

Illinois Anti-Predatory
Lending Database
Program

Doc#: 1923915071 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 08/27/2019 01:28 PM Pg: 1 of 38

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN:** 17-10-200-084-0000

Address:

Street: 737 North Michigan Avenue

Street line 2:

City: Chicago

State: IL

ZIP Code: 60611

Lender: Ankura Trust Company, LLC

Borrower: The Neiman Marcus Group LLC

Loan / Mortgage Amount: \$550,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: DB10897E-850F-400E-A68E-C5E0C831653E

Execution date: 8/22/2019

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This document was prepared by,
~~and after recording, return to:~~

Peter E. Fisch, Esq.
 Paul, Weiss, Rifkind, Wharton,
 & Garrison LLP
 1285 Sixth Avenue
 New York, NY 10019

Permanent Tax Index Number:

17-10-200-084, 17-10-200-085

Property Address:

737 North Michigan Avenue
 Chicago, IL 60611

Space above this line for recording data.

**LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY
 AGREEMENT AND FIXTURE FILING**

From

THE NEIMAN MARCUS GROUP LLC (f/k/a The Neiman Marcus Group, Inc.), as
 Mortgagee

TO

ANKURA TRUST COMPANY, LLC, as Collateral Agent, as Mortgagee

Dated: August 22, 2019

Record and Return to: Premises: 737 North Michigan Avenue
 First National Real Estate Services, LLC Chicago, Illinois 60611
 300 Rector Place, 4I Cook County
 New York, NY 10280 (Site #32/ Store No. 1019)

THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER ILLINOIS UNIFORM
 COMMERCIAL CODE CHAPTER 810 ILCS 5/1-101, ET SEQ.

THIS INSTRUMENT SECURES FUTURE ADVANCES UP TO A MAXIMUM
 PRINCIPAL SUM OF \$550,000,000.00 HEREBY PURSUANT TO 735 ILCS 5/15-1302

Reference is made to the ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7,
 2019 (as amended, restated, supplemented or otherwise modified from time to time, the
 "ABL/Term Loan/Notes Intercreditor Agreement"), among Deutsche Bank AG New York
 Branch as ABL Agent (as defined therein), Credit Suisse AG, Cayman Islands Branch, as

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Term Loan Agent (as defined therein), Ankura Trust Company, LLC, as New Second Lien Notes Collateral Agent (as defined therein) and Wilmington Trust, National Association, as New Third Lien Notes Collateral Agent (as defined therein) and acknowledged by Holdings, the Issuers and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the ABL/Term Loan/Notes Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the ABL/Term Loan/Notes Intercreditor Agreement and this Mortgage (as hereinafter defined), the provisions of the ABL/Term Loan/Notes Intercreditor Agreement shall control.

Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to this Mortgage and the exercise of any right or remedy by the Collateral Agent hereunder are subject to the provisions of the Junior Lien Intercreditor Agreement, dated as of June 7, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Junior Lien Intercreditor Agreement*"), among CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Initial First Lien Representative, CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Initial First Lien Collateral Agent, ANKURA TRUST COMPANY, LLC, as Initial Second Lien Representative, ANKURA TRUST COMPANY, LLC, as Initial Second Lien Collateral Agent, WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.000% Notes Representative, WILMINGTON TRUST, NATIONAL ASSOCIATION, as 8.750% Notes Representative, WILMINGTON TRUST, NATIONAL ASSOCIATION, as Initial Third Lien Collateral Agent and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Junior Lien Intercreditor Agreement and this Mortgage, the terms of the Junior Lien Intercreditor Agreement shall govern and control.

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THIS LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING dated as of August 22, 2019 (as hereafter amended, modified, extended, restated, supplemented or renewed from time to time, this "*Mortgage*"), by THE NEIMAN MARCUS GROUP LLC, a Delaware limited liability company (f/k/a The Neiman Marcus Group, Inc.), having an office at One Marcus Square, 1618 Main Street, Dallas, Texas 75201 (the "*Mortgagor*"), to ANKURA TRUST COMPANY, LLC, a New Hampshire state-chartered trust company, having an office at 140 Sherman Street, 4th Floor, Fairfield, Connecticut 06824 (the "*Mortgagee*"), as Collateral Agent for the Secured Parties (as such terms are defined below).

WITNESSETH THAT:

Reference is made to (i) the Second Lien Notes Indenture dated as of June 7, 2019 (the "*Indenture*") among NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company (the "*NMG*"), the NEIMAN MARCUS GROUP LLC ("*NMG LLC*"), Mariposa Borrower, Inc. ("*Mariposa Borrower*"), The NMG Subsidiary LLC (collectively, in their capacity as issuers under the Indenture, the "*Issuers*"), the Subsidiary Guarantors party thereto, and Ankura Trust Company, LLC, as trustee (in such capacity, the "*Trustee*") and as collateral agent (in such capacity, the "*Collateral Agent*") (ii) the Second Lien Notes Collateral Agreement, dated as of June 7, 2019, among the Issuers, the Subsidiary Guarantors, the Collateral Agent and the Trustee (the "*Collateral Agreement*"), (iii) the ABL/Term Loan/Notes Intercreditor Agreement dated as of June 7, 2019, by and among Credit Suisse AG, Cayman Islands Branch (the "*Extended Term Loan Agent*"), as administrative agent and collateral agent under the Extended Term Loan Agreement, Deutsche Bank AG New York Branch (the "*ABL Lender*"), as administrative agent and collateral agent under the ABL Credit Agreement, Wilmington Trust, National Association (the "*Third Lien Notes Collateral Agent*"), as collateral agent under the Third Lien Notes Indenture and the Collateral Agent, and acknowledged by Holdings, NMG and each other subsidiary of Holdings party from time to time (as amended, restated, supplemented or otherwise modified from time to time, the "*ABL/Term Loan/Notes Intercreditor Agreement*"), (iv) the Junior Lien Intercreditor Agreement dated as of June 7, 2019, by and among the Extended Term Loan Agent, the Third Lien Notes Collateral Agent, the Collateral Agent and acknowledged by Holdings, NMG and each other subsidiary of Holdings party from time to time (as amended, restated, supplemented or otherwise modified from time to time, the "*Junior Lien Intercreditor Agreement*" and together with the ABL/Term Loan/Notes Intercreditor Agreement, "*Intercreditor Agreements*"), (v) that certain mortgage dated as of even date hereof by Mortgagor, in favor of the Extended Term Loan Agent, as mortgagee (the "*Term Loan Mortgage*") granting to the Extended Term Loan Agent a first priority lien and security interest in the Mortgaged Property (as described below) in connection with the Extended Term Loan Agreement, (vi) that certain mortgage dated as of even date hereof by Mortgagor, in favor of the Third Lien Notes Collateral Agent, as mortgagee (the "*Third Lien Notes Mortgage*") granting to the Third Lien Notes Collateral Agent a third priority lien and security interest in the Mortgaged Property (as described below) in connection with the Third Lien Notes Indenture, and (vii) that certain mortgage to be dated following the date hereof by Mortgagor, in favor of the ABL Lender, as mortgagee (the "*ABL Mortgage*", together with the Third Lien Notes Mortgage, and the Term Loan Mortgage, the "*Other Lien Mortgages*")

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which will grant to the ABL Lender a fourth priority lien and security interest in the Mortgaged Property (as described below) in connection with the ABL Credit Agreement. Capitalized terms used but not defined herein have the meanings given to them in the Indenture and the Collateral Agreement; provided, however, that if a definition is contained in both such documents, the definition in the Indenture shall control.

Pursuant to the Indenture, the Issuers have issued 14.000% Second Lien Notes due 2024 pursuant to, upon the terms of, and subject to the conditions specified in, the Notes Documents.

Mortgagor is a wholly-owned Subsidiary of Holdings and has derived and will derive substantial benefit from the extension of credit to the Issuer pursuant to the Indenture. In order to induce the Trustee to enter into the Indenture and to induce the Holders to acquire the Notes, the Mortgagor has agreed to grant this Mortgage to secure, among other things, the due and punctual payment and performance of all of the Obligations (as hereinafter defined) and the obligations of the Trustee to enter into the Indenture and the Holders to acquire the Notes are conditioned upon, among other things, the execution and delivery by the Mortgagor of this Mortgage in the form hereof to secure the Obligations.

As used in this Mortgage, the term "*Obligations*", collectively, shall mean all amounts owing to the Trustee or any Holder pursuant to the terms of the Indenture, the Notes, or any other Notes Document, including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Issuer or Subsidiary Guarantor of any proceeding under the Bankruptcy Code, as now constituted or hereafter amended, or any other Bankruptcy Law naming such Issuer or Subsidiary Guarantor as the debtor in such proceeding, in accordance with and at the rate specified in the Indenture, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding.

As used in this Mortgage, the term "*Secured Parties*" has the meaning set forth in the Collateral Agreement.

Pursuant to the requirements of the Indenture, the Mortgagor is granting this Mortgage to create a lien on and a security interest in the Mortgaged Property to secure the performance and payment by the Mortgagor of the Obligations. The Indenture also requires the granting by the Mortgagor or the other Issuers or Guarantors, as applicable, of mortgages, deeds of trust and/or deeds to secure debt (the "*Other Mortgages*") that create liens on and security interests in certain real and personal property other than the Mortgaged Property to secure the performance of the Obligations.

Granting Clauses

NOW, THEREFORE, IN CONSIDERATION OF the foregoing and in order to secure the due and punctual payment and performance of the Obligations for the benefit of the Secured Parties, Mortgagor hereby irrevocably grants, conveys, mortgages, assigns and pledges to the Mortgagee, with power of sale, and right of entry, a mortgage lien on and

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security interest in, all the following described property (the "*Mortgaged Property*") whether now owned or held or hereafter acquired:

(1) all of Mortgagor's right, title and interest in and to that certain lease covering and encumbering that certain real property described on Exhibit A hereto (the "*Land*"), which lease is more specifically described on Exhibit B hereto (as amended or modified from time to time, the "*Subject Lease*"), together with all now or hereafter existing assignments, modifications, extensions and renewals of the Subject Lease, and all credits, deposits, options, privileges and rights of the Mortgagor as tenant under the Subject Lease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Subject Lease for a succeeding term or terms, the right to expand the premises demised under the Subject Lease, and the option to purchase, if any, all or any portion of the premises demised under the Subject Lease together with all rights of Mortgagor under the Subject Lease;

(2) all of Mortgagor's right, title and interest in and to the leasehold estate created by the Subject Lease, together with all rights appurtenant thereto, including the easements over certain other adjoining land granted by any easement agreements, covenant or restrictive agreements and all air rights, mineral rights, water rights, oil and gas rights and development rights, if any, relating thereto, and also together with all of the other easements, rights, privileges, interests, hereditaments and appurtenances thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired (the "*Premises*");

(3) all of Mortgagor's right, title and interest in and to all buildings, improvements, structures, paving, parking areas, walkways and landscaping now or hereafter erected or located upon the Land, and all fixtures of every kind and type affixed to the Premises or attached to or forming part of any structures, buildings or improvements and replacements thereof now or hereafter erected or located upon the Land (the "*Improvements*");

(4) all of Mortgagor's right, title and interest in and to all apparatus, movable appliances, building materials, equipment, fittings, furnishings, furniture, machinery and other articles of tangible personal property of every kind and nature, and replacements thereof, now or at any time hereafter placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Improvements or the Premises, including all of Mortgagor's books and records relating thereto and including all pumps, tanks, goods, machinery, tools, lifts, equipment (including without limitation fire sprinklers and alarm systems, fire prevention or control systems, cleaning rigs, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, loading, unloading, lighting, power, sanitation, waste removal, entertainment, communications, computers, recreational, window or structural, maintenance, truck or car repair and all other equipment of every kind), restaurant, bar and all other indoor or outdoor furniture (including tables, chairs, booths, serving

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stands, planters, desks, sofas, racks, shelves, lockers and cabinets), bar equipment, glasses, cutlery, uniforms, linens, memorabilia and other decorative items, furnishings, appliances, supplies, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, freezers, refrigerators, walk-in coolers, signs (indoor and outdoor), computer systems, cash registers and inventory control systems, and all other apparatus, equipment, furniture, furnishings, and articles used in connection with the use or operation of the Improvements or the Premises, it being understood that the enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned (the property referred to in this subparagraph (3), the "*Personal Property*");

(5) all general intangibles owned by Mortgagor and relating to design, development, operation, management and use of the Premises or the Improvements, all certificates of occupancy, zoning variances, building, use or other permits, approvals, authorizations and consents obtained from and all materials prepared for filing or filed with any governmental agency in connection with the development, use, operation or management of the Premises and Improvements, all construction, service, engineering, consulting, leasing, architectural and other similar contracts concerning the design, construction, management, operation, occupancy and/or use of the Premises and Improvements, all architectural drawings, plans, specifications, soil tests, feasibility studies, appraisals, environmental studies and tests, surveys, engineering, physical condition and risk management reports, and similar materials relating to any portion of or all of the Premises and Improvements, and all payment and performance bonds or warranties or guarantees relating to the Premises or the Improvements, all to the extent assignable (the "*Permits, Plans and Warranties*");

(6) all now or hereafter existing leases or licenses (under which Mortgagor is landlord or licensor) and subleases (under which Mortgagor is sublandlord), concession, management, mineral or other agreements of a similar kind that permit the use or occupancy of the Premises or the Improvements for any purpose in return for any payment or other consideration, or the extraction or taking of any gas, oil, water or other minerals from the Premises in return for payment of any fee, rent or royalty (collectively, "*Leases*"), and all agreements or contracts for the sale or other disposition (including installment sale, contract for deed, options, rights of first refusal and rights of first offer) of all or any part of the Premises or the Improvements, now or hereafter entered into by Mortgagor, together with all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable thereunder ("*Rents*");

(7) all real estate tax or assessment refunds and all proceeds of the conversion, voluntary or involuntary, of any of the Mortgaged Property into cash or liquidated claims ("*Proceeds*"), including, subject to the rights of Mortgagor under the Indenture or other Notes Documents, Proceeds of insurance maintained by the Mortgagor and condemnation awards, any awards that may become due by reason of the taking by eminent domain or any transfer in lieu thereof of the whole or any part of the Premises or Improvements or any rights appurtenant thereto, and any awards for

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change of grade of streets, together with any and all moneys now or hereafter on deposit for the payment of real estate taxes, assessments or common area charges levied against the Mortgaged Property, unearned premiums on policies of fire and other insurance maintained by the Mortgagor covering any interest in the Mortgaged Property or required by the Indenture;

(8) all reserves, escrows or impounds required under the Indenture, if any, and all of Mortgagor's right, title and interest in all reserves, deferred payments, deposits, refunds and claims of any nature relating to the Mortgaged Property; and

(9) to the extent assignable, all extensions, improvements, betterments, renewals, substitutes and replacements of and all additions and appurtenances to, the Land, the Premises, the Improvements, the Personal Property, the Permits, Plans and Warranties and the Leases, hereinafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor on the Land, the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by the Mortgagor, all of which shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, for the benefit of the Secured Parties, forever, subject only to Permitted Liens and to satisfaction and release as provided in Section 3.04 and subject further to the right, power and authority herein given to the Mortgagee to collect and apply all Rents.

ARTICLE I

Representations, Warranties and Covenants of Mortgagor

Mortgagor agrees, covenants, represents and/or warrants as follows:

SECTION 1.01. Title, Mortgage Lien. Mortgagor has good and marketable title to, or in connection with the portion of the Mortgaged Property which is subject to the Subject Lease, a valid leasehold interest in, the Mortgaged Property, subject only to Permitted Liens, and upon recordation in the official real estate records in the county (or other applicable jurisdiction) in which the Mortgaged Property is located, this Mortgage will constitute a valid and enforceable mortgage lien on the Mortgaged Property in favor of the Mortgagee, subject only to Permitted Liens. Mortgagor will forever warrant and defend its title to the Mortgaged Property, the rights of Mortgagee therein under this Mortgage and the validity and priority of the lien of this Mortgage thereon against the claims of all persons and parties except those having rights under Permitted Liens (but only to the extent of those rights).

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SECTION 1.02. Indenture. This Mortgage is given pursuant to the Indenture. Mortgagor expressly covenants and agrees to pay when due, and to timely perform, and to cause the other Issuers and Subsidiary Guarantors to pay when due, and to timely perform, the Obligations in accordance with the terms of the Indenture.

SECTION 1.03. Maintenance of Mortgaged Property. Mortgagor will maintain the Improvements and the Personal Property in the manner required by the Indenture.

SECTION 1.04. Insurance. Mortgagor will keep or cause to be kept the Improvements and Personal Property insured against such risks, and in the manner, pursuant to the Indenture or the Collateral Agreement and shall purchase such additional insurance as may be required from time to time pursuant to the Indenture and the Collateral Agreement. Federal Emergency Management Agency Standard Flood Hazard Determination Forms will be purchased by Mortgagor for each Mortgaged Property on which Improvements are located. If any portion of Improvements constituting part of the Mortgaged Property is located in an area identified as a special flood hazard area by Federal Emergency Management Agency or other applicable agency, Mortgagor will purchase flood insurance in an amount reasonably satisfactory to Mortgagee, but in no event less than the maximum limit of coverage available under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, each as amended.

SECTION 1.05. Casualty Condemnation/Eminent Domain. Mortgagor shall give Mortgagee prompt written notice of any casualty or other damage to the Mortgaged Property or any proceeding for the taking of the Mortgaged Property or any portion thereof or interest therein under power of eminent domain or by condemnation or any similar proceeding in accordance with, and to the extent required by, the Indenture. Any Net Cash Proceeds received by or on behalf of Mortgagor in respect of any such casualty, damage or taking shall constitute trust funds held by Mortgagor for the benefit of the Secured Parties to be applied to repair, restore or replace the Mortgaged Property or, if a prepayment event shall occur with respect to any such Net Cash Proceeds, to be applied in accordance with the Indenture and the Collateral Agreement.

SECTION 1.06. Assignment of Leases and Rents. (a) Mortgagor hereby irrevocably and absolutely grants, transfers and assigns all of its right title and interest in all Leases and Rents to Mortgagee, together with any and all extensions and renewals thereof for purposes of securing and discharging the performance by Mortgagor of the Obligations. Except in connection with the ABL Security Documents, the Third Lien Notes Documents and the Term Loan Documents, Mortgagor has not assigned, pledged or executed any assignment or pledge of, and will not assign or execute any assignment or pledge of, any Leases or the Rents payable thereunder to anyone other than Mortgagee.

(b) All Leases entered into by Mortgagor at the Mortgaged Property following the date hereof shall be subordinate to the lien of this Mortgage unless otherwise expressly contemplated under the Indenture. Mortgagor will not enter into, any Lease if such Lease, as entered into, will not be subordinate to the lien of this Mortgage unless otherwise expressly contemplated under the Indenture.

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(c) Subject to Section 1.06(d), Mortgagor has assigned and transferred to Mortgagee all of Mortgagor's right, title and interest in and to the Rents now or hereafter arising from each Lease heretofore or hereafter made or agreed to by Mortgagor, it being intended that this assignment establish, subject to Section 1.06(d), an absolute transfer and assignment of all Rents and all Leases to Mortgagee and not merely to grant a security interest therein. Subject to Section 1.06(d), Mortgagee may in Mortgagor's name and stead (with or without first taking possession of any of the Mortgaged Property personally or by receiver as provided herein) operate the Mortgaged Property and rent, lease, license or let all or any portion of any of the Mortgaged Property to any party or parties at such rental and upon such terms as Mortgagee shall determine, and may collect and have the benefit of all of said Rents arising from or accruing at any time thereafter or that may thereafter become due under any Lease.

(d) So long as an Event of Default (as defined in Section 2.01) shall not have occurred and be continuing, Mortgagee will not exercise any of its rights under Section 1.06(c) or this Section 1.06(d), and Mortgagor shall be entitled to receive and collect the Rents accruing under any Lease; but after the occurrence and during the continuance of any Event of Default, Mortgagee may, at its option, receive and collect all Rents and enter upon the Premises and Improvements through its officers, agents, employees or attorneys for such purpose and for the operation and maintenance thereof. Mortgagor hereby irrevocably authorizes and directs each tenant, if any, and each successor, if any, to the interest of any tenant under any Lease, respectively, to rely upon any notice of a claimed Event of Default sent by Mortgagee to any such tenant or any of such tenant's successors in interest, and thereafter to pay Rents to Mortgagee without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from the Mortgagor, who shall have no right or claim against any such tenant or successor in interest for any such Rents so paid to Mortgagee. Each tenant or any of such tenant's successors in interest from whom Mortgagee or any officer, agent, attorney or employee of Mortgagee shall have collected any Rents, shall be authorized to pay Rents to Mortgagor only after such tenant or any of their successors in interest shall have received written notice from Mortgagee that the Event of Default is no longer continuing, unless and until a further notice of an Event of Default is given by Mortgagee to such tenant or any of its successors in interest.

(e) Mortgagee will not become a mortgagee in possession so long as it does not enter or take actual possession of the Mortgaged Property. In addition, Mortgagee shall not be responsible or liable for performing any of the obligations of the landlord under any Lease, for any waste by any tenant, or others, for any dangerous or defective conditions of any of the Mortgaged Property, for negligence in the management, upkeep, repair or control of any of the Mortgaged Property or any other act or omission by any other person unless and until it enters or takes actual possession of the Mortgaged Property.

(f) Mortgagor shall furnish to Mortgagee, within 30 days after a request by Mortgagee to do so, a written statement containing the names of all tenants, subtenants, licensees and concessionaires of the Premises or Improvements, and a copy of any Lease.

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SECTION 1.07. Security Agreement. This Mortgage is both a mortgage of real property and a grant of a security interest in personal property, and shall constitute and serve as a "security agreement" within the meaning of the uniform commercial code as adopted in the state wherein the Premises are located ("UCC"). Mortgagor has hereby granted unto Mortgagee a security interest in and to all the Mortgaged Property described in this Mortgage that is not real property, and Mortgagor has filed or will file UCC financing statements, and will file continuation statements prior to the lapse thereof, at the appropriate offices in the jurisdiction of formation of the Mortgagor to perfect the security interest granted by this Mortgage in all the Mortgaged Property that is not real property. Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact and agent, for Mortgagor and in its name, place and stead, in any and all capacities, to execute any document and to file the same in the appropriate offices (to the extent it may lawfully do so), and to perform each and every act and thing reasonably requisite and necessary to be done to perfect the security interest contemplated by the preceding sentence. Mortgagee shall have all rights with respect to the part of the Mortgaged Property that is the subject of a security interest afforded by the UCC in addition to, but not in limitation of, the other rights afforded Mortgagee hereunder and under the Collateral Agreement.

SECTION 1.08. Filing and Recording. Mortgagor will cause this Mortgage, the UCC financing statements referred to in Section 1.07, any other security instrument creating a security interest in or evidencing the lien hereof upon the Mortgaged Property and each UCC continuation statement and instrument of further assurance to be filed, registered or recorded and, if necessary, refiled, rerecorded and reregistered, in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to perfect the lien hereof upon, and the security interest of Mortgagee in, the Mortgaged Property until this Mortgage is terminated and released in full in accordance with Section 3.04 hereof. Mortgagor will pay all filing, registration and recording fees, all Federal, state, county and municipal recording, documentary or intangible taxes and other taxes, duties, imposts, assessments and charges, and all reasonable expenses incidental to or arising out of or in connection with the execution, delivery and recording of this Mortgage, UCC continuation statements any mortgage supplemental hereto, any security instrument with respect to the Personal Property, Permits, Plans and Warranties and Proceeds or any instrument of further assurance.

SECTION 1.09. Further Assurances. Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances from time to time necessary or advisable for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and on demand, Mortgagor will also execute and deliver and hereby appoints Mortgagee, following the occurrence and during the continuance of an Event of Default, as its true and lawful attorney-in-fact and agent, for Mortgagor and in its name, place and stead, in any and all capacities, to execute and file to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments

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necessary or advisable to evidence more effectively the lien hereof upon the Personal Property and to perform each and every act and thing requisite and necessary to be done to accomplish the same.

SECTION 1.10. Additions to Mortgaged Property. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor upon the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by Mortgagor and specifically described in the grant of the Mortgaged Property above, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, deeds of trust, conveyances or assignments thereof necessary or advisable for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

SECTION 1.11. No Claims Against Mortgagee. Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Mortgagee in respect thereof.

SECTION 1.12. Fixture Filing. (a) Certain portions of the Mortgaged Property are or will become "fixtures" (as that term is defined in the UCC) on the Land, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such portions of the Mortgaged Property that are or become fixtures.

(b) The real property to which the fixtures relate is described in Exhibit A attached hereto. The record owner of the leasehold estate granted under the Subject Lease is Mortgagor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagor set forth in the first paragraph of this Mortgage, and the name of the secured party for purposes of this financing statement is the name of the Mortgagee set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagor/debtor is the address of the Mortgagor set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagee/secured party from which information concerning the security interest hereunder may be obtained is the address of the Mortgagee set forth in the first paragraph of this Mortgage.

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SECTION 1.13. *Conflicts.* In the event of a conflict between any provision of this Mortgage and any provision of the Collateral Agreement, the Collateral Agreement shall govern. In the event of a conflict between any provision of this Mortgage and any provision of the Indenture, the Indenture shall govern.

SECTION 1.14. *Performance Under Each Other Lien Mortgages.* Mortgagor shall perform or observe all covenants and conditions to be performed or observed by Mortgagor under each Other Lien Mortgage and shall not permit an Event of Default under any Other Lien Mortgage to occur and continue.

SECTION 1.15. *Copies of Communication.* If at any time the Mortgagor provides the Extended Term Loan Agent, the Third Lien Notes Collateral Agent or the ABL Lender with any written communication, information, documentation, notice or demand of any kind (including regular monthly loan payments) relevant to any Other Lien Mortgage, including any appraisal or other similar material, then Mortgagor shall at the same time and by the same means provide the Mortgagee with a copy of the same. If at any time Mortgagor receives any written communication, information, documentation, notice or demand of any kind from the Extended Term Loan Agent, the Third Lien Notes Collateral Agent or the ABL Lender relevant to any Other Lien Mortgage or the loan or other obligation secured thereby, then Mortgagor shall immediately provide the Mortgagee with a copy of the same.

SECTION 1.16. *Inspection.* Without limiting any other rights of Mortgagee under the Notes Documents, Mortgagor shall permit Mortgagee and its agents, representatives and employees to inspect the Mortgaged Property and all books and records of Mortgagor located thereon with reasonable prior notice at normal business hours.

SECTION 1.17. *Savings Clause.* Any provision herein to the contrary notwithstanding, Mortgagor makes no assignment or grant of rights with respect to any (i) personal property or (ii) any general intangibles or any other rights (the "*Contract Rights*") to any Leases, management agreements, contracts, insurance proceeds, instruments, licenses or other documents (collectively, the "*Contracts*"), as to which the grant of a security interest therein would constitute a violation of applicable law or, under the terms of such Contracts, would result in a breach of the terms of, constitute a default under, result in the abandonment, invalidation or unenforceability of, create a right of termination in favor of, or require the consent of any other party to (other than Holdings, any Borrower, or any Subsidiary), such Contracts.

ARTICLE II

Defaults and Remedies

SECTION 2.01. *Events of Default.* Any Event of Default under the Indenture (as such term is defined therein) shall constitute an "Event of Default" under this Mortgage.

SECTION 2.02. *Demand for Payment.* Subject to the terms of the Intercreditor Agreements, if an Event of Default shall occur and be continuing, then, upon written demand

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of Mortgagee, Mortgagor will pay to Mortgagee all amounts due hereunder and under the Indenture and the Collateral Agreement and such further amount as shall be sufficient to cover the costs and expenses of collection, including attorneys' fees, disbursements and expenses incurred by Mortgagee, and Mortgagee shall be entitled and empowered to institute an action or proceedings at law or in equity for the collection of the sums so due and unpaid, to prosecute any such action or proceedings to judgment or final decree, to enforce any such judgment or final decree against Mortgagor and to collect, in any manner provided by law, all moneys adjudged or decreed to be payable.

SECTION 2.03. Rights to Take Possession, Operate and Apply Revenues.

(a) Subject to the terms of the Intercreditor Agreements and the Subject Lease, if an Event of Default shall occur and be continuing, Mortgagor shall, upon demand of Mortgagee, forthwith surrender to Mortgagee actual possession of the Mortgaged Property and, if and to the extent not prohibited by applicable law, Mortgagee itself, or by such officers or agents as it may appoint, may then enter and take possession of all the Mortgaged Property without the appointment of a receiver or an application therefor, exclude Mortgagor and its agents and employees wholly therefrom, and have access to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such Demand by Mortgagee, Mortgagee may to the extent not prohibited by applicable law, obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Mortgagee, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor will pay to Mortgagee, upon demand, all reasonable expenses of obtaining such judgment or decree, including reasonable compensation to Mortgagee's attorneys and agents with interest thereon at the rate per annum applicable to overdue amounts under the Indenture (the "Interest Rate"); and all such expenses and compensation shall, until paid, be secured by this Mortgage.

(c) Upon every such entry or taking of possession, Mortgagee may, to the extent not prohibited by applicable law or the Subject Lease, hold, store, use, operate, manage and control the Mortgaged Property, conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon, (ii) purchase or otherwise acquire additional fixtures, personalty and other property, (iii) insure or keep the Mortgaged Property insured, (iv) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same, or (v) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Mortgagee, all as may from time to time be directed or determined by Mortgagee to be in its best interest and Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact and agent, following the occurrence and during the continuance of an Event of Default for Mortgagor and in its name, place and stead, in any and all capacities, to perform any of the foregoing acts. Mortgagee may collect and receive all the Rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (i) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation

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for the services of all persons employed for such purposes), (ii) the costs of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (iii) the costs of insurance, (iv) such taxes, assessments and other similar charges as Mortgagee may at its option pay, (v) other proper charges upon the Mortgaged Property or any part thereof and (vi) the compensation, expenses and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the moneys and proceeds so received first to the payment of the Mortgagee for the satisfaction of the Obligations, and, if there is any surplus, to Mortgagor, subject to the entitlement of others thereto under applicable law.

(1) Whenever, before any sale of the Mortgaged Property under Section 2.06, all Obligations that are then due shall have been paid and all Events of Default fully cured, Mortgagee will surrender possession of the Mortgaged Property back to Mortgagor, its successors or assigns. The same right of taking possession shall, however, arise again if any subsequent Event of Default shall occur and be continuing.

SECTION 2.04. Right to Cure Mortgagor's Failure to Perform. Subject to the terms of the Intercreditor Agreements, should Mortgagor fail in the payment, performance or observance of any term, covenant or condition required by this Mortgage, or the Indenture (with respect to the Mortgaged Property), Mortgagee may pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the Interest Rate. Mortgagee shall be the judge using reasonable discretion of the necessity for any such actions and of the amounts to be paid. To the extent permitted by, and subject to the terms of the Subject Lease, Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or the Improvements or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without having any obligation to so perform or observe and without thereby becoming liable to Mortgagor, to any person in possession holding under Mortgagor or to any other person.

SECTION 2.05. Right to a Receiver. If an Event of Default shall occur and be continuing, Mortgagee shall be entitled to make application to a court of competent jurisdiction for, and (to the extent permitted by law) obtain from such a court, as a matter of right, the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the Rents. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Mortgaged Property is located. Mortgagor shall pay to Mortgagee upon demand all reasonable expenses, including receiver's fees, reasonable attorney's fees and disbursements, costs and agent's compensation incurred pursuant to the provisions of this Section 2.05; and all such expenses shall be secured by this Mortgage and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon at the Interest Rate.

SECTION 2.06. Foreclosure and Sale. (a) Subject to the terms of the Intercreditor Agreements, if an Event of Default shall occur and be continuing, Mortgagee may, among its other remedies, (i) commence an action to foreclose this Mortgage in the manner provided by law for the foreclosure of mortgages of real property, (ii) elect to sell the Mortgaged Property

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or any part of the Mortgaged Property by exercise of the power of foreclosure or of sale granted to Mortgagee by applicable law or this Mortgage, (iii) deliver to Mortgagor a written declaration of default and demand for sale, and a written notice of default and election to cause the Mortgaged Property to be sold, which notice Mortgagee will cause to be filed for record, (iv) with respect to any personalty, proceed as to both the real and personal property in accordance with Mortgagee's rights and remedies in respect of real property, or proceed to sell the personalty separately and without regard to the real property in accordance with Mortgagee's rights and remedies, or (v) exercise any of these remedies in combination or any other remedy at law or in equity. If notice of default has been given as then required by law, and after lapse of the time that may then be required by law, after recordation of the notice of default Mortgagee, without demand on Mortgagor, will, after notice of sale having been given as required by law, sell the Mortgaged Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels as Mortgagee determines, and in any order that it may determine, at public auction to the highest bidder. Mortgagee may postpone sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale and from time to time after that may postpone the sale by public announcement at the time fixed by the preceding postponement, and without further notice make the sale at the time fixed by the last postponement; or Mortgagee may, in its discretion, give a new notice of sale. Mortgagee may rescind any notice of default at any time before sale by executing a notice of rescission and recording it. The recordation of the notice will constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of Indebtedness affected by any prior declaration or notice of default. The exercise by Mortgagee of the right of rescission will not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Mortgagee to execute other declarations of default and demand for sale, or notices of default and of election to cause the Mortgaged Property to be sold, nor otherwise affect the Obligations, this Mortgage, or any of the rights, obligations, or remedies of Mortgagee. After sale, Mortgagee will deliver to the purchaser its deed conveying the property sold, but without any covenant or warranty, express or implied. Any Person, including Mortgagor or Mortgagee, may purchase at that sale.

(b) Any foreclosure or other sale of less than the whole of the Mortgaged Property or any defective or irregular sale made hereunder shall not exhaust the power of foreclosure or of sale provided for herein; and subsequent sales may be made hereunder until the Obligations have been satisfied, or the entirety of the Mortgaged Property has been sold.

(c) If an Event of Default shall occur and be continuing, Mortgagee may instead of, or in addition to, exercising the rights described in Section 2.06(a) above and either with or without entry or taking possession as herein permitted, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy to pursue any remedy available to Mortgagee, all as Mortgagee shall determine most effectual for such purposes.

SECTION 2.07. Other Remedies. (a) Subject to the terms of the Intercreditor Agreements, in case an Event of Default shall occur and be continuing, Mortgagee may also exercise, to the extent not prohibited by law, any or all of the remedies available to a secured party under the UCC.

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(b) In connection with a sale of the Mortgaged Property or any Personal Property and the application of the proceeds of sale as provided in Section 2.08, Mortgagee shall be entitled to enforce payment of and to receive up to the principal amount of the Obligations, plus all other charges, payments and costs due under this Mortgage, and to recover a deficiency judgment for any portion of the aggregate principal amount of the Obligations remaining unpaid, with interest.

SECTION 2.08. Application of Sale Proceeds and Rents. Subject to the terms of the Intercreditor Agreements, after any foreclosure sale of all or any of the Mortgaged Property, Mortgagee shall receive and apply the proceeds of the sale together with any Rents that may have been collected and any other sums that then may be held by Mortgagee under this Mortgage in accordance with the Collateral Agreement.

SECTION 2.09. Mortgagor as Tenant Holding Over. Subject to the terms of the Intercreditor Agreements, if Mortgagor remains in possession of any of the Mortgaged Property after any foreclosure sale by Mortgagee, at Mortgagee's election Mortgagor shall be deemed a tenant holding over and shall forthwith surrender possession to the purchaser or purchasers at such sale or be summarily dispossessed or evicted according to provisions of law applicable to tenants holding over.

SECTION 2.10. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Mortgagor waives, to the extent not prohibited by law, (i) the benefit of all laws now existing or that hereafter may be enacted (x) providing for any appraisal or valuation of any portion of the Mortgaged Property and/or (y) in any way extending the time for the enforcement or the collection of amounts due under any of the Obligations or creating or extending a period of redemption from any sale made in collecting said debt or any other amounts due Mortgagee, (ii) any right to at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, stay, statute of limitations, extension or redemption, or sale of the Mortgaged Property as separate tracts, units or estates or as a single parcel in the event of foreclosure or notice of deficiency, and (iii) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of or each of the Obligations and marshaling in the event of foreclosure of this Mortgage.

SECTION 2.11. Discontinuance of Proceedings. Subject to the terms of the Intercreditor Agreements, in case Mortgagee shall proceed to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall be discontinued or abandoned for any reason, or shall be determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

SECTION 2.12. Suits to Protect the Mortgaged Property. Subject to the terms of the Intercreditor Agreements, Mortgagee shall have power (a) to institute and maintain suits and proceedings to prevent any impairment of the Mortgaged Property by any acts that may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom and (c) to restrain the enforcement of

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or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of or compliance with such enactment, rule or order would impair the security or be prejudicial to the interest of Mortgagee hereunder.

SECTION 2.13. Filing Proofs of Claim. Subject to the terms of the Intercreditor Agreements, in case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, whether arising under any Bankruptcy Law or otherwise, Mortgagee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the Obligations secured by this Mortgage at the date of the institution of such proceedings and for any interest accrued, late charges and additional interest or other amounts due or that may become due and payable hereunder after such date.

SECTION 2.14. Possession by Mortgagee. Subject to the terms of the Intercreditor Agreements, notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, any of its property or the Mortgaged Property, Mortgagee shall be entitled, to the extent not prohibited by law, to remain in possession and control of all parts of the Mortgaged Property now or hereafter granted under this Mortgage to Mortgagee in accordance with the terms hereof and applicable law.

SECTION 2.15. Waiver. (a) Subject to the terms of the Intercreditor Agreements, no delay or failure by Mortgagee to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or be construed to be a waiver of any such breach or Event of Default or acquiescence therein; and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver by Mortgagee to or of any breach or Event of Default by Mortgagor in the performance of the Obligations shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or of any other Obligations by Mortgagor hereunder. No failure on the part of Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any future Event of Default by Mortgagor.

(b) Even if Mortgagee (i) grants some forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment of any sums secured hereby, (iii) waives or does not exercise some right granted herein or under the Notes Documents, (iv) releases a part of the Mortgaged Property from this Mortgage, (v) agrees to change some of the terms, covenants, conditions or agreements of any of the Notes Documents, (vi) consents to the filing of a map, plat or replat affecting the Premises, (vii) consents to the granting of an easement or other right affecting the Premises or (viii) makes or consents to an agreement subordinating Mortgagee's lien on the Mortgaged Property hereunder; no such act or omission shall preclude Mortgagee from exercising any other right, power or privilege herein granted or intended to be granted in the event of any breach or Event of Default then made or of any subsequent default; nor, except as otherwise

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expressly provided in an instrument executed by Mortgagee, shall this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or part of the Mortgaged Property, Mortgagee is hereby authorized and empowered to deal with any vendee or transferee with reference to the Mortgaged Property secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

SECTION 2.16. Waiver of Trial by Jury. To the fullest extent permitted by applicable law, Mortgagor and Mortgagee each hereby irrevocably and unconditionally waive trial by jury in any action, claim, suit or proceeding relating to this Mortgage and for any counterclaim brought therein. Mortgagor hereby waives all rights to interpose any counterclaim in any suit brought by Mortgagee hereunder and all rights to have any such suit consolidated with any separate suit, action or proceeding.

SECTION 2.17. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, and each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder, in the Indenture or now or hereafter existing at law or in equity or by statute. Each right, power or remedy conferred upon or reserved to Mortgagee by this Mortgage may be pursued separately, successively or concurrently against Mortgagor or against the Mortgaged Property or any portion thereof or with respect to any Other Mortgage or any property (real, personal or intangible) or any portion thereof with respect to any Other Mortgage, in each instance at the sole discretion of Mortgagee.

ARTICLE III

Miscellaneous

SECTION 3.01. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 3.02. Notices. All notices and communications hereunder shall be in writing and given to Mortgagor in accordance with the terms of the Indenture at the address set forth on the first page of this Mortgage and to the Mortgagee as provided in the Indenture.

SECTION 3.03. Successors and Assigns. All of the grants, covenants, terms, provisions and conditions herein shall run with the Premises and the Improvements and shall apply to, bind and inure to, the benefit of the permitted successors and assigns of Mortgagor and the successors and assigns of Mortgagee.

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SECTION 3.04. Satisfaction and Cancellation. (a) This Mortgage shall continue in effect until all of the Obligations (other than Obligations in respect of contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted) have been paid in full in cash or immediately available funds.

(b) Upon any sale or other transfer by Mortgagor of the Mortgaged Property or any portion thereof, in each case solely to the extent permitted under the Indenture or Collateral Agreement, to any Person that is not an Issuer or Subsidiary Guarantor, or, upon the effectiveness of any written consent to the release of the lien and security interest granted hereby in the Mortgaged Property pursuant to Article IX of the Indenture or pursuant to Section 5.1 of the ABL/Term Loan Notes Intercreditor Agreement or Section 5.1 of the Junior Lien Intercreditor Agreement, the lien and security interest in the Mortgaged Property shall be automatically released.

(c) In connection with any termination or release pursuant to subsection (a) or (b), the Mortgage shall be marked "satisfied" by the Mortgagee, and this Mortgage shall be canceled or reconveyed of record at the request and at the expense of the Mortgagor. Mortgagee shall execute any documents reasonably requested by Mortgagor to accomplish the foregoing or to accomplish any release contemplated by this Section 3.04 and Mortgagor will pay all costs and expenses, including reasonable attorneys' fees, disbursements and other charges, incurred by Mortgagee in connection with the preparation and execution of such documents, as permitted by applicable law.

SECTION 3.05. Definitions. As used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (a) "including" shall mean "including but not limited to"; (b) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (c) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage or deed of trust"; (d) "obligation" shall mean "obligation, duty, covenant and/or condition"; and (e) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein." Any act that Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee. Any act that is prohibited to Mortgagor hereunder is also prohibited to all lessees of any of the Mortgaged Property. Each appointment of Mortgagee as attorney-in-fact for Mortgagor under the Mortgage is irrevocable, with power of substitution and coupled with an interest. Subject to the applicable provisions hereof, Mortgagee has the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction, in its sole discretion, whenever such consent, approval, acceptance or satisfaction is required hereunder.

SECTION 3.06. Multisite Real Estate Transaction. Mortgagor acknowledges that this Mortgage is one of a number of Other Mortgages and Notes Documents that secure the Obligations. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Mortgagee of any security for or guarantees of any of the Obligations hereby secured, or by any failure, neglect or omission

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on the part of Mortgagee to realize upon, enforce or protect any Obligation or indebtedness hereby secured or any collateral security therefor including the Other Mortgages and other Notes Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), forbearance, sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations secured (unless all Obligations are satisfied) or of any of the collateral security therefor, including the Other Mortgages and other Notes Documents or of any guarantee thereof, and Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy, in whole or in part, available to it under any or all of the Other Mortgages and other Notes Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee's rights and remedies under any or all of the Other Mortgages and other Notes Documents shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of Mortgagee hereunder shall not impair the lien of any of the Other Mortgages and other Notes Documents or any of Mortgagee's rights and remedies thereunder. Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages and other Notes Documents separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

SECTION 3.07. No Oral Modification. This Mortgage may not be changed or terminated orally but only by an instrument in writing signed by both Mortgagor and Mortgagee.

SECTION 3.08. Subject to Intercreditor Agreements. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Mortgagee, for the benefit of the Secured Parties hereunder, pursuant to this Mortgage and the exercise of any right or remedy by the Mortgagee and the other Secured Parties hereunder are subject to the provisions of the Intercreditor Agreements. In the event of any conflict or inconsistency between the provisions of any Intercreditor Agreement and this Mortgage, the provisions of such Intercreditor Agreement shall control.

SECTION 3.09. Reduction of Secured Amount. In the event the maximum principal amount secured by this Mortgage is less than the aggregate Obligations, then the amount secured hereby shall be reduced only by the last and final sums that Mortgagor or any other Issuer or Subsidiary Guarantor repays with respect to the Obligations and shall not be reduced by any intervening repayments of the Obligations. So long as the balance of the Obligations exceeds the amount secured hereby, any payments of the Obligations shall not be deemed to be applied against, or reduce, the portion of the Obligations secured by this Mortgage.

SECTION 3.10. Future Advances. This Mortgage is given to secure the Obligations under, or in respect of, the Notes Documents, (collectively, "Secured Debt Agreements") and shall secure not only Obligations with respect to presently existing indebtedness under the foregoing documents and agreements but also any and all other Obligations which may hereafter be owing to the Secured Parties under the Secured Debt Agreements, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred,

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accrued or capitalized, including future advances and re-advances and other obligations, pursuant to the Secured Debt Agreements, whether such advances or obligations are obligatory or to be made at the option of the Secured Parties, or otherwise, to the same extent as if such future advances or obligations were made on the date of the execution of this Mortgage, to the extent permitted by applicable law. The Lien of this Mortgage shall be valid as to all Obligations secured hereby, including future advances and obligations, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. This Mortgage is intended to and shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting solely taxes and assessments levied on the real estate. Although this Mortgage is given to secure all future advances and obligations made by Mortgagee and/or the other Secured Parties to or for the benefit of the Issuers and Subsidiary Guarantors, Mortgagor and/or the Mortgaged Property, whether obligatory or optional, Mortgagor and Mortgagee hereby acknowledge and agree that Mortgagee and the other Secured Parties are obligated by the terms of the Secured Debt Agreements to make certain future advances or obligations, subject to the fulfillment of the relevant conditions set forth in the Secured Debt Agreements.

SECTION 3.11. Concerning the Mortgagee. The Mortgagee has been appointed as Collateral Agent pursuant to the Indenture. The actions of the Mortgagee hereunder are subject to the provisions of the Indenture (including the rights, benefits, privileges, protections, immunities and indemnities of the Collateral Agent, all of which are incorporated herein *mutatis mutandis*, as a part hereof) and the Intercreditor Agreements. Beyond the exercise of reasonable care in the custody thereof, the Mortgagee shall have no duty as to any Mortgaged Property in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Mortgagee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any lien or security interest in the Mortgaged Property. Notwithstanding anything in this Mortgage to the contrary and unless otherwise provided in the Intercreditor Agreements, the Mortgagee shall act or refrain from acting with respect to any Mortgaged Property or any occasion requiring or permitting an approval, consent, discretion, waiver, election or other action on the part of the Mortgagee only on the written instructions and at the written direction of the holders of a majority of the aggregate principal amount of the Obligations then outstanding; *provided* that the Mortgagee shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Mortgagee to liability or that is contrary to the Notes Documents or applicable laws.

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ARTICLE IV

Particular Provisions

This Mortgage is subject to the following provisions relating to the particular laws of the state wherein the Premises are located:

SECTION 4.01. Applicable Law; Certain Particular Provisions. This Mortgage shall be governed by and construed in accordance with the internal law of the state where the Mortgaged Property is located, except that Mortgagor expressly acknowledges that by their terms, the Indenture and other Notes Documents (aside from those Other Mortgages to be recorded outside New York) shall be governed by the internal law of the State of New York, without regard to principles of conflict of law. Mortgagor and Mortgagee agree to submit to jurisdiction and the laying of venue for any suit on this Mortgage in the state where the Mortgaged Property is located. The terms and provisions set forth in Appendix A attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any conflict between the terms and provisions contained in the body of this Mortgage and the terms and provisions set forth in Appendix A, the terms and provisions set forth in Appendix A shall govern and control.

ARTICLE V

Subject Lease

Mortgagor agrees, covenants, represents and/or warrants as follows:

SECTION 5.01. The Subject Lease. (a) The Subject Lease is a valid and subsisting lease of that portion of the Premises demised thereunder for the term therein set forth, is in full force and effect in accordance with the terms thereof, and has not been modified except as expressly set forth herein. No material default exists, and to the best knowledge of Mortgagor, no event or act has occurred and no condition exists which with the passage of time or the giving of notice or both would constitute a material default, under the Subject Lease. Mortgagor has a good and marketable interest in the Subject Lease, Mortgagor has the full right, power and authority to grant this Mortgage with respect to Mortgagor's leasehold interest under the Subject Lease, and this Mortgage is and shall remain a valid and enforceable lien thereon. For the avoidance of doubt, notwithstanding any contrary provision in this Mortgage, it is the express intention of the parties that insofar as any of the Mortgaged Property is not owned by Mortgagor but is leased to Mortgagor by landlord pursuant to the Subject Lease, the lien of this Mortgage and the rights, remedies and interests of Mortgagee hereunder (i) shall affect and attach only to Mortgagor's leasehold estate and interest in the Subject Lease, and shall not survive the Subject Lease, and do not and shall not affect or attach to, the landlord's fee or any other superior interest in the Land, Improvements or in any other elements or items (if any) of the Mortgaged Property, or the landlord's interest in the Subject Lease or its interest in the premises leased or demised pursuant the Subject Lease, (ii) are subject and subordinate in all respects to, the landlord's fee interest or any other

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superior interest in the Land, Improvements or in any other elements or items (if any) of the Mortgaged Property, and (iii) in the case of (i) and (ii) are further subject to all terms, conditions and provisions of the Subject Lease.

(b) Without the prior written consent of Mortgagee, Mortgagor will not modify, amend, or in any way alter any of the terms of the Subject Lease if such modification, amendment or alteration would increase the monetary obligations of the Mortgagor (including any obligations the performance of which entail the expenditure of money) under the Subject Lease in any material respect or otherwise be adverse in any material respect to the interests of Mortgagee or the value of the Mortgaged Property or would impair the lien or enforcement of this Mortgage. Except to the extent permitted under the Indenture, without the prior written consent of Mortgagee, Mortgagor will not (i) in any way cancel, release, terminate, surrender or reduce the term of the Subject Lease, (ii) fail to exercise any option to renew or extend the term of the Subject Lease, (iii) waive, excuse, condone or in any way release or discharge the lessor under the Subject Lease of or from any material obligations, covenants, conditions and agreements by said lessor to be done and performed or (iv) consent to the subordination of the Subject Lease to any mortgage unless such subordination is conditioned upon the non-disturbance of Mortgagor, as tenant, by the applicable mortgagee on terms and conditions reasonably satisfactory to Mortgagee. Any attempt on the part of Mortgagor to do any of the foregoing without such written consent of Mortgagee shall be ipso facto null and void and of no effect and shall constitute an Event of Default hereunder. Mortgagor shall promptly notify the Mortgagee in writing of the receipt by the Mortgagor of any written notice from the lessor of the Subject Lease of any material default or notice of event of default under or a termination of the Subject Lease pursuant to the provisions of the Subject Lease, and shall promptly cause a copy of each such notice received by the Mortgagor to be delivered to the Mortgagee.

(c) Mortgagor shall at all times promptly and faithfully keep and perform in all material respects, or cause to be kept and performed in all material respects, all the covenants and conditions contained in the Subject Lease by the lessee therein to be kept and performed and shall in all material respects conform to and comply with the terms and conditions of the Subject Lease and Mortgagor further covenants that it will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would reasonably be expected to impair the security of this Mortgage or constitute a default or event of default under the Subject Lease. No release or forbearance of any Mortgagor's obligations under the Subject Lease including its obligation with respect to the payment of rent as provided in the Subject Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Subject Lease, pursuant to the Lease or otherwise, shall release the Mortgagor from any of its obligations under this Mortgage. The Mortgagor will furnish to the Mortgagee, upon demand, proof of payment of all items which are required to be paid by the Mortgagor pursuant to the Subject Lease and any proof of payment or performance which is required to be given by Mortgagor under the Subject Lease.

(d) Mortgagor shall promptly send Mortgagee a copy of any notice of default that it sends to the lessor under the Subject Lease and shall promptly provide to Mortgagee a copy of any notice of default received by Mortgagor from such lessor and this shall be done

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without regard to the fact that Mortgagee may be entitled to such notice directly from the lessor. Mortgagor shall promptly notify Mortgagee of any default under the Subject Lease by lessor or giving of any notice by the lessor to Mortgagor of such lessor's intention to end the term thereof or the exercise of an early termination right under the Subject Lease.

(e) To the extent that Mortgagee is not given the right by the lessor to cure any defaults of failure of compliance of Mortgagor under the Subject Lease pursuant to the terms thereof, then notwithstanding any other provision of this Mortgage, following written notice of default sent by the lessor to Mortgagor and the expiration of one-half of Mortgagor's cure period with respect to such default, or upon Mortgagee's learning of any such failure of compliance by Mortgagor and notice from Mortgagee to Mortgagor thereof, Mortgagee may (but shall not be obligated to) take any such action Mortgagee deems reasonably necessary or desirable to cure, in whole or in part, any such default or failure of compliance by Mortgagor under the Subject Lease; and upon the receipt by Mortgagee from Mortgagor or the lessor under the Subject Lease of any written notice of default by Mortgagor as the lessee thereunder, or upon Mortgagee's written notice of Mortgagor of non-compliance and Mortgagor's failure to dispute the same within five (5) Business Days of receipt of such written notice, Mortgagee may rely thereon, and such notice and expiration of one-half of Mortgagor's cure period or Mortgagor's failure to dispute Mortgagee's notice shall constitute full authority and protection to Mortgagee for any action taken or omitted to be taken in good faith reliance thereon. All sums, including reasonable attorneys' fees, so reasonably expended by the Mortgagee to cure or prevent any such default or non-compliance, or expended to sustain the lien of this Mortgage or its priority, shall be deemed secured by this Mortgage and shall be paid by the Mortgagor on demand, with interest accruing thereon at the Interest Rate. Upon the vesting of Mortgagee's right to cure defaults under the Subject Lease as set forth pursuant to this subsection, or Mortgagor hereby expressly grants to Mortgagee (subject to the terms of the Subject Lease), and agrees that Mortgagee shall, upon prior notice to Mortgagor, have, the absolute and immediate right to enter in and upon the Land and the Improvements or any part thereof to such extent and as often as Mortgagee deems reasonably necessary or desirable in order to cure any such default or alleged default or any such non-compliance by Mortgagor, provided, that, Mortgagee agrees that it shall not materially interfere with Mortgagor's business conducted on the Land and Improvements and shall comply with Mortgagor's reasonable security requirements.

(f) Upon the occurrence and during the continuance of any Event of Default, all options, election, consents and approval rights conferred upon Mortgagor as lessee under the Subject Lease, together with the right of termination, cancelation, modification, change, supplement, alteration or amendment of the Subject Lease, all of which have been assigned for collateral purposes to Mortgagee, shall automatically vest exclusively in and be exercisable solely by Mortgagee provided, that, if the lessor under the Subject Lease is not obligated to accept Mortgagee's exercise of such options, elections, consents and approval rights, then Mortgagor shall have the right to exercise the same, subject to Mortgagee's prior written consent.

(g) Mortgagor will give Mortgagee prompt written notice of the commencement of any material arbitration or appraisal proceeding or any material litigation under and pursuant to the provisions of the Subject Lease. Following the occurrence and during the continuance

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of an Event of Default, Mortgagee shall have the right, but not the obligation, to intervene and participate in any such proceeding and following the occurrence and during the continuance of a proceeding under any Bankruptcy Law or payment Event of Default, Mortgagee shall have the right, but not the obligation, to intervene and participate in such proceeding under any Bankruptcy Law or any material litigation and Mortgagor shall confer and use commercially reasonable efforts to cooperate with Mortgagee and its counsel to the extent which Mortgagee deems reasonably necessary for the protection of Mortgagee. Mortgagor may compromise any dispute or appraisal which is the subject of an arbitration or appraisal proceeding or litigation, provided that, following the occurrence and during the continuance of an Event of Default, Mortgagor shall first get the prior written consent of Mortgagee which approval will not be unreasonably withheld or delayed with respect to any such material disputes or appraisals or litigation.

(h) So long as this Mortgage is in effect, there shall be no merger of the Subject Lease or any interest therein, or of the leasehold estate created thereby, with the fee estate in the Land or any portion thereof by reason of the fact that the Subject Lease or such interest therein may be held directly or indirectly by or for the account of any person who shall hold the lessor's fee estate in the Land or any portion thereof or any interest of the lessor under the Subject Lease. In case the Mortgagor acquires fee title to the Land, this Mortgage shall attach to and cover and be a lien upon the fee title acquired, and such fee title shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage. Mortgagor shall notify Mortgagee of any such acquisition and, on written request by Mortgagee, shall cause to be executed and recorded all such other and further assurances or other instruments in writing as may in the reasonable opinion of Mortgagee be necessary or appropriate to effect the intent and meaning hereof and shall deliver to Mortgagee an endorsement to Mortgagee's loan title insurance policy insuring that such fee title or other estate is subject to the lien of this Mortgage.

(i) If any action or proceeding shall be instituted to evict Mortgagor or to recover possession of any leasehold parcel or any part thereof or interest therein or any action or proceeding otherwise affecting the Subject Lease or this Mortgage shall be instituted (including without limitation the appointment of a receiver), then Mortgagor will, promptly upon service thereof on or to Mortgagor, deliver to Mortgagee copies of any notice of motion, order to show cause and of other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(j) The lien of this Mortgage shall attach to all of Mortgagor's rights and remedies at any time arising under or pursuant to Bankruptcy Law, including under Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Mortgagor's rights to remain in possession of each leasehold parcel.

(k) Mortgagor hereby unconditionally assigns, transfers and sets over to Mortgagee all of Mortgagor's claims and rights to the payment of damages arising from any rejection of the Subject Lease by the lessor or any other fee owner of any leasehold parcel or any portion thereof under any Bankruptcy Law or in any proceeding under any Bankruptcy Law. Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Subject Lease,

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including, without limitation, the right to file and prosecute, without joining or the joinder of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case with respect to the lessor or any fee owner of all or a portion of any leasehold parcel under any Bankruptcy Law or in any proceeding under Bankruptcy Law. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Mortgagor shall promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Mortgagee, all such instruments, agreements and other documents, as may at any time hereafter be required by Mortgagee to effectuate and carry out the assignment pursuant to this subsection. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, in the event of a rejection of the Subject Lease by the lessor or any other fee owner of any leasehold parcel or any portion thereof any the Bankruptcy Law or in any proceeding under any Bankruptcy Law, (a) Mortgagee shall not seek to treat the Subject Lease as terminated without the prior written consent of Mortgagor and any such termination by Mortgagee without Mortgagor's consent shall be ipso facto null and void and no effect, and (b) Mortgagee shall have the right to retain any amounts it receives as damages arising out of the rejection of the Subject Lease and Mortgagee shall promptly pay to Mortgagor any such amounts it receives.

(l) If pursuant to Subsection 345(h)(1) of the Bankruptcy Code, or any other applicable Bankruptcy Law, Mortgagor shall seek to offset against the rent reserved in the Subject Lease the amount of any damages caused by the nonperformance by the lessor or any fee owner of any of their respective obligations under such Subject Lease after the rejection by the lessor or any fee owner of such Subject Lease under the Bankruptcy Code or any other applicable Bankruptcy Law, then Mortgagor shall, prior to effecting such offset, notify Mortgagee no less than ten (10) Business Days prior thereto of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Mortgagee shall have the right to object to all or any part of such offset that, in the reasonable judgment of Mortgagee, would constitute a breach of such Subject Lease, and in the event of such objection, Mortgagor shall not effect any offset of the amounts objected to by Mortgagee. Neither Mortgagee's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Mortgagee or the waiver of any rights or remedies of Mortgagee.

(m) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor or any fee owner of any leasehold parcel, or any portion thereof or interest therein, or the Subject Lease in connection with any case under any Bankruptcy Law, then Mortgagee shall have the option, exercisable upon written notice from Mortgagee to Mortgagor, to conduct and control any such litigation with counsel of Mortgagee's choice. Mortgagee may proceed in its own name or in the name of Mortgagor in connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents or other documents required by Mortgagee in connection therewith. Mortgagor shall, upon demand, pay to Mortgagee all reasonable costs and expenses (including attorneys' fees and court costs) paid or incurred by Mortgagee in connection with the prosecution or conduct of any such proceedings. Mortgagor shall not commence or intervene in any action, suit, proceeding or case, or file any application or make any motion, in respect of the Subject

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Lease in any such case under any Bankruptcy Law without the prior written consent of Mortgagee. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Mortgagee shall not preclude Mortgagor from electing to retain its possessory interest and rights under the Subject Lease pursuant to Section 365(h)(1)(A)(ii) of the Bankruptcy Code.

(n) Mortgagor shall, after obtaining knowledge thereof, promptly notify Mortgagee of any filing by or against the lessor or fee owner of any leasehold parcel of a petition under any Bankruptcy Law. Mortgagor shall promptly deliver to Mortgagee, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

(o) If there shall be filed by or against Mortgagor a petition under any Bankruptcy Law and Mortgagor, as lessee under a Subject Lease, shall determine to reject such Subject Lease pursuant to any Bankruptcy Law, including Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Mortgagee not less than twenty (20) days' prior notice of the date on which Mortgagor shall first apply to any Governmental Authority of competent jurisdiction presiding over any proceeding arising in, under or related to any Bankruptcy Law to reject such Subject Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such twenty (20) day period a notice stating that Mortgagee demands that Mortgagor assume and assign such Subject Lease to Mortgagee pursuant to any Bankruptcy Law, including Section 365 of the Bankruptcy Code. If Mortgagee shall serve upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject such Subject Lease and shall comply with the demand provided for in the preceding sentence.

(p) Effective upon the entry of an order for relief with respect to Mortgagor under any Bankruptcy Law, Mortgagor hereby assigns and transfers to Mortgagee a non-exclusive right to apply to any Governmental Authority of competent jurisdiction presiding over any proceeding arising in, under or related to any Bankruptcy Law under such Bankruptcy Law including subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Subject Lease may be rejected or assumed.

(q) The Mortgagor, promptly upon learning that lessor has failed to perform the terms and provision thereunder (including by reason of a rejection or disaffirmance or purported rejection or disaffirmance of such Subject Lease pursuant to any Bankruptcy Law), shall notify the Mortgagee of any such failure to perform. The Mortgagor unconditionally assigns, transfers, and sets over to the Mortgagee any and all damage claims thereunder. This assignment constitutes a present, irrevocable, and unconditional assignment of all damage claims under the Subject Lease, and shall continue in effect until the Obligations have been satisfied in full. Notwithstanding the foregoing, the Mortgagee grants to the Mortgagor a revocable license to exercise any such Subject Lease damage claims which license may only be revoked by the Mortgagee upon the occurrence and during the continuance of any Event of Default.

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(r) Without limiting the foregoing or any other provisions herein, with respect to all easements, easement agreements, covenant or restrictive agreements, and all Leases, constituting a part of the Mortgaged Property, Mortgagor shall at all times promptly and faithfully perform in all material respects or cause to be kept and performed in all material respects, all the covenants and conditions contained therein on the part of or as applicable to Mortgagor to be kept or performed pursuant to the terms and conditions thereof and/or in accordance with the terms and conditions of the Subject Lease, provided that in no event shall a breach of this Section 5.01(r) result in an Event of Default if such breach would not reasonably be expected to impair the security of this Mortgage or to constitute a default or event of default under the Subject Lease.

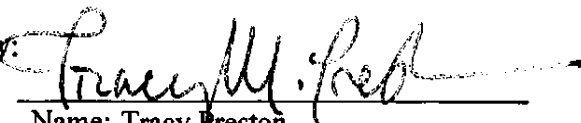
SECTION 5.02. Specific Lease Requirements. None.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

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IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered to Mortgagee by Mortgagor on the date of the acknowledgment attached hereto.

THE NEIMAN MARCUS GROUP LLC, a
Delaware limited liability company (f/k/a The
Neiman Marcus Group, Inc.)

by: 

Name: Tracy Preston

Title: SVP, General Counsel, Corporate Secretary
and CCO

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Exhibit A
to Mortgage

Description of the Land

Parcel 1:

Lots 3A and 3B in Olympia Centre Subdivision of various lots and parts of vacated alleys in Block 54 in Kinzie's Addition to Chicago, being a subdivision in Section 10, Township 39 North, Range 14, East of the Third Principal Meridian recorded as Document number 85070356, in Cook County, Illinois.

Parcel 2:

An easement for access and for the purpose of making repairs and replacements of any mechanical equipment located in Lot 3C in Olympia Centre Subdivision of various lots and parts of vacated alleys in Block 54 in Kinzie's Addition to Chicago, being a subdivision in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, recorded as Document number 85070356 in Cook County, Illinois.

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Exhibit B
to Mortgage

Description of the Subject Lease

Restated Lease Agreement, dated January 16, 1984, by and between 737 North Michigan Avenue Investors LLC, successor-in-interest to original landlord LaSalle National Bank (and its successors and assigns, if any) ("Landlord") and The Neiman Marcus Group LLC, f/k/a The Neiman Marcus Group, Inc., successor-in-interest to original tenant Carter Hawley Hale Stores, Inc. (and its successors and assigns, if any) ("Tenant"), as evidenced by that certain Memorandum of Lease Agreement, dated January 16, 1984, recorded February 2, 1984 as Document number 26954661 which restates, amends, and supersedes the Memorandum of Lease recorded July 30, 1981 as Document number 25954344, as amended by that certain unrecorded Amendment to Memorandum of Agreement, dated September 4, 1985, as assigned by that certain Assignment of Lease and Assumption Agreement, dated August 27, 1987, recorded October 28, 1987 as Document number 87581959, as amended by that certain Amendment No. 1 to Restated Lease Agreement, effective as of August 7, 2002, as amended by that certain Amendment to Lease, dated August 19, 2008, as amended by that certain Second Amendment to Restated Lease Agreement, dated June 28, 2013, as amended by that certain Amendment to Lease and Amendment to Memorandum of Lease dated August 20, 2019 and to be recorded concurrently herewith (collectively, the "Subject Lease").

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Appendix A to Mortgage

Local Law Provisions

The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Appendix A and the remainder of the Mortgage, this Appendix A shall govern.

1. The Indenture provides that, while the principal amount of the indebtedness secured hereby may increase or decrease from time to time, the sum of the principal amount of Obligations from time to time outstanding and secured hereby shall not exceed \$550,000,000.00, plus all interest thereon, and any and all disbursements made by Mortgagee for the payment of taxes, special assessments or insurance, with interest on such disbursements. Pursuant to, and subject to the terms of the Indenture, the maturity date of the Obligations is April 25, 2024. The Notes shall bear interest as provided in the Indenture, provided that the highest, non-default rate of interest on any Loan shall be the maximum rate of interest permitted by law. In the event of any conflict between the terms of the Mortgage and the Indenture, the terms of the applicable Indenture shall control.

2. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure of this Mortgage, and before and after a judgment of foreclosure, and at any time prior to sale of the Mortgaged Property, and, where applicable, after sale of the Mortgaged Property and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part hereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

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(iv) reasonable attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

All Protective Advances shall be so much additional Obligations secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Interest Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Obligations secured by this Mortgage at any time; (B) the amount of the Obligations found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court

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of any additional Obligations becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose): (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b) (2) and (e) of Sections 15-1508 and 15-1511 of the Act.

3. Mortgagor acknowledges and intends that any future advances whenever hereafter made shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Act. Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Indenture and any other Notes Documents, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Obligations, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the County in which the Mortgaged Property is located. This Mortgage shall be valid and shall have priority over all subsequent liens and encumbrances, including statutory liens except taxes and assessments levied on the Mortgaged Property, to the extent of the maximum amount secured hereby.

4. Without limiting any other provision hereof, any receiver or receivers shall have all the rights and powers described in Section 15-1704 of the Act.

5. Without limiting the generality of Sections 2.10 of this Mortgage, the waiver by Mortgagor of its rights of redemption and reinstatement in such Section, include the waiver of such rights as provided under Sections 15-1601 and 15-1602 of the Act.

6. Mortgagor acknowledges and agrees that (A) the proceeds of the Term Loans will be used in conformance with subparagraph (1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01, et seq., including Section 4(1) thereof); (B) the Obligations secured hereby have been incurred by Mortgagor or Borrower solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4(1); (C) the Obligations secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4(1); and (D) the secured Obligations are an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et seq.* and has been entered into solely for business purposes of Mortgagor and Mortgagor's investment or profit, as contemplated by said section. Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 15-1201 of the Act) or residential real estate (as defined in 15-1219 of the Act).

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7. In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

8. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

9. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless the Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Indenture or any other Notes Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Indenture or any other Notes Document. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the Obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own and may be added to the Obligations and future obligations secured hereunder.

10. Any action to enforce this Mortgage or to pursue any of the remedies set forth herein shall be brought in the courts of the State of Illinois, in the county in which the Land is located.

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11. Notwithstanding anything in this Mortgage to the contrary, no document referenced in this Mortgage shall impair the ability of Mortgagee to comply with the foreclosure process required under Illinois law.

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