that series), and continuance of such default or breach for a period of 60 calendar days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(v) any nonpayment at maturity or other default is made under any agreement or instrument relating to any other Indebtedness of the Company (the unpaid principal amount of which is not less than \$100 million), and, in any such case, such default (A) continues beyond any period of grace provided with respect thereto and (B) results in such Indebtedness becoming due prior to its stated maturity or occurs at the final maturity of such Indebtedness; provided, however, that, subject to the provisions of Section 9.01 and 8.08, the Trustee will not be deemed to have knowledge of such nonpayment or other default unless either (1) a Responsible Officer of the Trustee has actual knowledge of nonpayment or other default or (2) the Trustee has received written notice thereof from the Company, from any Holder, from the holder of any such Indebtedness or from the trustee under the agreement or instrument relating to such Indebtedness;

(vi) any Guarantee ceases to be in full force and effect (except as contemplated by the terms hereof), or any Guarantee is declared in a judicial proceeding to be null and void, or the Guarantor denies or disaffirms in writing its obligations under the terms of this Indenture or its Guarantee;

(vii) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company or the Guarantor in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization, or other similar law or (B) a decree or order adjudging the Company or the Guarantor a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of or in respect of the Company or the Guarantor under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of the Company or the Guarantor or of any substantial part of their respective property, or ordering the winding up or liquidation of their respective affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive calendar days;

(viii) the commencement by the Company or the Guarantor of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization, or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company or the Guarantor to the entry of a decree or order for relief in respect of the Company or the Guarantor in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization, or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by the Company or the Guarantor of a petition or answer or consent seeking reorganization or relief with respect to the Company or the Guarantor, as applicable, under any applicable federal or state bankruptcy, insolvency, reorganization, or other similar law, or the consent by the Company or the Guarantor to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of the Company or the Guarantor, as applicable, or of any substantial part of their respective property pursuant to any such law, or the making by the Company or the Guarantor of an assignment for the benefit of creditors, or the admission by the Company or the Guarantor in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or the Guarantor in furtherance of any such action; or

(ix) any other Event of Default provided with respect to Securities of that series.

(b) If an Event of Default (other than an Event of Default arising under Section 8.01(a)(vii) or (viii)) with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if any of the Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified in the terms thereof) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) will become immediately due and payable. If an Event of Default under Section 8.01(a)(vii) or (viii) occurs, then the principal of, premium, if any, and accrued interest on the Securities shall become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(c) At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article VIII provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(i) the Company or the Guarantor has paid or deposited with the Trustee a sum sufficient to pay (A) all overdue interest on all Securities of that series, (B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at

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the rate or rates prescribed therefor in such Securities, (C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and (D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements, and advances of the Trustee and its agents and counsel; and

(ii) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 8.01(d).

No such rescission will affect any subsequent default or impair any right consequent thereon.

(d) The Holders of a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default (i) in the payment of the principal of or any premium or interest on any Security of such series or (ii) in respect of a covenant or provision hereof which under Article X cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected. Upon any such waiver, such default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, for every purpose of this Indenture, but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

**Section 8.02. Covenant of Company to Pay to Trustee Whole Amount Due on Securities on Default in Payment of Interest or Principal; Suits for Enforcement by Trustee.**

(a) The Company covenants that if (i) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 calendar days or (ii) default is made in the payment of the principal of (or premium, if any, on) any Security when it becomes due and payable, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements, and advances of the Trustee and its agents and counsel.

(b) If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

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(c) In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee will be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee will be authorized to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements, and advances of the Trustee and its agents and counsel, and any other amounts due the Trustee under Section 9.06.

(d) No provision of this Indenture will 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 Securities 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; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

(e) All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee will be brought in its own name as trustee of an express trust, and any recovery of judgment will, after provision for the payment of the reasonable compensation, expenses, disbursements, and advances of the Trustee and its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

### **Section 8.03. Application of Money Collected by Trustee.**

Any money collected by the Trustee pursuant to this Article VIII or, after an Event of Default, distributable in respect of the Company's obligations under this Indenture will be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

- FIRST: To the payment of all amounts due the Trustee under Section 9.06;
- SECOND: To the payment of the amounts then due and unpaid for principal of and any premium and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, except to the extent that the Securities of a series are by their express terms subordinated and subject in right of payment to the prior payment of other indebtedness, according to the amounts due and payable on such Securities for principal and any premium and interest, respectively; and

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THIRD: To the Company, its successors or assigns, or to such other Person that may be lawfully entitled to receive the same.

**Section 8.04. Limitation on Suits by Holders of Securities.**

No Holder of any Security of any series will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(b) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee indemnity or security, in either case reasonably satisfactory to the Trustee, against any losses, costs, expenses, and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 calendar days after its receipt of such notice, request, and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series, it being understood and intended that no one or more of such Holders will have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb, or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

**Section 8.05. Rights and Remedies Cumulative; Delay or Omission in Exercise of Rights not a Waiver of Event of Default.**

(a) Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Securities in the last paragraph of Section 2.07, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

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(b) No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article VIII or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

**Section 8.06. Rights of Holders of Majority in Principal Amount of Outstanding Securities to Direct Trustee.**

The Holders of a majority in principal amount of the Outstanding Securities of any series will have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that (a) such direction will not be in conflict with any rule of law or with this Indenture and (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

**Section 8.07. Requirement of an Undertaking to Pay Costs in Certain Suits Under the Indenture or Against the Trustee.**

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, suffered, or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section 8.07 nor the Trust Indenture Act will be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company.

**Section 8.08. Notice of Defaults.**

If a Default occurs hereunder with respect to Securities of any series, the Trustee will give the Holders of Securities of such series notice of such Default within 90 days after the occurrence of any Default; provided, however, that in the case of any Default of the character specified in Section 8.01(a)(iv) with respect to Securities of such series no such notice to Holders will be given until at least 30 calendar days after the occurrence thereof. The Company will give the Trustee notice of any uncured Event of Default within 10 days after any Responsible Officer of the Company becomes aware of or receives actual notice of such Event of Default. Except in the case of a Default in payment of principal or interest on any Security, the Trustee may withhold notice if and so long as a committee of its Responsible Officers in good faith determines that withholding notice is in the interests of the Holders.

**Section 8.09. Unconditional Right of Holders to Receive Principal, Premium, and Interest.**

Notwithstanding any other provision in this Indenture, the Holder of any Security will have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 2.09) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights may not be impaired without the consent of such Holder.



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**Section 8.10. Restoration of Rights and Remedies.**

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee, and the Holders will be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders will continue as though no such proceeding had been instituted.

**Section 8.11. Trustee May File Proofs of Claims.**

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 proceeding relative to the Company or the Subsidiaries (or any other obligor upon the Securities), their creditors or their property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claim and to distribute the same, and any custodian in any such judicial proceedings is hereby authorized by each Holder to make such 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 to it for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee hereunder. Nothing herein contained 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 Securities 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.

**ARTICLE IX. CONCERNING THE TRUSTEE.****Section 9.01. Certain Duties and Responsibilities.**

(a) 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 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 or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions).

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(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that,

(i) this Subsection (c) shall not be construed to limit the effect of Subsections (a) or (d) of this Section 9.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series, determined as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series.

(d) No provision of this Indenture shall require 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 in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee will be subject to the provisions of this Section 9.01.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) In the absence of bad faith, negligence or willful misconduct on the part of the Trustee, the Trustee shall not be responsible for the application of any money by any Paying Agent other than the Trustee.

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**Section 9.02. Certain Rights of Trustee.**

Subject to the provisions of Section 9.01:

(a) the Trustee may conclusively rely and will be fully protected in acting or refraining from acting upon, whether in its original or facsimile form and delivered pursuant to Section 14.02, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein will be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors will be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering, or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate;

(d) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture, at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity, in each case reasonably satisfactory to the Trustee, against the costs, expenses, and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee will 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, note, other evidence of indebtedness, 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 will be entitled to examine the books, records, and premises of the Company, personally or by agent or attorney, at the sole reasonable cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee will not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

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(i) Trustee shall not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless written notice of such Default or Event of Default from the Company or any Holder is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(j) 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 each agent, custodian and other Person employed to act hereunder;

(k) the Trustee may request that the Company 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, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of the form of action;

(m) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including, without limitation, any provision of any future law or regulation or any future act of any governmental authority, acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action; and

(n) the permissive right of the Trustee to take or refrain from taking action hereunder shall not be construed as a duty.

#### **Section 9.03. Not Responsible for Recitals or Issuance of Securities.**

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, may be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee or any Authenticating Agent will not be accountable for the use or application by the Company of Securities or the proceeds thereof.

#### **Section 9.04. May Hold Securities.**

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar, or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 9.07 and 9.12, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar, or such other agent.

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**Section 9.05. Money Held in Trust.**

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required herein or by law. The Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

**Section 9.06. Compensation and Reimbursement.**

The Company and the Guarantor will jointly and severally:

(a) pay to the Trustee from time to time such compensation for all services rendered by it hereunder as the parties shall agree from time to time (which compensation will not be limited to any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, reimburse the Trustee upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Trustee in accordance with provision of this Indenture (including the reasonable compensation and the expenses and disbursements of agents and counsel), except any such expense, disbursement, or advance as may be attributable to its bad faith, negligence or willful misconduct; and

(c) indemnify each of the Trustee and any predecessor Trustee for, and hold the Trustee harmless against, any and all loss, damage, liability, claim, or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without bad faith, negligence or willful misconduct on its part arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim (whether asserted by the Company, the Guarantor, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section 9.06, except to the extent that such loss, damage, liability, claim, or expense is due to its own bad faith, negligence or willful misconduct.

In addition to, but without prejudice to its other rights under the Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 8.01(a)(vii) or Section 8.01(a)(viii), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Securities.

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“Trustee” for purposes of this Section shall include any predecessor Trustee; provided, however, that the bad faith, negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

The provisions of this Section shall survive the satisfaction and discharge of the Securities, the termination for any reason of this Indenture, and the resignation or removal of the Trustee.

**Section 9.07. Disqualification; Conflicting Interests.**

If the Trustee has or acquires a conflicting interest within the meaning of the Trust Indenture Act, the Trustee will either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

**Section 9.08. Corporate Trustee Required; Eligibility.**

There will at all times be one or more Trustees hereunder with respect to the Securities of each series, at least one of which will be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$100 million and its Corporate Trust Office or principal office in New York City, or any other major city in the United States that is acceptable to the Company. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of a supervising or examining state or federal authority, then for the purposes of this Section 9.08, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 9.08, it will resign immediately in the manner and with the effect hereinafter specified in this Article IX.

**Section 9.09. Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article IX will become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 9.10.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 9.10 shall not have been delivered to the Trustee within 30 calendar days after the giving of such notice of resignation, the resigning Trustee may at the reasonable expense of the Company petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.

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(d) If, at any time, (i) the Trustee fails to comply with Section 9.07 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, (ii) the Trustee ceases to be eligible under Section 9.08 and fails to resign after written request therefor by the Company or by any such Holder, or (iii) the Trustee becomes incapable of acting or is adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property is appointed or any public officer takes charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation, then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Securities or (B) subject to Section 8.07, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee resigns, is removed, or becomes incapable of acting, or if a vacancy occurs in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company by a Board Resolution will promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there will be only one Trustee with respect to the Securities of any particular series) and will comply with the applicable requirements of Section 9.10. If, within one year after such resignation, removal, or incapability or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series is appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed will, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 9.10, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 9.10, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, at the reasonable expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company will give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 14.03. Each notice will include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

#### **Section 9.10. Acceptance of Appointment by Successor.**

(a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed will execute, acknowledge, and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee will become effective and such successor Trustee, without any further act, deed, or conveyance, will become

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vested with all the rights, powers, trusts, and duties of the retiring Trustee, but, on the request of the Company or the successor Trustee, such retiring Trustee will execute and deliver an instrument transferring to such successor Trustee all the rights, powers, and duties of the retiring Trustee and will duly assign, transfer, and deliver to such Trustee all property and money held by such retiring Trustee hereunder, provided all sums owing to it hereunder have been paid and subject to its lien provided for in Section 9.06.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee, and each successor Trustee with respect to the Securities of one or more series will execute and deliver an indenture supplemental hereto wherein such successor Trustee will accept such appointment and which:

(i) will contain such provisions as may be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts, and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates;

(ii) if the retiring Trustee is not retiring with respect to all Securities, will contain such provisions as may be deemed necessary or desirable to confirm that all the rights, powers, trusts, and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring will continue to be vested in the retiring Trustee; and

(iii) will add to or change any of the provisions of this Indenture as may be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture will constitute such Trustees co-trustees of the same trust and that each such Trustee will be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustees and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee will become effective to the extent provided therein and each such successor Trustee, without any further act, deed, or conveyance, will become vested with all the rights, powers, trusts, and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but on request of the Company or any successor Trustee, such retiring Trustee will duly assign, transfer, and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all applicable rights, powers, and trusts referred to in the preceding paragraphs of this Section 9.10.

(d) No successor Trustee will accept its appointment unless at the time of such acceptance such successor Trustee is qualified and eligible under this Article IX.



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**Section 9.11. Merger, Conversion, Consolidation, or Succession to Business.**

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion, or consolidation to which the Trustee may be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee (including the administration of the trust created by this Indenture), will be the successor of the Trustee hereunder, provided such Person is otherwise qualified and eligible under this Article IX, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**Section 9.12. Preferential Collection of Claims Against Company.**

If and when the Trustee is or becomes a creditor of the Company (or any other obligor upon the Securities), the Trustee will be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

**Section 9.13. Appointment of Authenticating Agent.**

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which will be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon original issue and upon exchange, registration of transfer, or partial redemption thereof or pursuant to Section 2.07, and Securities so authenticated will be entitled to the benefits of this Indenture and will be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference will be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any state thereof, or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50 million and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 9.13, the combined capital and surplus of such Authenticating Agent will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 9.13, such Authenticating Agent will resign immediately in the manner and with the effect specified in this Section 9.13.

(b) Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion, or consolidation to which such Authenticating Agent may be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, will continue to be an Authenticating Agent, provided such corporation is otherwise eligible under this Section 9.13, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions this Section 9.13, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and will mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder will become vested with all the rights, powers, and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent will be appointed unless eligible under the provisions of this Section 9.13.

(d) The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 9.13.

(e) If an appointment with respect to one or more series of Securities is made pursuant to this Section 9.13, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative form of certificate of authentication in the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

The Bank of New York Mellon Trust Company, N.A.,  
as Trustee

Dated:

By: \_\_\_\_\_  
As Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

**Section 9.14. Trustee's Application for Instruction from the Company.**

Any application by the Trustee for written instructions from the Company 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

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or such omission shall be effective. In the case of any proposed action or omission expressly authorized by this Indenture, 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 Business Days after the date any officer of the Company actually receives such application by telecopy, e-mail, or otherwise (provided that such receipt shall have been confirmed by the Trustee), 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. In the case of any proposed action or omission that is not expressly authorized by this Indenture, the Trustee shall not take or refrain from taking any action unless prior to taking or refraining from taking any such action, the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

## **ARTICLE X. SUPPLEMENTAL INDENTURES AND CERTAIN ACTIONS.**

### **Section 10.01. Purposes for Which Supplemental Indentures May Be Entered Into Without Consent of Holders.**

Without the consent of or notice to any Holders, the Company, when authorized by a Board Resolution, the Guarantor, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company or the Guarantor and the assumption by any such successor of the covenants of the Company or the Guarantor herein and in the Securities, all to the extent otherwise permitted hereunder;

(b) to add to the covenants of the Company or the Guarantor for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company or the Guarantor;

(c) to add any additional Events of Default;

(d) to add to or change any of the provisions of this Indenture to such extent as may be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form;

(e) to add to, change, or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change, or elimination (i) will neither (A) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (B) modify the rights of the Holder of any such Security with respect to such provision or (ii) will become effective only when there is no such Security Outstanding;

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(f) to allow any Person to guarantee, in whole or in part, any Obligations in respect of all or any series of Securities;

(g) to establish the terms or form of Securities and the Guarantee of any series as permitted by Sections 2.01 and 2.02;

(h) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as may be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 9.10; or

(i) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this clause (i) will not adversely affect the legal rights under this Indenture of the Holders of Securities of any series in any material respect.

**Section 10.02. Modification of Indenture with Consent of Holders of at Least a Majority in Principal Amount of Outstanding Securities.**

(a) With the consent of the Holders of a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company, the Guarantor and the Trustee, the Company, when authorized by a Board Resolution, the Guarantor, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture will, without the consent of the Holder of each Outstanding Security affected thereby:

(i) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.01(b), or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date);

(ii) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture; or

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(iii) modify any of the provisions of this Section 10.02, Section 8.01(d) or Section 6.06, except to increase the percentage in principal amount of Holders required under any such Section or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, provided, however, that this clause (iii) will not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section 10.02 and Section 6.06, or the deletion of this proviso, in accordance with the requirements of Sections 9.10 and 10.01(g).

(b) A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, will be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

(c) It will not be necessary for any Act of Holders under this Section 10.02 to approve the particular form of any proposed supplemental indenture, but it will be sufficient if such Act approves the substance thereof.

#### **Section 10.03. Execution of Supplemental Indentures.**

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article X or the modifications thereby of the trusts created by this Indenture, the Trustee will be entitled to receive, and (subject to Section 9.01) will be fully protected in relying upon, an Officer’s Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but will not be obligated to, enter into any such supplemental indenture which affects the Trustee’s own rights, duties, or immunities under this Indenture or otherwise.

#### **Section 10.04. Effect of Supplemental Indentures.**

Upon the execution of any supplemental indenture under this Article X, this Indenture will be modified in accordance therewith, and such supplemental indenture will form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder will be bound thereby.

#### **Section 10.05. Conformity with Trust Indenture Act.**

Every supplemental indenture executed pursuant to this Article X will conform to the requirements of the Trust Indenture Act.

#### **Section 10.06. Reference in Securities to Supplemental Indentures.**

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article X may, and will if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

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## **ARTICLE XI. CONSOLIDATION, MERGER, SALE, OR TRANSFER.**

### **Section 11.01. Consolidations and Mergers of Company and Sales Permitted Only on Certain Terms.**

(a) The Company shall not consolidate with or merge with or into any other Person, or transfer (by lease, assignment, sale, or otherwise) all or substantially all of its properties and assets to another Person unless:

(i) either (A) the Company shall be the continuing or surviving Person in such a consolidation or merger or (B) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or to which all or substantially all of the properties and assets of the Company are transferred (the Company or such other Person being referred to as the “Surviving Person”) shall be a corporation, partnership, limited liability company, business trust, trust or other legal entity organized and validly existing under the laws of the United States, any State thereof, or the District of Columbia, and shall expressly assume, by an indenture supplemental hereto, all of the obligations of the Company under the Securities and the Indenture;

(ii) immediately after the transaction and the incurrence or anticipated incurrence of any Indebtedness to be incurred in connection therewith, no Default will exist; and

(iii) an Officer’s Certificate has been delivered to the Trustee to the effect that the conditions set forth in the preceding clauses (i) and (ii) have been satisfied and an Opinion of Counsel (from a counsel who shall not be an employee of the Company) has been delivered to the Trustee to the effect that the conditions set forth in the preceding clause (i) have been satisfied.

(b) The Surviving Person will succeed to and be substituted for the Company with the same effect as if it had been named herein as a party hereto, and thereafter the predecessor corporation will be relieved of all obligations and covenants under this Indenture and the Securities.

## **ARTICLE XII. GUARANTEES**

### **Section 12.01. Guarantees.**

(a) The Guarantor hereby fully, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, to each Holder of the Securities and the Trustee the full and punctual payment when due, whether at maturity, by acceleration, by redemption, by repurchase, or otherwise, of the principal of, premium, if any, and interest on the Securities (the “Obligations”). The Guarantor further agrees (to the extent permitted by law) that the 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 XII notwithstanding any extension or renewal of any Obligation.

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(b) The Guarantor waives presentation to, demand of payment from and protest to the Company of any of the Obligations and also waives notice of protest for nonpayment. The Guarantor waives notice of any default under the Securities or the Obligations. The obligations of the Guarantor hereunder shall not be affected by:

- (i) the failure of any Holder to assert any claim or demand or to enforce any right or remedy against the Company or any other person under this Indenture, the Securities or any other agreement or otherwise;
- (ii) any extension or renewal of any thereof;
- (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities or any other agreement;
- (iv) the release of any security held by any Holder or the Trustee for the Obligations or any of them;
- (v) the failure of any Holder to exercise any right or remedy against any other Guarantor; or
- (vi) any change in the ownership of the Company.

(c) The 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 Obligations.

(d) The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the 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 Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by 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 the Guarantor or would otherwise operate as a discharge of the Guarantor as a matter of law or equity.

(e) The 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 or interest on any of the Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Company or otherwise.

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(f) In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against the Guarantor by virtue hereof, upon the failure of the Company to pay any of the Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption, by repurchase or otherwise, the 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 an amount equal to the sum of (i) the unpaid amount of such Obligations then due and owing and (ii) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by law).

(g) The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders, on the other hand, (x) the maturity of the 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 Obligations guaranteed hereby and (y) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purposes of this Guarantee.

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

**Section 12.02. Limitation on Liability; Termination, Release and Discharge.**

(a) The obligations of the Guarantor hereunder will be limited to those set forth in this Article XII and to the maximum amount that will, after giving effect to all other contingent and fixed liabilities of the Guarantor, result in the obligations of the Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

(b) The Guarantor may consolidate with or merge into or sell its assets to the Company without limitation. The Guarantor may consolidate with or merge into or sell its assets to a Person other than the Company (whether or not an Affiliate of the Guarantor), provided, that upon any such consolidation, merger or sale to which the Guarantor is a party, other than transactions in which the Guarantor is the surviving Person, the Obligations shall be expressly assumed by supplemental indenture executed and delivered to the Trustee, by the Person formed by such consolidation, or into which the Guarantor shall have been merged, or which shall have acquired such property and the Guarantor will be deemed released from all its obligations under the Indenture and its Guarantee and such Guarantee will terminate.

(c) Upon Defeasance in accordance with Article V hereof or satisfaction and discharge of this Indenture in accordance with Article XIII hereof, the Guarantor will be released and relieved of any obligations under its Guarantee and such Guarantee will terminate.

**Section 12.03. No Subrogation.**

Notwithstanding any payment or payments made by the Guarantor hereunder, the Guarantor shall not be entitled to be subrogated to any of the rights of the Trustee or any Holder against the Company or any collateral security or guarantee or right of offset held by the



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Trustee or any Holder for the payment of the Obligations, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from the Company in respect of payments made by the Guarantor hereunder, until all amounts owing to the Trustee and the Holders by the Company on account of the Obligations are paid in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by the Guarantor in trust for the Trustee and the Holders, segregated from other funds of the Guarantor, and shall, forthwith upon receipt by the Guarantor, be turned over to the Trustee in the exact form received by the Guarantor (duly indorsed by the Guarantor to the Trustee, if required), to be applied against the Obligations.

### **ARTICLE XIII. SATISFACTION AND DISCHARGE OF INDENTURE.**

#### **Section 13.01. Satisfaction and Discharge of Indenture.**

This Indenture will upon a Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, at the expense the Company, will execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(a) either:

(i) all Securities theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost, or stolen and which have been replaced or paid as provided in Section 2.07 and (B) Securities for the payment of which money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 6.03) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation (A) have become due and payable, (B) will become due and payable at their Stated Maturity within one year, or (C) 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 Company, and the Company or the Guarantor, in the case of clause (A), (B), or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(b) the Company or the Guarantor has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been satisfied.

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Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 9.06, the obligations of the Trustee to any Authenticating Agent under Section 9.13, and, if money shall have been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section 13.01, the obligations of the Trustee under Sections 6.03(e) and 13.02, will survive.

**Section 13.02. Application of Trust Money.**

Subject to the provisions of Section 6.03(e), all money deposited with the Trustee pursuant to Section 13.01 will be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest for the payment of which such money has been deposited with the Trustee; and such money shall be segregated from other funds to the extent required by law.

**ARTICLE XIV. MISCELLANEOUS PROVISIONS.**

**Section 14.01. Successors and Assigns of Company Bound by Indenture.**

All the covenants, stipulations, promises, and agreements in this Indenture contained by or on behalf of the Company will bind its successors and assigns, whether so expressed or not.

**Section 14.02. Service of Required Notice to Trustee and Company.**

Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder or by the Company will be sufficient for every purpose hereunder if made upon, given, furnished, or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust Department; or

(b) the Company by the Trustee or by any Holder will be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at 7 West Seventh Street, Cincinnati, Ohio 45202 (marked for the attention of both the Chief Financial Officer and the General Counsel) or at any other address previously furnished in writing to the Trustee by the Company.

The Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by e-mail, facsimile and other similar unsecured electronic methods by Persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company. The Trustee shall have no duty or obligation to verify or confirm that the Person who sent such instructions or directions is, in fact, a Person authorized to give instructions or directions on behalf of the Company; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such instructions or directions. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

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**Section 14.03. Service of Required Notice to Holders; Waiver.**

Where this Indenture provides for notice to Holders of any event, such notice will be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder will affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Holders will be filed with the Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as may be made with the approval of the Trustee will constitute a sufficient notification for every purpose hereunder.

**Section 14.04. Indenture and Securities to be Construed in Accordance with the Laws of the State of New York; Consent to Jurisdiction.**

This Indenture and the Securities will be deemed to be a contract made under the laws of the State of New York, and for all purposes will be construed in accordance with the laws of said State.

The Company irrevocably consents and submits, for itself and in respect of any of its assets or property, to the nonexclusive jurisdiction of any court of the State of New York or any United States Federal court sitting, in each case, in the Borough of Manhattan, The City of New York, New York, United States of America, and any appellate court from any thereof in any suit, action or proceeding that may be brought in connection with this Indenture or the Securities, and waives any immunity from the jurisdiction of such courts. The Company irrevocably waives, to the fullest extent permitted by law, any objection to any such suit, action or proceeding that may be brought 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 Company agrees, to the fullest extent that it lawfully may do so, that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon the Company, and waives, to the fullest extent permitted by law, any objection to the enforcement by any competent court in the Company's jurisdiction of organization of judgments validly obtained in any such court in New York on the basis of such suit, action or proceeding; provided, however, that the Company does not waive, and the foregoing provisions of this sentence shall not constitute or be deemed to constitute a waiver of, (i) any right to appeal any such judgment, to seek any stay or otherwise to seek reconsideration or review of any such judgment or (ii) any stay of execution or levy pending an appeal from, or a suit, action or proceeding for reconsideration of, any such judgment.

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**Section 14.05. Waiver of Jury Trial**

EACH OF THE COMPANY, THE GUARANTOR AND THE TRUSTEE, AND EACH HOLDER OF A SECURITY BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**Section 14.06. Compliance Certificates and Opinions.**

Upon any application or request by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company will furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion will be given in the form of an Officer's Certificate, if to be given by an officer of the Company, an Opinion of Counsel, if to be given by counsel, or a certificate or opinion of an accountant, if to be given by an accountant or accounting firm, and will comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

**Section 14.07. Form of Documents Delivered to Trustee.**

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Where any Person is required to make, give, or execute two or more applications, requests, consents, certificates, statements, opinions, or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**Section 14.08. Payments Due on Non-Business Days.**

In any case where any Interest Payment Date, Redemption Date, or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of the Securities of any series which specifically states that such provision will apply in lieu of this Section 14.08)) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, provided that interest will accrue for the period from and after such Interest Payment Date, Redemption Date, or Stated Maturity, as the case may be.

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**Section 14.09. Provisions Required by Trust Indenture Act to Control.**

If any provision of this Indenture limits, qualifies, or conflicts with the duties imposed on any Person by Sections 310 through 317, inclusive, of the Trust Indenture Act (including provisions automatically deemed included in this Indenture pursuant to the Trust Indenture Act unless this Indenture provides that such provisions are excluded), which are deemed to be a part of and govern this Indenture, whether or not contained herein, then such imposed duties will control.

**Section 14.10. Invalidity of Particular Provisions.**

In case any one or more of the provisions contained in this Indenture or in the Securities is for any reason held to be invalid, illegal, or unenforceable in any respect, such validity, illegality, or enforceability will not affect any other provision of this Indenture or of the Securities, but this Indenture and such Securities will be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

**Section 14.11. Indenture May be Executed In Counterparts.**

This instrument may be executed in any number of counterparts, each of which will be an original, but such counterparts will together constitute but one and the same instrument.

**Section 14.12. Acts of Holders; Record Dates.**

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided or permitted by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments (including instruments in electronic, digital or other machine-readable form) of substantially similar tenor signed (including signatures in electronic, digital or other machine-readable form) by such Holders in person or by agent duly appointed in writing (including writings in electronic, digital or other machine-readable form); and, except as herein otherwise expressly provided, such action will become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments. Proof of signature of any such instrument or of a writing appointing any such agent will be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 14.12.

(b) The fact and date of the signing by any Person of any such instrument or writing may be proved by the affidavit of a witness of such signing or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the signing thereof. Where such signing is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit will also constitute sufficient proof of his authority. The fact and date of the signing of any such instrument or writing, or the authority of the Person signing the same, may also be proved in any other manner which the Trustee deems sufficient.

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(c) The ownership of Securities will be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver, or other Act of the Holder of any Security will bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange thereof or in lieu thereof in respect of anything done, omitted, or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) The Company may, in the circumstances permitted by the Trust Indenture Act, set any day as the record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give or take any request, demand, authorization, direction, notice, consent, waiver, or other action provided or permitted by this Indenture to be given or taken by Holders of Securities of such series. With regard to any record date set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date (or their duly appointed agents), and only such Persons, will be entitled to give or take the relevant action, whether or not such Holders remain Holders after such record date. With regard to any action that may be given or taken hereunder only by Holders of a requisite principal amount of Outstanding Securities of any series (or their duly appointed agents) and for which a record date is set pursuant to this paragraph, the Company may, at its option, set an expiration date after which no such action purported to be given or taken by any Holder will be effective hereunder unless given or taken on or prior to such expiration date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date (or their duly appointed agents). On or prior to any expiration date set pursuant to this paragraph, the Company may, on one or more occasions at its option, extend such date to any later date. Nothing in this paragraph will prevent any Holder (or any duly appointed agent thereof) from giving or taking, after any such expiration date, any action identical to, or, at any time, contrary to or different from, the action or purported action to which such expiration date relates, in which event the Company may set a record date in respect thereof pursuant to this paragraph. Nothing in this Section 14.12(e) will be construed to render ineffective any action taken at any time by the Holders (or their duly appointed agents) of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is so taken. Notwithstanding the foregoing or the Trust Indenture Act, the Company will not set a record date for, and the provisions of this Section 14.12(e) will not apply with respect to, any notice, declaration, or direction referred to in the next paragraph.

(f) Upon receipt by the Trustee from any Holder of Securities of a particular series of (a) any notice of default or breach referred to in Section 8.01(a)(iv) or 8.01(a)(v) with respect to Securities of such series, if such default or breach has occurred and is continuing and the Trustee shall not have given such notice to the Company, (b) any declaration of acceleration referred to in Section 8.01(b), if an Event of Default with respect to Securities of such series has occurred and is continuing and the Trustee shall not have given such a declaration to the Company, or (c) any direction referred to in Section 8.06 with respect to Securities of such series, if the Trustee shall not have taken the action specified in such direction, then a record date will automatically and without any action by the Company or the Trustee be set for determining the Holders of Outstanding Securities of such series entitled to join in such notice, declaration, or direction, which record date will be the close of business on the tenth calendar day following the

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day on which the Trustee receives such notice, declaration, or direction. Promptly after such receipt by the Trustee, and in any case not later than the fifth calendar day thereafter, the Trustee will notify the Company and the Holders of Outstanding Securities of such series of any such record date so fixed. The Holders of Outstanding Securities of such series on such record date (or their duly appointed agents), and only such Persons, will be entitled to join in such notice, declaration, or direction, whether or not such Holders remain Holders after such record date; provided that, unless such notice, declaration, or direction shall have become effective by virtue of Holders of the requisite principal amount of Outstanding Securities of such series on such record date (or their duly appointed agents) having joined therein on or prior to the 90th calendar day after such record date, such notice, declaration, or direction will automatically and without any action by any Person be cancelled and of no further effect. Nothing in this Section 14.12(f) will be construed to prevent a Holder (or a duly appointed agent thereof) from giving, before or after the expiration of such 90-day period, a notice, declaration, or direction contrary to or different from, or, after the expiration of such period, identical to, the notice, declaration, or direction to which such record date relates, in which event a new record date in respect thereof will be set pursuant to this Section 14.12(f). Nothing in this Section 14.12(f) will be construed to render ineffective any notice, declaration, or direction of the type referred to in this Section 14.12(f) given at any time to the Trustee and the Company by Holders (or their duly appointed agents) of the requisite principal amount of Outstanding Securities of the relevant series on the date such notice, declaration, or direction is so given.

(g) Without limiting the foregoing, a Holder entitled hereunder to give or take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any different part of such principal amount.

**Section 14.13. Effect of Headings and Table of Contents.**

The Article and Section headings herein and the Table of Contents are for convenience only and will not affect the construction hereof.

**Section 14.14. Benefits of Indenture.**

Nothing in this Indenture or in the Securities, express or implied, will give to any Person, other than the parties hereto and their successors hereunder and the Holders any benefit or any legal or equitable right, remedy, or claim under this Indenture.

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**In Witness Whereof**, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

**MACY'S RETAIL HOLDINGS, INC.,  
as Issuer**

By: /s/ Karen M. Hoguet

Name: Karen M. Hoguet

Title: Vice President and  
Chief Financial Officer

**MACY'S, INC.,  
as Guarantor**

By: /s/ Karen M. Hoguet

Name: Karen M. Hoguet

Title: Chief Financial Officer

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
as Trustee**

By: /s/ Sharon K. McGrath

Name: Sharon K. McGrath

Title: Vice President



## Form of Opinion of Jones Day

\_\_\_\_\_, 20\_\_

Macy's, Inc.  
Macy's Retail Holdings, Inc.  
7 West Seventh Street  
Cincinnati, Ohio 45202

Re: Registration Statement on Form S-3 Filed by Macy's, Inc. and Macy's Retail Holdings, Inc.

Ladies and Gentlemen:

We have acted as counsel for Macy's, Inc., a Delaware corporation ("Macy's"), and Macy's Retail Holdings, Inc., a New York corporation ("Macy's Holdings"), in connection with the authorization of the possible issuance and sale from time to time, on a delayed basis, by Macy's and/or Macy's Holdings, as applicable, of an indeterminate amount of: (i) shares of common stock, par value \$0.01 per share, of Macy's (the "Common Stock"); (ii) shares of preferred stock, par value \$0.01 per share, of Macy's (the "Preferred Stock"), in one or more series, certain of which may be convertible into or exchangeable for Common Stock; (iii) depositary shares of Macy's representing fractional interests in Preferred Stock (the "Depositary Shares"); (iv) debt securities of Macy's Holdings, in one or more series ("Debt Securities"), each fully and unconditionally guaranteed by Macy's (the "Guarantees"), certain of which Debt Securities may be convertible into or exchangeable for Common Stock or other securities of Macy's or any other person; (v) warrants to purchase Common Stock, Preferred Stock, Depositary Shares, Debt Securities or any combination thereof (the "Warrants"); (vi) purchase contracts for the purchase or sale of Common Stock, Preferred Stock, Depositary Shares, Debt Securities, Warrants or securities of any other person unaffiliated with Macy's or Macy's Holdings at a future date or dates (the "Purchase Contracts"); and (vii) units consisting of one or more of the securities described in clauses (i) through (vi) above and which may include debt obligations of any other person (the "Units"), in each case as contemplated by the Registration Statement on Form S-3 of Macy's and Macy's Holdings to which this opinion has been filed as an exhibit (as the same may be amended from time to time, the "Registration Statement"). The Common Stock, the Preferred Stock, the Depositary Shares, the Debt Securities, the Guarantees, the Warrants, the Purchase Contracts, and the Units are collectively referred to herein as the "Securities" and each, a "Security." The Securities are to be issued from time to time pursuant to Rule 415 under the Securities Act of 1933 (the "Securities Act"). The Debt Securities and Guarantees are to be issued under an Indenture, dated as of December 9, 2009 (as the same may be amended, supplemented or otherwise modified from time to time, the "Indenture"), among Macy's Holdings, as issuer, Macy's, as guarantor, and The Bank of New York Mellon Trust Company, N.A., as trustee (including any successor, the "Trustee").

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion. Based on the foregoing, and subject to the further limitations, qualifications and assumptions set forth herein, we are of the opinion that:

1. The shares of Common Stock, upon receipt by Macy's of such lawful consideration therefor having a value not less than the par value thereof as the Macy's Board of Directors (or an authorized committee thereof) may determine, will be validly issued, fully paid and nonassessable.

2. The shares of Preferred Stock, upon receipt by Macy's of such lawful consideration therefor having a value not less than the par value thereof as the Macy's Board of Directors (or an authorized committee thereof) may determine, will be validly issued, fully paid and nonassessable.

3. The Depositary Shares, upon receipt by Macy's of such lawful consideration therefor as the Macy's Board of Directors (or an authorized committee thereof) may determine, will be validly issued, and the depositary receipts representing the Depositary Shares will entitle the holders thereof to the rights specified therein and in the deposit agreement pursuant to which they are issued.

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4. The Debt Securities, when duly executed by Macy's Holdings and authenticated by the Trustee in accordance with the Indenture, issued and sold in accordance with the Registration Statement and delivered to the purchaser or purchasers thereof against receipt by Macy's Holdings of such lawful consideration therefor as the Macy's Holding's Board of Directors (or a duly authorized committee thereof) may determine, will constitute valid and binding obligations of Macy's Holdings.

5. Upon the execution, authentication, issuance, sale and delivery of the Debt Securities as described above, the Guarantees thereof will constitute valid and binding obligations of Macy's.

6. The Warrants, upon receipt by Macy's and/or Macy's Holdings, as applicable, of such lawful consideration therefor as the Board of Directors (or an authorized committee thereof) of Macy's and/or Macy's Holdings, as applicable, may determine, will constitute valid and binding obligations of Macy's and/or Macy's Holdings, as applicable.

7. The Purchase Contracts, upon receipt by Macy's and/or Macy's Holdings, as applicable, of such lawful consideration therefor as the Board of Directors (or an authorized committee thereof) of Macy's and/or Macy's Holdings, as applicable, may determine, will constitute valid and binding obligations of Macy's and/or Macy's Holdings, as applicable.

8. The Units, upon receipt by Macy's and/or Macy's Holdings, as applicable, of such lawful consideration therefor as the Board of Directors (or an authorized committee thereof) of Macy's and/or Macy's Holdings, as applicable, may determine, will constitute valid and binding obligations of Macy's and/or Macy's Holdings, as applicable.

In rendering the foregoing opinions, we have assumed that: (i) the Registration Statement, and any amendments thereto, will have become effective (and will remain effective at the time of issuance of any Securities thereunder); (ii) a prospectus supplement describing each class and/or series of Securities offered pursuant to the Registration Statement, to the extent required by applicable law and relevant rules and regulations of the Securities and Exchange Commission (the "Commission"), will be timely filed with the Commission; (iii) the definitive terms of each class and/or series of Securities will have been established in accordance with the authorizing resolutions adopted by the Board of Directors of Macy's or Macy's Holdings (or an authorized committee thereof), as applicable, and, as applicable, the Macy's and/or Macy's Holdings certificate of incorporation, in each case as amended and restated, and applicable law; (iv) Macy's or Macy's Holdings, as applicable, will issue and deliver the applicable Securities in the manner contemplated by the Registration Statement and any Securities that consist of shares of capital stock will have been authorized and reserved for issuance, in each case within the limits of the then remaining authorized but unissued and unreserved amounts of such capital stock; (v) the resolutions authorizing Macy's and Macy's Holdings to issue, offer and sell the Securities will have been adopted by the Board of Directors Macy's and/or Macy's Holdings (or an authorized committee thereof), as applicable, and will be in full force and effect at all times at which the Securities are offered or sold by Macy's or Macy's Holdings, as applicable; (vi) all Securities will be issued in compliance with applicable federal and state securities laws; and (vii) any Indenture, Deposit Agreement, Warrant Agreement, Purchase Contract Agreement (each as defined below) or unit agreement will be governed by and construed in accordance with the laws of the State of New York and will constitute a valid and binding obligation of each party thereto other than Macy's or Macy's Holdings, as applicable.

With respect to any Securities consisting of any series of Debt Securities or Guarantees, we have further assumed that (i) the Indenture is, and any supplemental indenture will be, a valid and binding obligation of the Trustee; (ii) all terms of the Debt Securities or Guarantees not provided for in the Indenture will have been established in accordance with the provisions of the Indenture and reflected in appropriate documentation approved by us and, if applicable, duly executed and delivered by Macy's and/or Macy's Holdings and the Trustee; and (iii) the Debt Securities will be duly executed, authenticated, issued and delivered in accordance with the provisions of the Indenture.

With respect to any Securities consisting of Preferred Stock, we have further assumed that Macy's will issue and deliver the shares of Preferred Stock being issued and delivered after the filing with the Secretary of State of the State of Delaware of a certificate of amendment to Macy's restated certificate of incorporation, approved by us, establishing the designations, preferences and rights of the class or series of Preferred Stock being issued and delivered.

With respect to any Securities consisting of Depositary Shares, we have further assumed that the Depositary Shares will be: (i) issued and delivered after authorization, execution and delivery of the deposit agreement, approved by us, relating to the Depositary Shares (the "Deposit Agreement") to be entered into between Macy's and an entity selected by Macy's to act as depositary (the "Depositary"), and (ii) issued after Macy's deposits with the Depositary shares of the Preferred Stock to be represented by such Depositary Shares that are authorized, validly issued, fully paid and nonassessable as contemplated by the Registration Statement and the Deposit Agreement.

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With respect to any Securities consisting of Warrants, we have further assumed that (i) the warrant agreement, approved by us, relating to the Warrants (the “Warrant Agreement”) to be entered into between Macy’s and/or Macy’s Holdings, as applicable, and an entity selected by Macy’s and/or Macy’s Holdings to act as the warrant agent (the “Warrant Agent”) will have been authorized, executed and delivered by Macy’s and/or Macy’s Holdings, as applicable, and the Warrant Agent, and (ii) the Warrants will be authorized, executed and delivered by Macy’s and/or Macy’s Holdings, as applicable, and the Warrant Agent in accordance with the provisions of the Warrant Agreement.

With respect to any Securities consisting of Purchase Contracts, we have further assumed that (i) the purchase contract agreement, approved by us, relating to the Purchase Contracts (the “Purchase Contract Agreement”) to be entered into between Macy’s and/or Macy’s Holdings, as applicable, and an entity selected by Macy’s and/or Macy’s Holdings to act as the purchase contract agent (the “Purchase Contract Agent”) will have been authorized, executed and delivered by Macy’s and/or Macy’s Holdings and the Purchase Contract Agent and (ii) the Purchase Contracts will be authorized, executed and delivered by Macy’s and/or Macy’s Holdings, as applicable, and the Purchase Contract Agent in accordance with the provisions of the Purchase Contract Agreement.

With respect to any Securities consisting of Units, we have further assumed that each component of such Unit will be authorized, validly issued, fully paid and nonassessable (to the extent applicable) and will constitute a valid and binding obligation of Macy’s and/or Macy’s Holdings, as applicable, or any third party (to the extent applicable) as contemplated by the Registration Statement and the applicable unit agreement, if any.

The opinions expressed herein are limited by bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, voidable preference, moratorium or other similar laws and related regulations and judicial doctrines from time to time in effect relating to or affecting creditors’ rights generally, and by general equitable principles and public policy considerations, whether such principles and considerations are considered in a proceeding at law or at equity.

As to facts material to the opinions and assumptions expressed herein, we have relied upon oral or written statements and representations of officers and other representatives of Macy’s, Macy’s Holdings and others. The opinions expressed herein are limited to the laws of the State of New York and the Delaware General Corporation Law including applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting such law, in each case as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the reference to Jones Day under the caption “Certain Legal Matters” in the prospectus constituting a part of such Registration Statement. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

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**Macy's, Inc.**  
**Computation of Historical Ratios of Earnings to Fixed Charges(a)**  
(in millions, except ratio data)

	39 Weeks Ended 10/31/2009	Fiscal Year Ended				
		1/31/2009	2/2/2008	2/3/2007	1/28/2006	1/29/2005
Income (loss) from continuing operations before income taxes	\$ (228)	\$ (4,938)	\$ 1,320	\$ 1,446	\$ 2,044	\$ 1,116
Add: Interest Expense	423	588	579	451	422	299
Portion of rents representative of the interest factor	81	110	104	117	122	91
Adjusted Income (loss)	\$ 276	\$ (4,240)	\$ 2,003	\$ 2,014	\$ 2,588	\$ 1,506
<b>Fixed Charges:</b>						
Interest Expense	\$ 423	\$ 588	\$ 579	\$ 451	\$ 422	\$ 299
Capitalized Interest	4	11	11	15	1	—
Portion of rents representative of the interest factor	81	110	104	117	122	91
Total Fixed Charges	\$ 508	\$ 709	\$ 694	\$ 583	\$ 545	\$ 390
Ratio of earnings (losses) to fixed charges (b)	0.5x	—	2.9x	3.5x	4.7x	3.9x

- (a) For purposes of determining the ratio of earnings (losses) to fixed charges, earnings (losses) consist of income (loss) from continuing operations before income taxes plus fixed charges (excluding interest capitalized). Fixed charges represent interest incurred, amortization of debt expenses, and that portion of rental expenses on operating leases deemed to be the equivalent of interest.
- (b) For the fiscal year ended January 31, 2009, our earnings were insufficient to cover our fixed charges by \$4.95 billion. For the thirty-nine weeks ended October 31, 2009, our earnings were insufficient to cover our fixed charges by \$232 million.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Shareholders  
Macy's, Inc.:

We consent to the use of our reports dated March 30, 2009, with respect to the consolidated balance sheets of Macy's, Inc. and subsidiaries as of January 31, 2009 and February 2, 2008, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for each of the three fiscal years in the period ended January 31, 2009, and the effectiveness of internal control over financial reporting as of January 31, 2009, incorporated by reference in the prospectus and to the reference to our firm under the heading "Experts" in the prospectus.

Our report on the consolidated financial statements refers to the adoption of the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes," and the measurement date provision of Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," in fiscal 2007, and the provisions of Statement of Financial Accounting Standards No. 123R, "Share Based Payment," and the recognition and related disclosure provisions of Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," in fiscal 2006.

/s/ KPMG LLP

Cincinnati, Ohio  
December 9, 2009

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned directors and/or officers of MACY'S, INC., a Delaware corporation ("Macy's"), hereby constitutes and appoints DENNIS J. BRODERICK, ANN MUNSON STEINES, CHRISTOPHER M. KELLY and LINDA J. BALICKI, or any of them, his or her true and lawful attorney or attorneys-in-fact, with full power of substitution and resubstitution, to do any and all acts and things and execute any and all instruments or documents which said attorney or attorneys-in-fact, or any of them, may deem necessary or advisable or which may be required in connection with the filing with the Securities and Exchange Commission (the "SEC") of a Registration Statement on Form S-3 (the "Registration Statement") (and any abbreviated registration statement relating thereto permitted pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Securities Act")) for the purposes of registering guarantees of debt securities of Macy's Retail Holdings, Inc., common stock, preferred stock, depositary shares, warrants, purchase contracts and/or units of Macy's, or any combination of the foregoing securities, and to sign any and all amendments, including any or all post-effective amendments and supplements to the Registration Statement (and any such abbreviated registration statement), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorney or attorneys-in-fact, or each of them with or without the others, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to accomplish the foregoing, as fully to all intents and purposes as he or she might or could in person, hereby ratifying and confirming all that said attorneys-in-fact, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

This Power of Attorney may be executed in counterparts and all such duly executed counterparts shall together constitute the same instrument. Except as otherwise specifically provided herein, the power of attorney granted herein shall not in any manner revoke in whole or in part any power of attorney that each of the undersigned has previously executed. This power of attorney shall not be revoked by any subsequent power of attorney any of the undersigned may execute, unless such subsequent power specifically refers to this power of attorney or specifically states that the instrument is intended to revoke all prior general powers of attorney or all prior powers of attorney.

The "CAUTION TO THE PRINCIPAL" and "IMPORTANT INFORMATION FOR THE AGENT" statements below are required under the New York General Obligations Law. Notwithstanding anything to the contrary contained therein, this Power of Attorney is limited to the powers granted as described above and DOES NOT grant the attorneys-in-fact and agents the authority to spend the undersigned's money or sell or dispose of the undersigned's property.

**CAUTION TO THE PRINCIPAL:**

Your Power of Attorney is an important document. As the "principal," you give the person whom you choose (your "agent") powers to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar powers. When your agent exercises these powers, he or she must act according to any instructions you have provided, or, where there are no specific instructions, in your best interest. "Important Information for the Agent" near the end of this document describes your agent's responsibilities. Your agent can act on your behalf only after signing the Power of Attorney before a notary public. You can request information from your agent at any time. You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly. Your agent cannot make health care decisions for you. You may execute a "Health Care Proxy" to do this. The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, [www.senate.state.ny.us](http://www.senate.state.ny.us) or [www.assembly.state.ny.us](http://www.assembly.state.ny.us). If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

**IMPORTANT INFORMATION FOR THE AGENT:**

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the power of attorney is terminated or revoked. You must: (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest; (2) avoid conflicts that would impair your ability to act in the principal's best interest; (3) keep the principal's property separate and distinct from any assets you own or

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control, unless otherwise permitted by law; (4) keep a record of all receipts, payments, and transactions conducted for the principal; and (5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent.

You may not use the principal's assets to benefit yourself or give gifts to yourself or anyone else unless there is a Statutory Major Gifts Rider attached to this Power of Attorney that specifically gives you that authority. If you have that authority, you must act according to any instructions of the principal, or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Joel A. Belsky

Joel A. Belsky

Executive Vice President and Controller

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Joel A. Belsky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment



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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Stephen F. Bollenbach

Stephen F. Bollenbach  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Stephen F. Bollenbach, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Deirdre P. Connelly

Deirdre P. Connelly  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Deirdre P. Connelly, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Meyer Feldberg

Meyer Feldberg  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Meyer Feldberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Karen M. Hoguet  
Karen M. Hoguet  
Chief Financial Officer

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Karen M. Hoguet, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim  
Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Sara Levinson

Sara Levinson  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Sara Levinson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Terry J. Lundgren

Terry J. Lundgren  
Chairman of the Board, President and Chief Executive  
Officer and Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Terry J. Lundgren, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Joseph Neubauer

Joseph Neubauer  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Joseph Neubauer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Joseph A. Pichler

Joseph A. Pichler  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Joseph A. Pichler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment



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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Joyce M. Roché

Joyce M. Roché  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Joyce M. Roché, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Karl M. von der Heyden

Karl M. von der Heyden  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Karl M. von der Heyden , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Craig E. Weatherup

Craig E. Weatherup  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Craig E. Weatherup, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 4<sup>th</sup> day of December, 2009.

/s/ Marna C. Whittington

Marna C. Whittington  
Director

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Marna C. Whittington, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim

Signature and Office of individual taking  
acknowledgment

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I, Dennis J. Broderick, have read the foregoing Power of Attorney. I am a person identified therein as an agent for the principals named therein. I acknowledge my legal responsibilities to the principals.

Agent signs here: ==> /s/ Dennis J. Broderick

State of New York)

County of New York) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Dennis J. Broderick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Denise Pilgrim  
Signature and Office of individual taking  
acknowledgment

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I, Ann Munson Steines, have read the foregoing Power of Attorney. I am a person identified therein as an agent for the principals named therein. I acknowledge my legal responsibilities to the principals.

Agent signs here: ==> /s/ Ann Munson Steines

State of Ohio)

County of Hamilton) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Ann Munson Steines, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Tracy L. Hughes  
Signature and Office of individual taking  
acknowledgment

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I, Christopher M. Kelly, have read the foregoing Power of Attorney. I am a person identified therein as an agent for the principals named therein. I acknowledge my legal responsibilities to the principals.

Agent signs here: ==> /s/ Christopher M. Kelly

State of Ohio)

County of Hamilton) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Christopher M. Kelly, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Tracy L. Hughes  
Signature and Office of individual taking  
acknowledgment

I, Linda J. Balicki, have read the foregoing Power of Attorney. I am a person identified therein as an agent for the principals named therein. I acknowledge my legal responsibilities to the principals.

Agent signs here: ==> /s/ Linda J. Balicki

State of Missouri)

County of St. Louis) ss.:

On the 4<sup>th</sup> day of December in the year before me, the undersigned, personally appeared Linda J. Balicki, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Sarah Jane Westover

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Signature and Office of individual taking  
acknowledgment



**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned directors and/or officers of MACY'S RETAIL HOLDINGS, INC., a New York corporation ("Macy's Holdings"), hereby constitutes and appoints DENNIS J. BRODERICK, ANN MUNSON STEINES, CHRISTOPHER M. KELLY and LINDA J. BALICKI, or any of them, his or her true and lawful attorney or attorneys-in-fact, with full power of substitution and resubstitution, to do any and all acts and things and execute any and all instruments or documents which said attorney or attorneys-in-fact, or any of them, may deem necessary or advisable or which may be required in connection with the filing with the Securities and Exchange Commission (the "SEC") of a Registration Statement on Form S-3 (the "Registration Statement") (and any abbreviated registration statement relating thereto permitted pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Securities Act")) for the purposes of registering debt securities, warrants, purchase contracts and/or units of Macy's Holdings, or any combination of the foregoing securities, and to sign any and all amendments, including any or all post-effective amendments and supplements to the Registration Statement (and any such abbreviated registration statement), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorney or attorneys-in-fact, or each of them with or without the others, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to accomplish the foregoing, as fully to all intents and purposes as he or she might or could in person, hereby ratifying and confirming all that said attorneys-in-fact, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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/s/ Dennis J. Broderick

Dennis J. Broderick

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/s/ Karen M. Hoguet

Karen M. Hoguet

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/s/ Joel A. Belsky

Joel A. Belsky

Dated: November 24, 2009

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM T-1**

**STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY  
OF A TRUSTEE PURSUANT TO SECTION 305(b)(2) ☐

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

(Exact name of trustee as specified in its charter)

N/A  
(State of incorporation  
if not a U.S. national bank)

95-3571558  
(I.R.S. employer  
identification no.)

700 South Flower Street, Suite 500  
Los Angeles, California  
(Address of principal executive offices)

90017  
(Zip code)

Legal Department  
The Bank of New York Mellon Trust Company, N.A.  
One Wall Street, 15<sup>th</sup> Floor  
New York, NY 10286  
(212) 635-1270

(Name, address and telephone number of agent for service)

**MACY'S, INC.**  
(Exact name of obligor as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

13-3324058  
(I.R.S. employer  
identification no.)

7 West Seventh Street  
Cincinnati, Ohio  
(Address of principal executive offices)

45202  
(Zip code)

**MACY'S RETAIL HOLDINGS, INC.**  
(Exact name of obligor as specified in its charter)

New York  
(State or other jurisdiction of  
incorporation or organization)

43-0398035  
(I.R.S. employer  
identification no.)

7 West Seventh Street  
Cincinnati, Ohio  
(Address of principal executive offices)

45202  
(Zip code)

**Debt Securities**  
(Title of the indenture securities)

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**Item 1. General information.**

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Name	Address
Comptroller of the Currency – United States Department of the Treasury	Washington, D.C. 20219
Federal Reserve Bank	San Francisco, California 94105
Federal Deposit Insurance Corporation	Washington, D.C. 20429

- (b) Whether it is authorized to exercise corporate trust powers.  
Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**Item 16. List of Exhibits.**

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the “Act”) and 17 C.F.R. 229.10(d).

1. A copy of the articles of association of The Bank of New York Mellon Trust Company, N.A. (Exhibit 1 to Form T-1 filed with Registration Statement No. 333-135006)
2. A copy of certificate of authority of the trustee to commence business. (Exhibit 2 to Form T-1 filed with Registration Statement No. 333-121948).
3. A copy of the authorization of the trustee to exercise corporate trust powers. (Exhibit 3 to Form T-1 filed with Registration Statement No. 333-135006).
4. A copy of the existing by-laws of the trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 333-135006).
6. The consent of the trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-135006).
7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.
8. Not applicable.
9. Not applicable.

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**SIGNATURE**

Pursuant to the requirements of the Act, the trustee, The Bank of New York Mellon Trust Company, N.A., a banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago, and State of Illinois, on the 9th day of December, 2009.

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.**

By: /s/ Sharon McGrath

Name: Sharon McGrath

Title: Vice President

Consolidated Report of Condition of  
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.  
of 700 South Flower Street, Suite 200, Los Angeles, CA 90017

At the close of business September 30, 2009, published in accordance with Federal regulatory authority instructions.

	Dollars Amounts in Thousands
<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	1,585
Interest-bearing balances	426
Securities:	
Held-to-maturity securities	16
Available-for-sale securities	553,806
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold	83,000
Securities purchased under agreements to resell	0
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	0
LESS: Allowance for loan and lease losses	0
Loans and leases, net of unearned income and allowance	0
Trading assets	0
Premises and fixed assets (including capitalized leases)	10,983
Other real estate owned	0
Investments in unconsolidated subsidiaries and associated companies	1
Not applicable	
Intangible assets:	
Goodwill	852,858
Other Intangible Assets	251,145
Other assets	156,398
<b>Total assets</b>	<b>\$1,910,218</b>

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**LIABILITIES**

## Deposits:

In domestic offices	1,712
Noninterest-bearing	1,712
Interest-bearing	0
Not applicable	

## Federal funds purchased and securities sold under agreements to repurchase:

Federal funds purchased	0
Securities sold under agreements to repurchase	0

Trading liabilities 0

## Other borrowed money:

(includes mortgage indebtedness and obligations under capitalized leases)	268,691
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Not applicable

Not applicable

Subordinated notes and debentures 0

Other liabilities 198,124

Total liabilities 468,527

Minority interest in consolidated subsidiaries 0

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus 0

Common stock 1,000

Surplus (exclude all surplus related to preferred stock) 1,121,520

Retained earnings 316,907

Accumulated other comprehensive income 2,264

Other equity capital components 0

Total equity capital 1,441,691

Total liabilities and equity capital (sum of items 21 and 28) 1,910,210

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I, Karen Bayz, Vice President of the above-named bank do hereby declare that the Reports of Condition and Income (including the supporting schedules) for this report date have been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and are true to the best of my knowledge and belief.

Karen Bayz                    ) Vice President

We, the undersigned directors (trustees), attest to the correctness of the Report of Condition (including the supporting schedules) for this report date and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true and correct.

Michael K. Klugman, President        )  
Frank P. Sulzberger, MD            ) Directors (Trustees)  
William D. Lindelof, VP             )