

## **Customer's Affidavit of Waiver and General Release**

I, \_\_\_\_\_, wish to voluntarily participate in the Fantasy Gift Experience (as defined on Attachment A) being promoted by The Neiman Marcus Group LLC, a Delaware limited liability company ("NMG"), and I understand that agreeing to and providing this waiver and general release (the "Waiver and General Release") in favor of the Indemnified Parties (as defined below) is required to participate in the Fantasy Gift Experience. I understand that this Waiver and General Release will be relied upon by NMG and Gray Malin Enterprises, dba Gray Malin Photography, a Delaware corporation ("Malin").

**Voluntary Act.** I hereby acknowledge that I am executing this Waiver and General Release as my own voluntary act, free from duress and undue influence. I understand that I am participating in the Fantasy Gift Experience at my own risk and assume all responsibility for any damage or injury that I, my guests, or any of our respective property may incur. I agree to abide by any decision of the vendor(s) providing the Fantasy Gift Experience relative to my ability to participate in the Fantasy Gift Experience safely.

**Waiver and Release.** I, my children, heirs, next of kin, spouse, guardians, legal representatives, executors, and administrators hereby release, hold harmless and forever discharge NMG, Malin, their respective parents, subsidiaries, equity holders, attorneys, accountants, partners, trustees, consultants, affiliates and the directors, officers, managers, employees, volunteers, successors, assigns, agents and representatives of each of the foregoing (the "Indemnified Parties") from, and shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, demands, actions, liabilities, judgments, damages, losses, grievances, obligations (including, but not limited to, personal injury or death), costs or expenses, including attorneys' fees (collectively, "Claims"), of whatever kind or nature whether or not founded in fact or in law or at law or in equity, whether known or unknown, that I now have, or may have in the future, or that my children, heirs, next of kin, spouse, guardians, legal representatives, executors, and administrators hereafter may allege to have against the Indemnified Parties related to the Fantasy Gift Experience, and all such Claims are hereby released and unconditionally and irrevocably waived.

**No Express or Implied Representations or Warranties and Assumption of Risk.** I hereby acknowledge and agree that NMG and Malin do not make any express or implied representation or warranty with respect to itself, the Fantasy Gift Experience or any other information provided to me in connection therewith, and I hereby disclaim any other representations or warranties, whether made by or on behalf of NMG, Malin or any other person (including, but not limited to, on social media or by email). I further acknowledge and agree that none of the Indemnified Parties assumes any responsibility or undertakes any duty of care for the safety of any participants in the Fantasy Gift Experience. In consideration for the work performed by or on behalf of the Indemnified Parties in promoting and organizing the Fantasy Gift Experience, from which I receive value and benefit, I assume all risks of injury or death related to participation in the Fantasy Gift Experience. I further release the Indemnified Parties, and I waive any Claim that I might make against the Indemnified Parties, for any injury or death arising out of or relating to my participation in, preparation for, or during travel related to, the Fantasy Gift Experience. I understand and agree that the effect of signing this Waiver and General Release is to give up all of my legal rights to make any Claims, file any lawsuit or to recover any money damages against

the Indemnified Parties for any Claim relating to the Fantasy Gift Experience (other than with respect to the marketing, promotion and advertising obligations of NMG with respect thereto), including, but not limited to, any Claim for negligence by the Indemnified Parties.

**Waiver and General Release of Claims Whether Known or Unknown.** IT IS THE SPECIFIC INTENT AND PURPOSE OF THIS INSTRUMENT TO RELEASE AND DISCHARGE ANY AND ALL CLAIMS OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN AND WHETHER SPECIFICALLY MENTIONED OR NOT, INCLUDING, BUT NOT LIMITED TO, THE INDEMNIFIED PARTIES' NEGLIGENCE OR MY OWN NEGLIGENCE, WHICH MAY EXIST OR MIGHT BE CLAIMED TO EXIST AT OR AFTER THE DATE OF THIS INSTRUMENT, AND I SPECIFICALLY WAIVE ANY CLAIM OR RIGHT TO ASSERT THAT ANY CLAIM HAS BEEN, THROUGH OVERSIGHT OR ERROR, OR INTENTIONALLY OR UNINTENTIONALLY, OMITTED FROM THIS WAIVER AND GENERAL RELEASE.

IT IS MY INTENTION IN EXECUTING THIS WAIVER AND GENERAL RELEASE THAT IT SHALL BE EFFECTIVE AS A BAR TO EACH AND EVERY CLAIM SPECIFIED HEREIN. IN FURTHERANCE OF THIS INTENTION, I EXPRESSLY WAIVE ANY AND ALL RIGHTS AND BENEFITS CONFERRED BY SECTION 1542 OF THE CALIFORNIA CIVIL CODE AND EXPRESSLY CONSENT THAT THIS WAIVER AND GENERAL RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH AND ALL OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS. SECTION 1542 PROVIDES:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

HAVING BEEN SO APPRISED, I NEVERTHELESS VOLUNTARILY ELECT TO AND DO WAIVE THE RIGHTS DESCRIBED IN CIVIL CODE SECTION 1542 AND ELECT TO ASSUME ALL RISKS FOR CLAIMS HEREIN ABOVE SPECIFIED THAT NOW EXIST, KNOWN OR UNKNOWN.

**I have read the above language regarding Section 1542 of the California Civil Code and understand that I am waiving any and all rights and benefits conferred by it as stated herein.**

**Please Initial: \_\_\_\_\_**

**Opportunity to Review.** I have been given the opportunity to read carefully all of the terms of this Waiver and General Release, and I understand fully the legal consequences of signing it. I understand that I will not be allowed to participate in the Fantasy Gift Experience unless I sign this Waiver and General Release.

**Severability.** It is the specific intent and purpose of this Waiver and General Release to be as broad and inclusive as lawfully permitted and that, in the event that any clause or provision of this Waiver and General Release shall be held to be invalid by any court of competent jurisdiction, that provision shall be deemed modified so as to be valid and enforceable to the full extent lawfully permitted and, further, the invalidity of any clause or provision shall not otherwise affect the validity or enforceability of the remaining clauses and provisions of this Waiver and General Release.

**Governing Law.** This Waiver and General Release and the legal relations between the Parties arising hereunder (whether at law, in equity, based on contract, tort or otherwise) shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the conflicts of law principles thereof.

**Dispute Resolution.** I agree that any claim, dispute, or controversy (whether in contract, tort, or otherwise) I may have against the Indemnified Parties' will be resolved exclusively by final and binding confidential arbitration administered by American Arbitration Association ("AAA") and conducted before a sole neutral arbitrator admitted to practice law for at least fifteen (15) years and is a former judge pursuant to the applicable Rules and Procedures established by AAA. Any arbitration hearing will be conducted in Dallas, Texas, or another location agreed to by the parties and reasonably convenient for Participant. The decision of the arbitrator shall be final and binding on both parties. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties agree that the state and federal courts sitting in Dallas County, Texas, shall be permitted to enforce any arbitral award, and I hereby waive any objection to the laying of venue in any such court or that such court is an inconvenient forum or does not have personal jurisdiction over me.

**Headings Used for Convenience.** There headings in this Waiver and General Release are used for convenience, and the language of the individual paragraphs rather than the headings themselves govern.

*[Signature page follows.]*

IN WITNESS WHEREOF, the undersigned has executed and delivered this Waiver and General Release effective as of the date set forth below.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**WITNESSED BY**

\_\_\_\_\_  
Printed Name of Witness 1

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Witness 2

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

## **Attachment A**

### **Fantasy Gift Experience**

- First-class flights to, and two nights of travel accommodations in, Los Angeles
- Helicopter ride over and around Los Angeles, during which Gray Malin will take photographs of scenes of interest
- (1) A medium-sized framed print of the selected photograph (for U.S.-based customers) / a medium-sized print of the selected photograph (for non-U.S.-based customers) and (2) a tray customized with the selected photograph
- Happy hour with Gray Malin – to be coordinated by NMG after the gift is purchased/booked
- Gift basket upon arrival with two signed books, a kit, print, tags, and a candle

The Fantasy Gift Experience shall be deemed to include the entire period of time ranging from the customer's departure for Los Angeles through the customer's return from Los Angeles. The trip must take place between June 1, 2018 to October 15, 2018, and the Customer must submit available dates prior to the end of January, 2018. Should weather conditions restrict flight over the beaches due to fog, Vendor will work with Customer to determine alternative location during the Customer's 48 hours in Los Angeles.

Please Initial: \_\_\_\_\_