Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c, C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

MOTION RECORD
(Returnable June 5, 2014)

May 16, 2014

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, Ontario, M5L 1G4
Fax: (416) 865-1398

MICHAEL WEINCZOK (33113D)
E-mail: mweinczok@dickinsonwright.com
Tel: (416) 777-4026

DAVID PREGER (36870L)
E-mail: dpreger@dickinsonwright.com
Tel: (416) 646-4606

Lawyers for Computershare Trust Company, N.A., in its capacity as Indenture Trustee, and Computershare Trust Company of Canada, in its capacity as Collateral Trustee and Indenture Trustee ("Computershare") and agents for Perkins Coie LLP, US counsel to Computershare

To: Service List

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TAB 1

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NOTICE OF MOTION
(Returnable June 5, 2014)

Computershare Trust Company of Canada ("**CS Canada**") and Computershare Trust Company, N.A. (collectively, the "**Trustee**"), in their capacities as Indenture Trustee pursuant to the provisions of an indenture dated January 31, 2012 providing for the issue of $132.5 million aggregate principal amount of 11 1/2 % senior secured notes due 2017 (the "**Indenture**"), and CS Canada, in its capacity as Collateral Trustee (the "**Collateral Trustee**"), pursuant to the provisions of the Collateral Trust and Intercreditor Agreement dated January 31, 2012 (the "**CTIA**"), will make a motion before the Honourable Regional Senior Justice Morawetz on Thursday June 5, 2014 at 11:30 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

1. abridging and validating the time for service of the Notice of Motion and Motion Record such that the motion is properly returnable June 5, 2014 and dispensing with further service thereof;

2. varying and/or amending paragraphs 42 and 44 of the Amended and Restated Initial Order of the Honourable Regional Senior Justice Morawetz dated April 15, 2014 (the "**Initial Order**"), in the form attached as Schedule "A" hereto, so as to: (a) require payment by the Applicants of the reasonable fees and disbursements of the Trustee, the Collateral Trustee, their legal counsel and, if necessary, the financial advisor retained by the Trustee and the Collateral Trustee in connection with these proceedings; and (b) include the Trustee, the Collateral Trustee, their legal counsel and, if necessary, the financial advisor retained by the Trustee and the Collateral Trustee as beneficiaries of the Administration Charge (as such term is defined in the Initial Order), ranking *pari passu* in priority with all other parties entitled to the benefit of the Administration Charge; and

3. granting such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On April 15, 2014, the Court granted the Initial Order, without Notice to the Trustee or the Collateral Trustee;

2. The Trustee and the Collateral Trustee together represent certain interests of virtually all of the Applicants' pre-filing secured creditors, including the holders (the "**Holders**") of $132.5 million in 11.5% senior secured notes due 2017 (the "**Notes**") and certain senior

secured lenders, namely Coliseum Capital Management, LLC, 8028702 Canada Inc. and 424187 Alberta Ltd. (collectively, the "**Senior Lenders**");

3. Pursuant to paragraphs 42 and 44 of the Initial Order, a committee comprised of a select, unidentified group of the Holders (the "**Ad Hoc Committee**") is entitled to be paid the reasonable fees and disbursements of its legal counsel and financial advisor. Payment of those expenses is secured by the Administration Charge;

4. Pursuant to the Indenture, the Trustee has various rights, obligations and duties, including but not limited to:

   (a) filing proofs of claim and other papers or documents necessary or advisable to have the claims of the Trustee and Collateral Trustee (including any claim for reasonable compensation, disbursements and advances of its counsel and agents) and the Holders allowed in any judicial proceeding relating to Cash Store Financial Services Inc., its creditors or its property;

   (b) participating as a member of any official committee of creditors; and

   (c) collecting, receiving and distributing any money or other property payable or deliverable on any claims filed in these proceedings;

5. Under the terms of the Indenture, the Trustee:

   (a) is to be jointly and severally indemnified by the Applicants;

   (b) is granted a priority lien to secure payment of its compensation, including disbursements and advances and those of its counsel and agents, over all money or property it holds or collects on behalf of a Holder and on any distributions,

dividends, money, securities and other properties that a Holder may be entitled to receive in these proceedings;

(c) is to have its expenses and compensation for services rendered post-default (inclusive of legal fees) constitute "expenses of administration under Bankruptcy Law";

6. The identity of the members of the Ad Hoc Committee and the amount of indebtedness which they represent in the aggregate is unknown to the Trustee and the Collateral Trustee, notwithstanding a request for such information having been made to counsel for the Ad Hoc Committee;

7. Upon information and belief, there are numerous Holders who currently have no separate legal representation of their interests in these proceedings (the "**Unrepresented Holders**");

8. The Coliseum group of affiliated companies, which includes Coliseum Capital Partners, LP, Coliseum Capital Partners II, LP, Blackwell Partners, LLC and Coliseum Capital Management, LLC (collectively, "**Coliseum**"), is a Senior Lender, and the current DIP lender. There is an inherent conflict between certain of the interests of Coliseum and those of the Unrepresented Holders and the Trustee;

9. According to paragraphs 10 and 11 of the Monitor's Second Report dated April 27, 2014, consideration is being given to a joint DIP facility in which both the Ad Hoc Committee and some of the Coliseum entities would participate. As such, there may be an inherent conflict between certain of the interests of the Ad Hoc Committee and those of the Unrepresented Holders and the Trustee;

10. The Applicants, the Holders and the Trustee have expressly agreed in the Indenture that the Trustee is entitled to participate in these proceedings and is the proper party to represent the interests of the Holders;

11. The Indenture, which is governed by the laws of the State of New York imposes a "prudent person" standard of care in assessing post-insolvency Indenture Trustee conduct. Although an Indenture Trustee is not charged with guaranteeing any particular result in a post-default scenario, these obligations have been held to include representation of the interests of the entire noteholder class to enhance debtholder protection. This obligation is also reflected in section 7.01 of the Note Indenture which provides that where an Event of Default is continuing, "the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs".

12. Despite a provision in the Indenture which states that, when an Event of Default (as defined therein) is continuing, holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in the exercise of its powers, the Trustee has not received any such direction;

13. Even if a direction were provided to the Trustee, under the Indenture, the Trustee reserves the right to refuse to follow any such direction in instances where:

(a) the direction conflicts with law or the terms of the Indenture;

(b) the Trustee believes the direction is "unduly prejudicial" to the rights of any other Holders; or

(c) the direction would involve the Trustee in personal liability;

14. No Holder may rely on the Indenture in prejudicing the rights of any other Holder or in obtaining a preference or priority over any other Holder.

15. Under the CTIA, the Collateral Trustee is the registered holder of all security held by the Senior Lenders and all of the Holders;

16. The intercreditor provisions of the CTIA determine the priority ranking as between the Senior Lenders and the Holders;

17. Under the intercreditor provisions of the CTIA, the Collateral Trustee continues to have certain obligations during the Applicants' insolvency, not only to the Senior Lenders, but also to the Holders who maintain certain rights during insolvency proceedings;

18. The complexities inherent in the interrelationship between the Indenture and the CTIA reinforce the necessity of a role for the Trustee and Collateral Trustee in these proceedings;

19. Under the terms of the CTIA, the Collateral Trustee:

(a) is to be jointly and severally indemnified by the Applicants; and

(b) to the extent that it is not entirely indemnified by the Applicants, it is to be indemnified severally by the Senior Lenders and the Holders based on their respective percentage share of the aggregate secured obligations under the CTIA;

20. The "Application of Proceeds" provisions of the CTIA require that all proceeds of realization upon the Collateral be paid first to the Collateral Trustee, on account of its

direct or indirect fees as well as any reasonable legal fees, costs and expenses, or other liabilities or debts incurred by the Collateral Trustee in connection with its obligations under the CTIA, and that such payments shall be made in priority to any amounts owing to the Secured Lenders and the Holders;

21. Under the Initial Order, the Ad Hoc Committee and Houlihan Capital LLC, its financial advisor, are beneficiaries of the Administration Charge. This provision fails to recognize the respective rights, obligations and duties of the Trustee and the Collateral Trustee in representing the interests of the entire Holder class;

22. Moreover, the Trustee, under the Indenture, and the Collateral Trustee, under the CTIA, have priority for the reasonable fees and disbursements of their respective professionals retained in connection with these proceedings, and the Initial Order should, therefore, provide the Trustee and the Collateral Trustee with priority for payment of their respective fees and disbursements by varying and/or amending paragraph 42 of the Initial Order so as to impose an affirmative obligation upon the Applicants to pay the reasonable fees and disbursements of legal counsel and, if necessary, a financial advisor retained by the Trustee and the Collateral Trustee;

23. Section 11.52(1)(c) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

24. Rules 1.04, 2.03, 3.02, 37 and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

25. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Patricia Wakelin and the exhibits attached thereto sworn May 16, 2014;

2. The Affidavit of Evan Flaschen and the exhibits attached thereto;

3. The Monitor's Second Report dated April 27, 2014;

4. The Monitor's Fourth Report dated May 15, 2014; and

5. Such further and other materials as counsel may advise and this Honourable Court may permit.

May 16, 2014

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, Ontario, M5L 1G4
Fax: (416) 865-1398

MICHAEL WEINCZOK (33113D)
E-mail: mweinczok@dickinsonwright.com
Tel: (416) 777-4026

DAVID PREGER (36870L)
E-mail: dpreger@dickinsonwright.com
Tel: (416) 646-4606

Lawyers for Computershare Trust Company, N.A., in its capacity as Indenture Trustee, and Computershare Trust Company of Canada, in its capacity as Collateral Trustee and Indenture Trustee ("Computershare") and agents for Perkins Coie LLP, US counsel to Computershare

SCHEDULE "A"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL	)	TUESDAY, THE 15TH
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF APRIL, 2014

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE". (each one and all of the above, collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Steven Carlstrom sworn April 14, 2014 and the Exhibits thereto (the "**Carlstrom Affidavit**") and the affidavits of Patrick Riesterer and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Special Committee, the DIP Lenders (as defined in the Term Sheet (as defined herein)), the *ad hoc* committee of holders of the Applicants' 11 ½% senior secured notes (the "**Ad Hoc**

Committee"), FTI Consulting Canada Inc. ("**FTI**") in its capacity as Monitor (the "**Monitor**") and such other counsel present, no other person appearing although duly served as appears from the affidavit of service of Karin Sachar sworn April 14, 2014 and on reading the Pre-Filing Report of the Monitor dated April 14, 2014, the consent of FTI to act as the Monitor and the First Report of the Monitor dated April 15, 2014,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, and including for greater certainty all cash held in the Applicants' accounts (the "**Property**"), subject to paragraphs 30 to 35. The Applicants shall continue to carry on business and use the Property, the Filing Date Cash (as defined below), and the TPL Funds (as defined in the Carlstrom Affidavit) in a manner consistent with the preservation of its business, including the making of brokered loans pursuant to the Applicants' past practices as modified by paragraphs 30 to 35 (the "**Business**"), and Property.

The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Carlstrom Affidavit or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay (excluding any change of control or similar termination payments without the consent of the DIP Lenders) and reasonable employee expenses (the reasonableness of which will be determined by the CRO (as defined herein)) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) subject to the terms and conditions of the debtor-in-possession loan facility (the "**DIP Facility**") as provided for in the Term Sheet, including the applicable terms therein that refer to the cash flow projections approved by the DIP Lenders pursuant to the

terms and conditions of the DIP Facility (the "**Cash Flow Projections**"), the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, subject to the terms and conditions of and availability under the DIP Facility and the Term Sheet, including the applicable terms therein that refer to the Cash Flow Projections, and except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) payment for goods or services actually supplied to the Applicants following the date of this Order; and

(c) payments to critical vendors with the consent of the Monitor.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior

to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date, other than interest payments under the Credit Agreement (as defined in the Carlstrom Affidavit) and the retention payments to TPLs (as described below), both as set out in the Cash Flow Projections; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the term sheet governing the

DIP Facility (the "**Term Sheet**") and the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding $25,000 in any one transaction or $75,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the applicable employer and such employee or, failing such agreement, to deal with the consequences thereof in accordance with applicable law;

(c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) in consultation with the Monitor, solicit non-binding letters of intent for the sale of the Business by May 15, 2014 (or such later date as the Applicants, with the consent of the Monitor, shall determine) through Rothschild Inc. ("**Rothschild**"), in furtherance of the mergers and acquisitions process described in the Carlstrom Affidavit,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in

accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

FINANCIAL ADVISORS

14. THIS COURT ORDERS that the engagement of (i) Rothschild as financial advisor pursuant to the engagement letter dated February 20, 2014 and (ii) Conway MacKenzie ("**Conway**") as financial advisor pursuant to the engagement letter dated January 29, 2014 are hereby approved.

15. THIS COURT ORDERS that Rothschild is authorized to continue the mergers and acquisitions process as described in the Carlstrom Affidavit, in consultation with the Monitor.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

16. THIS COURT ORDERS that until and including May 14, 2014, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants, the CRO, or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all

Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the CRO, or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

18. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers,

internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA. For greater certainty, nothing in this Order shall prejudice the rights of the TPLs under their broker agreements (the "**Broker Agreements**") with the Applicants, or their right to assert any arguments in this proceeding in relation to the matters contemplated hereby.

PROCEEDINGS AGAINST CRO, DIRECTORS AND OFFICERS

21. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

22. THIS COURT ORDERS that no member of the Special Committee nor the CRO shall have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims,

damages or liabilities result from the gross negligence or wilful misconduct on the part of such member of the Special Committee or the CRO, as the case may be.

23. THIS COURT ORDERS that BlueTree Advisors Inc. be and is hereby appointed Chief Restructuring Officer of the Applicants ("**CRO**"). The CRO shall have the authority to direct the operations and management of the Applicants and the Restructuring, and the officers (including the executive management team of the Applicants) of the Applicants shall report to the CRO. For greater certainty, the CRO shall be entitled to exercise any powers of the Applicants set out herein, to the exclusion of any other Person (including any board member of the Applicants). The CRO shall provide timely updates to the Monitor in respect of its activities.

24. THIS COURT ORDERS that the CRO shall not be or be deemed to be a director, officer or employee of any of the Applicants.

25. THIS COURT ORDERS that (i) any indemnification obligations of the Applicants in favour of the CRO and (ii) the payment obligations of the Applicants to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge set out herein.

26. THIS COURT ORDERS that any claims of the CRO shall be treated as unaffected in any plan of compromise and arrangement filed by the Applicants under the CCAA, any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA") or any other restructuring.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $2,500,000 as security for the indemnity

provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53 and 55 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

THE THIRD PARTY LENDERS

30. THE COURT ORDERS that the TPLs (as defined in the Carlstrom Affidavit) shall be entitled to the benefit of and are hereby granted a charge (the "**TPL Charge**") on the Property, which charge shall equal the amount of the Applicants' cash-on-hand as of the effective time of the Initial Order granted in these proceedings (the "**Filing Date Cash**"). The TPLs shall only be entitled to the benefit of the TPL Charge in the event that this Court determines that the TPLs were entitled to the Filing Date Cash in priority to any other Person, or that the Filing Date Cash was not Property as of the effective time of the Initial Order granted in these proceedings. Notwithstanding the granting of the TPL Charge, subject to the reservation of rights in paragraph 20, above, nothing in this order shall grant the TPLs any new, additional, or greater rights to the Filing Date Cash than the TPLs would have had immediately prior to the effective time of the Initial Order granted in these proceedings.

31. THIS COURT ORDERS and directs that the Applicants shall keep records of all receipts and disbursements in connection with the TPL brokered loans (the "**TPL Brokered Loans**") and any amounts received by the Applicants in respect of same subsequent to the effective time of the Initial Order granted in these proceedings (the "**TPL Post-Filing Receipts**"), separate and apart from the Applicants' direct loans, and shall report to the TPLs with respect to the TPL Post-Filing Receipts in a manner and on a basis as agreed upon by the relevant TPL, the Applicants and the Monitor, or as subsequently ordered by this Court. The Applicants shall provide information reasonably requested by a TPL in respect of its TPL Brokered Loans and funds paid to the Applicants by the TPLs, in each case whether before or after the effective time

of the Initial Order granted in these proceedings and shall give the TPLs or their agents reasonable access to their records for the purpose of preparing an accounting of such TPL Brokered Loan and funds and monitoring the Applicants' compliance with the Broker Agreements. In both cases the reasonableness of such requests shall be determined by the CRO and the Monitor.

32. THIS COURT ORDERS that the Applicants shall continue to receive amounts in connection with the repayment of TPL Brokered Loans and shall be entitled to use such TPL Post-Filing Receipts for the sole purpose of brokering new TPL Brokered Loans. The Applicants shall be entitled to continue their practice of depositing repayments of TPL Brokered Loans into the Applicants' general bank accounts; however, no party (including the Applicants, TPLs and any lender, including a DIP lender), shall be entitled to rely on such treatment of TPL Post-Filing Receipts in connection with the determination of the relevant TPL's entitlement to, or ownership of, any TPL Post-Filing Receipts, the TPL Net Receipt Minimum Balance (as defined below) or any TPL Brokered Loans advanced therefrom. Moreover, the treatment of the TPL Post-Filing Receipts set out in this Order shall be without prejudice to any argument by a TPL that but for the CCAA Proceedings such TPL would have required the Applicants to physically segregate such funds.

33. THIS COURT ORDERS that the Applicants shall maintain a minimum cash balance in an amount equal to the aggregate amount of any TPL Post-Filing Receipts less the aggregate amount of any Post-Filing TPL Receipts subsequently redeployed, from time to time, as new TPL Brokered Loans (the "**TPL Net Receipt Minimum Balance**").

34. THIS COURT ORDERS that to the extent a TPL claims a priority entitlement to the TPL Brokered Loans in existence at or after the effective time of the Initial Order granted in these proceedings and/or to the Post-Filing TPL Receipts, the TPL's entitlement thereto shall be determined based on the legal rights as they existed immediately prior to the effective time of the Initial Order granted in these proceedings, including that each TPL's entitlement to any portion of the TPL Net Receipts Minimum Balance will be determined by reference to such TPL's entitlement to and interest in the TPL Brokered Loans giving rise to such portion of Post-Filing TPL Receipts. To the extent a TPL is able to establish a trust, ownership or other proprietary interest in any Post-Filing TPL Receipts and/or any TPL Brokered Loans such that they do not

form part of the Property of the Applicants then, for greater certainty, the Charges (defined below) shall not apply to such TPL's portion of the TPL Net Receipt Minimum Balance or such TPL's then-existing TPL Brokered Loans to the extent of such established entitlement. Notwithstanding the foregoing, nothing in this paragraph shall affect the rights of any TPL arising from or related to any registration to preserve or protect a security interest pursuant to paragraph 17.

35. THIS COURT ORDERS the Applicants shall continue to ensure that TPLs receive a return of approximately 17.5% per year (or such lesser amount as may be agreed to) with respect to TPL Brokered Loans that are repaid and available for redeployment from and after the Initial Order date and any capital protection (as described in the Carlstrom Affidavit).

APPOINTMENT OF MONITOR

36. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lenders and their counsel at the times required under the DIP Facility, of financial and other information as agreed to between the Applicants and the DIP

Lenders which may be used in these proceedings, including reporting on a basis as agreed with the DIP Lenders under the DIP Facility;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Lenders and their counsel on a periodic basis, as provided under the DIP Facility;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) assist the Applicants, to the extent required by the Applicants, with any and all restructuring activities and/or any sale of the Property and the Business or any part thereof;

(i) assist Rothschild with respect to the mergers and acquisitions process of the Applicants' Business;

(j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

38. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the

Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

41. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. THIS COURT ORDERS that, subject to the terms and conditions of and availability under the DIP Facility and the Term Sheet, including the applicable terms therein that refer to the

Cash Flow Projections, the CRO, the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Special Committee and the CRO, Rothschild, Conway, Michele McCarthy (the "**CCRO**")~~and~~, counsel to the DIP Lenders and Coliseum Capital Management, LLC (in its capacity as Agent under the DIP Facility (the "**Agent**")) **Computershare Trust Company of Canada and Computershare Trust Company, N.A. (collectively, "Computershare"), its Canadian and U.S. counsel (together "Counsel"), and, if necessary, its financial advisor, as determined by Computershare in its sole discretion,** shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the CRO, the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Special Committee and the CRO, Rothschild, Conway, ~~and~~ counsel to the DIP Lenders and Agent**, Computershare, its Counsel and, if necessary, its financial advisor, as determined by Computershare in its sole discretion,** on a weekly basis, or on such basis as otherwise agreed by the Applicants and the applicable payee. The Applicants shall also be entitled to pay the reasonable fees and disbursements of Goodmans LLP, Houlihan Capital LLC and McMillan LLP.

43. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

44. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, the Applicants' counsel, the Special Committee's and CRO's counsel, Rothschild, Conway, the CCRO, counsel to the DIP Lenders and Agent, **Computershare, its Counsel and, if necessary, its financial advisor, as determined by Computershare in its sole discretion,** Goodmans LLP and Houlihan Capital LLC shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,500,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53 and 55 hereof.

DIP FINANCING

45. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under the DIP Facility from the DIP Lenders in order to finance the Applicants' working capital requirements, other general corporate purposes and capital expenditures and allow them to make such other payments as permitted under this Order and the Term Sheet, provided that borrowings under the DIP Facility shall not exceed the amounts prescribed in the Term Sheet.

46. THIS COURT ORDERS that the DIP Facility shall be on the terms and subject to the conditions set forth in the Term Sheet.

47. THIS COURT ORDERS that the DIP Facility and the Term Sheet be and are hereby approved and the Applicants are hereby authorized and directed to execute and deliver the Term Sheet.

48. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Term Sheet or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Term Sheet and Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

49. THIS COURT ORDERS that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Priority Charge**") on the Property as security for any and all obligations of the Applicants under the DIP Facility, the Term Sheet and the Definitive Documents (including on account of principal, interest, fees, expenses and other liabilities) (the aggregate of all such obligations being the "**DIP Obligations**"), which DIP Priority Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time. The DIP Priority Charge shall not secure an obligation that exists before this Order is made. The DIP Priority Charge shall have the priority set out in paragraphs 53 and 55 hereof.

50. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Priority Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Term Sheet, the other Definitive Documents or the DIP Priority Charge, (A) the DIP Lenders may cease making advances to the Applicants, (B) the DIP Lenders may (i) set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the Term Sheet, the Definitive Documents or the DIP Priority Charge, and make demand, accelerate payment, and (ii) following an Order of the Court, granted on at least two (2) days' notice to the Applicants and the Monitor, exercise any and all of their respective rights and remedies against the Applicants or the Property under or pursuant to the Term Sheet, the other Definitive Documents, the DIP Priority Charge, or the *Personal Property Security Act* of Manitoba, *Personal Property Security Act* of Alberta, *Personal Property Security Act* of Ontario or any other legislation of similar effect applicable, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

51. THIS COURT ORDERS AND DECLARES that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA ("**Proposal**"), with respect to any advances made under the DIP Facility, the Term Sheet and the Definitive Documents.

52. THIS COURT ORDERS that the obligations under the DIP Facility, Term Sheet and the Definitive Documents shall be treated as unaffected by any Plan or Proposal and the Applicants

shall not file a Plan in these Proceedings or any Proposal that does not provide for the indefeasible payment in full in cash of the obligations outstanding in respect of the DIP Facility, the Term Sheet and the Definitive Documents as a pre-condition to the implementation of any such Plan or Proposal.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

53. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the DIP Priority Charge, and the TPL Charge as among them, shall be as follows:

First – Administration Charge;

Second – Directors' Charge (up to a maximum of $1,250,000);

Third – DIP Priority Charge and the TPL Charge on a *pari passu* basis;

Fourth – the liens securing obligations under the Credit Agreement;

Fifth – Directors' Charge (for the remaining amount of $1,250,000) (the "**Directors' Subordinated Charge**").

54. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the DIP Priority Charge or the TPL Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge, the DIP Priority Charge, and the TPL Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except that the Directors'

Subordinated Charge shall rank behind the liens securing obligations under the Credit Agreement.

56. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the TPL Charge or the DIP Priority Charge, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lenders and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

57. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the TPL Charge, the DIP Loan Agreement, the Definitive Documents and the DIP Priority Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants' entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

59. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Edmonton *Journal*, the Calgary *Sun* and the *Globe and Mail* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

60. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.cfcanada.fticonsulting.com/cashstorefinancial.

61. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or

distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

62. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

63. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

64. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

65. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

66. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided however, that the DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the Term Sheet, the DIP Priority Charge and the Definitive Documents up to and including the date this Order may be varied or amended.

67. THIS COURT ORDERS that the come-back hearing is scheduled for April 28, 2014.

68. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

_____

IN THE MATTER OF the *Companies' Creditors Arrangement Act,* **R.S.C. 1985, c. C-36, as amended**

AND IN THE MATTER OF a plan of compromise or arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd. Doing Business as "The Title Store"

Court File No: CV-14-10518-00CL

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC#44066M
Tel: (416) 862-4908

Jeremy Dacks LSUC# 41851R
Tel: (416) 862-4923
Fax: (416) 862-6666

Counsel to the Special Committee of the Board of Directors of Cash Store Financial Services Inc.

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. doing business as "THE TITLE STORE"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Toronto, Ontario M5L 1G4

MICHAEL WEINCZOK (33113D)
Tel: (416) 777-4026
Fax: (416) 865-1398

DAVID P. PREGER (36870L)
Tel: (416) 646-4606
Fax: (416) 865-1398

Lawyers for Computershare Trust Company, N.A., in its capacity as Indenture Trustee, and Computershare Trust Company of Canada, in its capacity as Collateral Trustee and Indenture Trustee ("Computershare") and agents for Perkins Coie LLP, US counsel to Computershare

TAB 2

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c, C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

AFFIDAVIT OF PATRICIA WAKELIN

I, Patricia Wakelin, of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Corporate Trust Officer at Computershare Trust Company of Canada ("**CS Canada**") and have held this position since January 2005. As such, I have personal knowledge of the matters to which I hereinafter depose unless such knowledge is stated to be on information I have received from other sources, in which case, I believe such information to be true.

2. The Amended and Restated Initial Order of the Honourable Justice Morawetz dated April 15, 2014 (the "**Initial Order**") was issued without prior notice to CS Canada and Computershare Trust Company, N.A. (collectively, "**Computershare**").

3. This affidavit is sworn in support of a come-back motion by Computershare for an Order varying and/or amending paragraphs 42 and 44 of the Initial Order to: (a) require payment by the Applicants of the reasonable fees and disbursements of Computershare, their Canadian and U.S. legal counsel (together, "**Counsel**") and, if necessary, the financial advisor retained by Computershare in connection with these proceedings; and (b) include Computershare, its Counsel and, if necessary, the financial advisor retained by Computershare as beneficiaries under the Administration Charge (as such term is defined in the Initial Order), ranking *pari passu* in priority with all other parties entitled to the benefit of the Administration Charge.

THE INDENTURE

4. On January 31, 2012, The Cash Store Financial Services Inc. ("**Cash Store**") issued $132.5 million in 11 1/2 % senior secured notes due 2017(the "**Notes**") through private placement in Canada and the United States.

5. The Notes are subject to the terms of an indenture (the "**Indenture**") dated January 31, 2012 as between Cash Store as issuer, 7252331 Canada Inc., 5515433 Manitoba Inc., The Cash Store Inc., Instaloans Inc., TCS Cash Store Inc., The Cash Store Financial Limited, The Cash Store Limited and CSF Insurance Services Limited (the "**TCS Affiliates**") as guarantors and Computershare as Trustee. Attached hereto and marked as **Exhibit "A"** is a true copy of the Indenture.

6. Under the Indenture, Computershare has various rights, duties and obligations to the holders of the Notes (the "**Holders**").

7. The Indenture contemplates Computershare's participation in an insolvency proceeding, and expressly provides in section 6.12 that the Trustee is:

(a) authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of their counsel and agents) and the Holders allowed in any judicial proceeding relating to Cash Store, its creditors or its property;

(b) entitled and empowered to participate as a member of any official committee of creditors; and

(c) collect, receive and distribute any money or other property payable or deliverable on any claims filed in these proceedings.

THE COLLATERAL TRUST AND INTERCREDITOR AGREEMENT

8. On November 29, 2013 Cash Store entered into a credit agreement (the "**Credit Agreement**") with Coliseum Capital Management, LLC, 8028702 Canada Inc. and 424187 Alberta Ltd. as secured lenders (collectively, the "**Senior Lenders**") and the TCS Affiliates as guarantors, wherein the Senior Lenders agreed to provide a loan of a minimum of $12 million and up to a maximum of $32.5 million to Cash Store.

9. The security granted to the Senior Lenders under the Credit Agreement is held by CS Canada, as Collateral Trustee, pursuant to the terms of a Collateral Trust and Intercreditor Agreement dated January 31, 2012 (the "**CTIA**"). Under the CTIA and the Indenture, CS

Canada is also the registered holder of the security granted to the Holders. Attached hereto and marked as **Exhibit "B"** is a true copy of the CTIA.

10. As Collateral Trustee, CS Canada has ongoing responsibilities to both the Senior Lenders and the Holders in respect of the collateral.

EFFECTIVE PARTICIPATION

11. Promptly after receiving notice of these proceedings, Computershare, through its Canadian legal counsel, Dickinson Wright LLP, communicated to the Monitor, the Applicants, as well as other key stakeholders, its intention to seek payment of its professional fees by the Applicants, and inclusion of said fees in the court-ordered Administration Charge.

12. To the best of my knowledge and belief, Computershare, as Trustee and Collateral Trustee, represents certain interests of nearly the entire pool of pre-filing secured debt in the within proceedings. Accordingly, Computershare is a critical player in these proceedings.

13. Computershare intends to ensure there is adequate, cost-effective and non-duplicative representation for all of the stakeholders by and for whom Computershare has been appointed trustee, including those Holders who do not currently have separate legal representation of their interests in these proceedings. Computershare proposes to work cooperatively with the Applicants, Monitor and the *ad hoc* committee of Holders recognized in the Initial Order (the "Ad Hoc Committee"), to share information and analyses obtained from professional advisors wherever feasible.

14. By letter dated April 25, 2014, Michael Weinczok wrote to the Monitor to explain the role Computershare expects to play in these proceedings. Attached hereto and marked as **Exhibit "C"** is a true copy of the letter from Michael Weinczok to the Monitor dated April 25, 2014. As noted in that letter, Article 13.06 of the Indenture provides that it is governed by New York law. The Indenture is also subject to the U.S. Trust Indenture Act of 1939, as amended (the "TIA"). Accordingly, Computershare requires U.S. legal advice in connection with its obligations thereunder. Article 7.01 of the Indenture reflects the incorporation of the TIA by expressly providing that following default by the Cash Store, the Trustee has an obligation to use the same degree of care and skill as a prudent person would exercise in the conduct of such person's own affairs.

COMPUTERSHARE'S RIGHTS TO INDEMNITY AND CHARGE

15. The amendment of the Initial Order to direct payment by the Applicants of Computershare's reasonable fees and expenses, and those of its Counsel and advisors, provides a mechanism for implementing the rights granted to Computershare and agreed upon by the parties under the Indenture and the CTIA.

16. Pursuant to Article 7.06 of the Indenture, the Applicants are required to reimburse Computershare promptly for all reasonable disbursements, advances, and expenses incurred as Trustee and Collateral Agent, including reasonable compensation, disbursements, and expenses of agents and counsel. Article 7.06 of the Indenture also provides that when the Trustee and Collateral Agent incur expenses in connection with a court supervised insolvency proceeding by the Cash Store, the expenses of the Trustee

and Collateral Agent are intended to constitute expenses of administration under bankruptcy law.

17. Moreover, pursuant to Articles 6.12 and 7.06 of the Indenture, the Trustee and Collateral Agent are granted a lien on all money or property held or collected by the Trustee or the Collateral Agent to secure recovery of their compensation, expenses, disbursements and advances, which lien ranks in priority to the rights of the Holders, and attaches to and is to be paid out of any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in any judicial proceeding relating to Cash Store.

18. Similarly, Article 10.11 of the CTIA provides that:

(a) Cash Store has agreed to pay, promptly, all reasonable costs and expenses incurred by the Collateral Trustee, including all reasonable fees, expenses and disbursements of its counsel, agents or other professional advisors incurred in connection with the CTIA or in any insolvency proceeding; and

(b) each Senior Lender and Holder is severally liable to indemnify the Collateral Trustee in respect of all reasonable costs and expenses incurred by it in connection with the CTIA.

19. Finally, Article 3.4 of the CTIA directs the Collateral Trustee to apply the proceeds of any realization upon the collateral:

> "(i) FIRST, to the payment of all amounts payable under this Agreement on account of the Collateral Trustee's direct or indirect fees

and any reasonable legal fees, costs and expenses or other liabilities or debts of any kind incurred by the Collateral Trustee or any co-trustee or agent in connection with this Agreement or any other Security Document".

20. By permitting payment of the professional fees of the Ad Hoc Committee, and securing payment thereof under the Administrative Charge, without making the same protections available to Computershare, paragraphs 42 and 44 of the Initial Order reverse the priorities agreed upon by the Holders, the Applicants, and Computershare in the Indenture and the CTIA, are unfairly prejudicial to Computershare, and impede Computershare's ability to carry out its obligations under the Indenture and the CTIA.

DISCUSSIONS WITH THE AD HOC COMMITTEE

21. The Ad Hoc Committee intends to provide a Debtor in Possession ("DIP") loan to the Applicants to fund the continuation of these *CCAA* proceedings. In that event, certain interests of the Ad Hoc Committee will differ from and potentially conflict with the interests of the Holders who are not participating in the DIP loan.

22. Computershare, and its legal counsel, have had discussions with legal counsel to the Ad Hoc Committee in an effort to reach an agreement relating to Computershare's role and participation in these proceedings. By email dated May 9, 2014 from Dickinson Wright to Goodman's LLP, counsel to Computershare outlined the terms upon which Computershare was prepared to proceed. A true copy of that email is attached as **"Exhibit D"**.

23. By e-mail dated May 13, 2014 from Goodman's LLP to Dickinson Wright LLP, counsel for the Ad Hoc Committee sought clarification of Computershare's proposal, which

Dickinson Wright LLP provided by email dated May 15, 2014. True copies of those emails are attached collectively as **"Exhibit E"**.

24. Despite a provision in the Indenture which states that, when an Event of Default (as defined therein) is continuing, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in the exercise of its powers, the Trustee has not received any such direction;

25. Even if a direction were provided to the Trustee, under Article 6.05 of the Indenture, the Trustee reserves the right to refuse to follow any such direction in instances where:

(a) the direction conflicts with law or the terms of the Indenture;

(b) the Trustee believes the direction is "unduly prejudicial" to the rights of any other Holder; or

(c) the direction would involve the Trustee in personal liability.

26. Although counsel to the Ad Hoc Committee has stated that it represents Holders who collectively hold Notes representing approximately 65% of Holders, Computershare has not received any information to confirm the principal amount held by each Holder represented by the Ad Hoc Committee, the beneficial holder of the Notes, or, where the Notes are held through a participant, the name of that participant.

27. I swear this affidavit in support of the within motion for the relief set out in paragraph 3 hereof and for no other or improper purpose.

SWORN BEFORE ME at the City of Brampton, in the Province of Ontario on May 16, 2014

A Commissioner for Taking Oaths.

PATRICIA WAKELIN

This is Exhibit "A" referred to in the Affidavit of **PATRICIA WAKELIN** sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

EXECUTION VERSION

INDENTURE

Dated as of January 31, 2012

Among

THE CASH STORE FINANCIAL SERVICES INC.

THE GUARANTORS NAMED ON THE SIGNATURE PAGES HERETO

COMPUTERSHARE TRUST COMPANY, N.A.,
as U.S. Trustee

and

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Canadian Trustee and Collateral Agent

11 ½% SENIOR SECURED NOTES DUE 2017

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INDENTURE, dated as of January31, 2012, among The Cash Store Financial Services Inc., an Ontario corporation (the "Company"), the Guarantors (as defined herein) listed on the signature pages hereto, Computershare Trust Company, N.A., as U.S. Trustee (the "U.S. Trustee") and Computershare Trust Company of Canada, as Canadian Trustee (the "Canadian Trustee" and, together with the U.S. Trustee, the "Trustee") and Collateral Agent.

W I T N E S S E T H

WHEREAS, the Company has duly authorized the creation of an issue of $132.500,000 aggregate principal amount of 11 ½% Senior Secured Notes due 2017 (the "Initial Notes"); and

WHEREAS, the Company and each of the Guarantors has duly authorized the execution and delivery of this Indenture;

NOW, THEREFORE, the Company, each of the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes:

ARTICLE 1

DEFINITIONS

Section 1.01 Definitions.

"144A Global Note" means a Global Note substantially in the form of Exhibit A bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"Acquired Debt" means with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person was merged into or amalgamated, arranged or consolidated with or became a Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging into or amalgamating, arranging or consolidating with or becoming a Subsidiary of such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person at the time such asset is acquired by such specified Person.

"Additional Notes" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Sections 2.01, 2.15, 4.09 and 4.12, as part of the same series as the Initial Notes.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified

Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agent" means any Registrar or Paying Agent.

"Applicable Premium" means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of such Note; and

(2) the excess, if any, of (a) the present value at such Redemption Date of (i) the redemption price of such Note at July 31, 2014 (such redemption price being set forth in Section 3.07(b)), *plus* (ii) all required interest payments due on such Note through July 31, 2014 (excluding accrued but unpaid interest to the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over (b) the principal amount of such Note.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, DTC, Euroclear and Clearstream that apply to such transfer or exchange.

"Asset Sale" means:

(1) the sale, lease, transfer, conveyance or other disposition of any assets (including by way of a Sale and Leaseback Transaction); *provided* that the sale, lease, transfer, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by Section 4.14 and/or Section 5.01 and not by Section 4.10;

(2) the issue or sale by the Company or any of its Restricted Subsidiaries of Equity Interests of any of the Company's Restricted Subsidiaries; and

(3) an Event of Loss to the extent of the cash proceeds actually received by the Company or any of its Restricted Subsidiaries in connection with such Event of Loss.

In the case of either clause (1), (2) or (3), whether in a single transaction or a series of related transactions:

(1) that have a Fair Market Value in excess of $2.5 million; or

(2) for Net Proceeds in excess of $2.5 million.

Notwithstanding the foregoing, none of the following will be deemed to be an Asset Sale:

(1) a transfer of assets to the Company or any Restricted Subsidiary of the Company:

(2) an issuance of Equity Interests by a Restricted Subsidiary of the Company to the Company or to a Restricted Subsidiary of the Company;

(3) for purposes of Section 4.10 only, a Restricted Payment that is permitted by Section 4.07 or a Permitted Investment;

(4) the incurrence of Permitted Liens and the disposition of assets subject to such Liens by or on behalf of the Person holding such Liens;

(5) the sale, transfer or other disposition of accounts (including loans or advances) in the ordinary course of business;

(6) the sale, transfer or other disposition of Equity Interests in or Indebtedness of an Unrestricted Subsidiary of the Company;

(7) any disposition of cash or Cash Equivalents;

(8) the lease, assignment or sub-lease of any property in the ordinary course of business;

(9) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business;

(10) the sale, transfer or other disposition of assets of the Company or any of its Restricted Subsidiaries in exchange for assets used or useful in a Similar Business; *provided* that the assets received in exchange have a Fair Market Value equal to or greater than the transferred assets;

(11) sales of assets that have become worn out, obsolete or damaged or otherwise unsuitable for use in connection with the business of the Company or any of its Restricted Subsidiaries;

(12) the license of patents, trademarks, copyrights, software applications and know-how to Restricted Subsidiaries of the Company and to third Persons in the ordinary course of business;

(13) the disposition of all or substantially all of the assets of the Company or a Guarantor in a manner permitted pursuant to Section 5.01 or any disposition that constitutes a Change of Control;

(14) the issuance by a Restricted Subsidiary of the Company of Preferred Stock that is permitted by Section 4.09;

(15) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary of the Company after the Issue Date, including Sale and Lease-Back Transactions permitted by this Indenture; and

(16) dispositions of motor vehicles securing consumer loans made by the Company and its Restricted Subsidiaries in the ordinary course of business.

"Attributable Debt" in respect of a Sale and Leaseback Transaction means, at the time of determination, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with GAAP) of the total obligations of the lessee for net rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended or may, at the option of the lessor, be extended; *provided, however*, if such Sale and Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capital Lease Obligation).

"Available Cash" means the amount of cash and Cash Equivalents held by the Company and its Restricted Subsidiaries, as reflected on the Company's consolidated balance sheet for the most recently completed fiscal quarter for which financial statements have been provided to Holders in accordance with Section 4.03 and calculated in accordance with GAAP.

"Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time and any successor provision thereto.

"Bankruptcy Law" means the Bankruptcy Code, BIA and any similar federal, state or foreign law for the relief of debtors.

"BIA" means the Bankruptcy and Insolvency Act (Canada) as such legislation exists as of the Issue Date or may from time to time hereafter be amended, modified, recodified, supplemented or replaced, together with all rules, regulations and interpretations thereunder or related thereto.

"Board of Directors" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors or other governing body of the general partner of the partnership;

(3) with respect to a limited liability company, the board of directors, managers or other governing body, and in the absence of the same, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person or other individual or entity serving a similar function.

"Business Day" means each day that is not a Legal Holiday.

"Canadian Dollar Equivalent" of any amount means, at the time of determination thereof,

(1) if such amount is expressed in Canadian dollars, such amount; or

(2) if such amount is expressed in any other currency, the equivalent of such amount in Canadian dollars determined by using the noon rate published by the Bank of Canada (or applicable successor entity) on the date one Business Day prior to such determination.

"Canadian Government Securities" means direct obligations of, or obligations guaranteed by the Government of Canada (or any agency thereof provided the obligations of such agency are guaranteed by the Government of Canada) or any Province of Canada (or any agency thereof provided the obligations of such agency are guaranteed by such government).

"Capital Lease Obligation" of any Person means the obligations of such Person to pay rent or other amounts under a lease of (or other Indebtedness arrangements conveying the right to use) real or personal property which are required to be classified and accounted for as a capital lease or capitalized on a balance sheet of such Person determined in accordance with GAAP and the amount of such obligations shall be the capitalized amount thereof in accordance with GAAP and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease or other arrangement prior to the first date upon which such lease or other arrangement may be terminated by the lessee without payment of a penalty; *provided* that any obligations of the Company and its Restricted Subsidiaries either existing on the Issue Date or created prior to the recharacterization described below (i) that were not included on the consolidated balance sheet of the Company as capital lease obligations and (ii) that are subsequently recharacterized as capital lease obligations due to a change in accounting treatment or otherwise, shall for all purposes of this Indenture (including, without limitation, the calculation of Consolidated Net Income and Consolidated Cash Flow) not be treated as Capital Lease Obligations or Indebtedness.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock or shares;

(2) in the case of an association or business entity other than a corporation, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of the issuing Person;

but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with such Capital Stock.

"Cash Equivalents" means;

(1) marketable direct obligations issued by, or unconditionally Guaranteed by, the United States or Canada or issued by any agency thereof and backed by the full faith and credit of the United States or Canada, as applicable, in each case maturing within one year from the date of acquisition;

(2) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances having maturities of one year or less from the date of acquisition issued by any lender to the Company or any of its Subsidiaries or by any commercial bank organized under the laws of Canada or the United States or any subdivision thereof or any U.S. or Canadian branch of a foreign bank having, at the date of acquisition thereof, combined capital and surplus of not less than $250,000,000 and whose long-term debt is rated "A-3" or "A−" or higher according to Moody's or S&P (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Rule 436 under the Securities Act));

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) entered into with (a) a bank meeting the qualifications described in clause (2) above, or (b) any primary government securities dealer reporting to the Market Reports Division of the Federal Reserve Bank of New York;

(4) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America with a rating at the time as of which any Investment therein is made of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Rule 436 under the Securities Act)) or, with respect to commercial paper issued in Canada by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of Canada, having a rating at the time as of which any Investment therein is made of "R-1" (or higher) according to Dominion Bond Rating Service Limited;

(5) direct obligations (or certificates representing an ownership interest in such obligations) of any state of the United States of America, any province of Canada or any foreign country recognized by the United States or any political subdivision of any such state, province or foreign country, as the case may be (including any agency or instrumentality thereof), for the payment of which the full faith and credit of such state is pledged and which are not callable or redeemable at the issuer's option, provided that (a) the long-term debt of such state, province or country is rated "A-3" or "A−" or higher according to Moody's or S&P (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Rule 436 under the Securities Act)), and (b) such obligations mature within one year of the date of acquisition thereof; and

(6) Investments in money market funds which invest substantially all of their assets in securities of the types described in clauses (1) through (5) above.

"CCAA" means the Companies' Creditors Arrangement Act (Canada) as such legislation now exists or may from time to time hereafter be amended, modified, recodified, supplemented or replaced, together with all rules, regulations and interpretations thereunder or related thereto.

"CDS" means CDS Clearing and Depository Services Inc.

"Change of Control" means the occurrence of any of the following:

(1) the direct or indirect sale, conveyance, transfer, lease or other disposition (other than by way of amalgamation, arrangement, exchange offer, merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act);

(2) the adoption of a plan relating to the liquidation or dissolution of the Company (whether or not otherwise in compliance with this Indenture);

(3) the consummation of any transaction (including any amalgamation, arrangement, exchange offer, merger or consolidation) the result of which is that any "person" (as defined above) becomes the "beneficial owner" (as such term is defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (3) such person shall be deemed to have "beneficial ownership" of all shares that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the Voting Stock of the Company; or

(4) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors;

except that in the case of (1), (3) or (4) above, any transaction or series of related transactions where immediately following such transaction or transactions (x) Gordon J. Reykdal is the Chairman of the Company or any successor thereto or the person to whom all or substantially all of such assets are sold conveyed, transferred, leased or otherwise disposed (a "Successor Entity") and (y) the Equity Interests in the Company or the Successor Entity controlled, directly or indirectly, by Gordon J. Reykdal and his Affiliates are no less than 20% of the total Equity Interest in the Company or such Successor Entity, shall not constitute a Change of Control.

"Clearstream" means Clearstream Banking, Société Anonyme.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor thereto.

"Collateral" means the collateral securing the Indenture Obligations.

"Collateral Agent" means Computershare Trust Company of Canada in its capacity as Collateral Agent under the Collateral Documents, together with its successors in such capacity.

"Collateral Documents" means the Collateral Trust Agreement, the Securities Pledge Agreements, the General Security Agreements, and all security agreements, pledge agreements, collateral assignments, collateral agency agreements, debentures, control agreements, blocked account agreements, mortgages, deeds of trust or other grants or transfers for security executed and delivered by the Company or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent for the benefit of the Priority Lien Secured Parties or the Parity Lien Secured Parties or under which rights or remedies with respect to any such Lien are governed, in each case as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the provisions of the Collateral Documents and Article 9 herein.

"Collateral Trust Agreement" means the collateral trust and intercreditor agreement, dated the Issue Date between the Company, each Secured Obligations Guarantor, the Collateral Agent and the representatives of the Secured Parties, which sets forth the terms on which the Collateral Agent will receive, hold, administer, maintain and distribute the proceeds of the Collateral securing the obligations under the Collateral Documents.

"Common Shares" means the common shares of the Company, no par value, as existing on the Issue Date or to the extent such common shares are reclassified or otherwise cease to exist, any class of Capital Stock of the Company that (1) is at the time entitled to vote in the election of the Board of Directors of the Company and (2) has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer thereof and which is not subject to redemption by the issuer thereof.

"Company" has the meaning set forth in the recitals hereto.

"Company Order" means a written request or order signed on behalf of the Company by an Officer of the Company, who must be the chief executive officer, chief financial officer, president, senior vice president, treasurer or principal accounting officer of the Company, and delivered to the Trustee.

"Consolidated Cash Flow" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period plus:

(1) an amount equal to any extraordinary or non-recurring loss, to the extent that such losses were deducted in computing such Consolidated Net Income; plus

(2) an amount equal to any net loss realized in connection with an Asset Sale, the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness by such Person or its Restricted Subsidiaries, to the extent such losses were deducted in computing such Consolidated Net Income; plus

(3) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net income; plus

(4) Consolidated Interest Expense of such Person and its Restricted Subsidiaries for such period; plus

(5) depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) to the extent deducted in computing such Consolidated Net Income; plus

(6) write offs, write downs or impairment of goodwill or other intangible assets, unrealized mark-to-market losses, and other non-cash charges and expenses (excluding any such other non-cash charge or expense to the extent that it represents an accrual of or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent deducted in computing such Consolidated Net Income; plus

(7) any charge or expense related to the final disposition, including settlement, of any class action litigation described in the Final Offering Circular; plus

(8) any one-time, non-recurring expenses or charges related to any Equity Offering, Permitted Investment, acquisition, recapitalization or Indebtedness permitted to be incurred pursuant to the terms of this Indenture (including a refinancing thereof), whether or not successful, including (i) such fees, expenses or charges related to the offering of the Notes and the Credit Agreement and (ii) any amendment or other modification of this Indenture, in each case, deducted in computing Consolidated Net Income; minus

(9) all non-cash items to the extent that such non-cash items increased Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period and any items for which cash was received in a prior period).

Notwithstanding the foregoing, the provision for taxes based on income or profits of, and the depreciation and amortization and other non-cash charges of, a Restricted Subsidiary of a Person shall be added to Consolidated Net Income to compute Consolidated Cash Flow only to the extent (and in the same proportion) that the Net Income of such Restricted Subsidiary was included in calculating the Consolidated Net Income of such Person.

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

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (including amortization of original issue discount, non-cash interest payments, the interest component of any deferred

payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net payments and receipts (if any) pursuant to interest rate Hedging Obligations, but excluding the imputed interest component of retention payments paid by such Person and its Restricted Subsidiaries); *provided* that the amortization or write-off of capitalized financing or debt issuance costs shall be excluded; plus

(2) all cash dividend payments on any series of Preferred Stock to the extent treated as debt for tax purposes;

(3) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; plus

(4) any interest expense on Indebtedness of another Person to the extent that such Indebtedness is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on the assets of such Person or one of its Restricted Subsidiaries (whether or not such Guarantee or Lien is called upon).

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; *provided* that:

(1) the Net Income of any Person that is not a Restricted Subsidiary of such Person, or that is accounted for by the equity method of accounting shall be included, but only to the extent of the amount of dividends or distributions that have been distributed in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period;

(2) solely for the purpose of determining the amount available for Restricted Payments under Section 4.07(a)(3) the Net Income of any Restricted Subsidiary that is not a Guarantor shall be excluded only to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction has been legally waived;

(3) the cumulative effect of a change in accounting principles shall be excluded;

(4) any non-recurring charge or expense related to the offering of the Initial Notes and the use of proceeds therefrom, as described in the Final Offering Circular, shall be excluded;

(5) any income or loss from the early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded; and

(6) any unrealized net gain or loss resulting in such period from Hedging Obligations or other derivative instruments shall be excluded.

"Continuing Directors" means, as of any date of determination, any member of the Board of Directors of the Company who (1) was a member of such Board of Directors on the Issue Date or (2) was nominated for election or elected to such Board of Directors with the approval, recommendation or endorsement of a majority of the directors who were members of such Board of Directors on the Issue Date or whose nomination or election to the Board of Directors was previously so approved.

"Corporate Trust Office of the Trustee" shall be at the address of the Trustee specified in Section 13.01, or such other address as to which the Trustee may give notice to the Holders and the Company.

"Credit Agreement" means the letter agreement dated as of September 1, 2011 by and among the Company and the lender thereto, including any related notes, guarantees, collateral documents, instruments and agreements in connection therewith (in each case, as may be amended and restated, supplemented or otherwise modified from time to time).

"Credit Agreement Representative" means an administrative agent or, if no administrative agent, such lender or lenders under the Credit Agreement.

"Credit Facility" means one or more debt facilities, including the Credit Agreement, or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit, bankers acceptances or other indebtedness, including any notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case, as amended, extended, renewed, restated, supplemented, replaced (whether or not upon termination and whether with the original lenders, institutional investors or otherwise), refinanced (including through the issuance of debt securities), restructured or otherwise modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any agreement (and related document) governing Indebtedness incurred to refinance, in whole or in part, the borrowings and commitments then outstanding or permitted to be outstanding under such Credit Facility or a successor Credit Facility, whether by the same or any other agent, lender or group of lenders (or institutional investors).

"Custodian" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

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

"Definitive Note" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(c) or issued on the Issue Date, substantially in the form of Exhibit A except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

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

(1) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Company or a Subsidiary of the Company; *provided* that any such conversion or exchange will be deemed an Incurrence of Indebtedness or Disqualified Stock, as applicable); or

(3) is redeemable at the option of the holder thereof, in whole or in part,

in the case of each of clauses (1), (2) and (3) on or prior to the 91st day after the Stated Maturity of the Notes; *provided* that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an Asset Sale or Change of Control occurring on or prior to the 91st day after the Stated Maturity of the Notes will not constitute Disqualified Stock if the terms of such Capital Stock provide that such Person may not repurchase or redeem any such Capital Stock pursuant to such provisions prior to the Company's purchase of the Notes as are required to be purchased pursuant to Section 4.10 and Section 4.14.

"DTC" means the Depository Trust Company.

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

"Equity Offering" means a sale for cash of either (1) common equity securities or units including or representing common equity securities of the Company (other than to the Company or a Subsidiary of the Company) or (2) common equity securities or units including or representing common equity securities of a direct or indirect parent entity of the Company (other than to the Company or a Subsidiary of the Company) to the extent that the net proceeds therefrom are contributed to the common equity capital of the Company.

"Event of Loss" means, with respect to any property or asset, any (i) loss or destruction of, or damage to, such property or asset or (ii) any condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such property or asset, or confiscation or requisition of the use of such property or asset.

"Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.

"Existing Indebtedness" means any Indebtedness of the Company or any of its Restricted Subsidiaries outstanding on the Issue Date until such Indebtedness is repaid.

"Fair Market Value" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors of the Company, as applicable; *provided, however,* that, (x) with respect to any such price less than $5.0 million, only the good faith determination of the Company's senior management, as applicable, shall be required, (y) with respect to any such price in excess of $5.0 million, the basis of such determination is set forth in writing and a majority of the non-employee directors of the Company has determined in good faith that the criteria set forth in this definition are satisfied as evidenced by a resolution of the Board of Directors of the Company set forth in an Officer's Certificate and (z) except in the case of determining the Fair Market Value of assets in connection with an Asset Sale not involving the sale of assets to an Affiliate, the Board of Directors' determination must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing in the United States or Canada if the Fair Market Value exceeds $10.0 million.

"Final Offering Circular" means the final Offering Circular relating to the offering of Initial Notes, dated January 24, 2012.

"Fixed Charge Coverage Ratio" means with respect to any Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the Company or any of its Restricted Subsidiaries incurs or redeems any Indebtedness (other than revolving credit borrowings) or issues or redeems Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such Incurrence or redemption of Indebtedness, or such issuance or redemption of Preferred Stock (including the application of any proceeds therefrom), as if the same had occurred at the beginning of the applicable four-quarter reference period. In addition, for purposes of making the computation referred to above:

(1) acquisitions that have been made by the Company or any of its Restricted Subsidiaries, including through amalgamations, arrangements, mergers or consolidations and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be deemed to have occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period shall be calculated to include the Consolidated Cash Flow of the acquired entities (adjusted to exclude (A) the cost of any

compensation, remuneration or other benefit paid or provided to any employee, consultant, Affiliate or equity owner of the acquired entities to the extent such costs are eliminated and not replaced and (B) the amount of any reduction in general, administrative or overhead costs of the acquired entities, in each case, as determined in good faith by an officer of the Company);

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the referent Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary of the Company on the Calculation Date will be deemed to have been a Restricted Subsidiary of the Company at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary of the Company on the Calculation Date will be deemed not to have been a Restricted Subsidiary of the Company at any time during such four-quarter period; and

(6) if any Indebtedness bears a floating rate of interest, the interest expense on such indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months).

"Fixed Charges" means, with respect to any Person for any period, the sum of, without duplication:

(1) the Consolidated Interest Expense of such Person and its Restricted Subsidiaries for such period; plus

(2) the product of (A) all cash dividend payments on any series of Preferred Stock to the extent not treated as debt for tax purposes of such Person, *times* (B) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, provincial, state, local and foreign statutory income tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"GAAP" means generally accepted accounting principles in the United States of America in effect on the Issue Date.

"General Security Agreement" means the general security agreements granted by each Secured Obligations Guarantor in favour of the Collateral Agent for the benefit of the

Priority Lien Secured Parties and the Parity Lien Secured Parties as security for the payment and performance of the Secured Obligations, in each case as amended, modified, renewed, restated or replaced, in whole or part, from time to time, in accordance with its terms.

"Global Note Legend" means the legend set forth in Section 2.06(g)(iii), which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A, issued in accordance with Section 2.01, 2.06(b) or 2.06(d).

"Grantors" means the Company and each Guarantor and each other Person that has or may from time to time hereafter execute and deliver a Collateral Document as a Person granting a Lien or other interest in its property to secure any of the Indenture Obligations.

"Guarantee" by any Person means any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person to:

(1) purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness;

(2) purchase property, securities or services for the purposes of assuring the holder of such Indebtedness of the payment of such Indebtedness; or

(3) maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness;

provided, however, that the Guarantee by any Person shall not include endorsements by such Person for collection or deposit, in either case, in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantors" means each Restricted Subsidiary of the Company that executes a Notes Guarantee in accordance with the provisions of this Indenture.

"Hedge Agreements" means any commodity swap, future or option contracts, interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, and other hedging agreements or swap contracts with respect to the management of risks related to commodities, interest rate or currency fluctuations which is permitted under each applicable Secured Debt Document.

"Hedge Obligations" means the actual Indebtedness of the Company or any other Obligor to a Hedge Provider under or pursuant to any Hedge Agreement to which it is a party.

"Hedge Providers" means any person who enters into a Hedge Agreement with the Company or any other Obligor to the extent permitted under each applicable Secured Debt Document and who has complied with the Collateral Trust Agreement or is a Lender Hedge Provider.

"Holder" means the Person in whose name a Note is registered in the Note Register.

"Incur" or "incur" means, with respect to any indebtedness or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume (pursuant to an amalgamation, arrangement, merger, consolidation, acquisition or other transaction), Guarantee or otherwise become liable in respect of such Indebtedness or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and "incurrence" and "incurred" shall have meanings correlative to the foregoing); *provided, however,* that a change in GAAP that results in an obligation of such Person that exists at such time becoming Indebtedness shall not be deemed an Incurrence of such Indebtedness. Indebtedness otherwise incurred by a Person before it becomes a Subsidiary of the Company shall be deemed to have been incurred at the time it becomes such a Subsidiary.

"Indebtedness" means (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person and whether or not contingent:

(1) obligations of such Person in respect of principal for money borrowed;

(2) obligations of such Person in respect of principal evidenced by bonds, debentures, notes or other similar instruments;

(3) every reimbursement obligation of such Person with respect to letters of credit, banker's acceptances or similar facilities issued for the account of such Person, other than obligations with respect to letters of credit securing obligations, other than obligations referred to in clauses (1), (2) and (5) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 10th day following payment on the letter of credit;

(4) every obligation of such Person issued or assumed as the deferred purchase price of property or services that is recorded as a liability under GAAP (but excluding trade payables, credit on open account, provisional credit, accrued liabilities or similar terms arising in the ordinary course of business which are not overdue by more than 30 days or which are being contested in good faith);

(5) every Capital Lease Obligation of such Person;

(6) the maximum fixed redemption or repurchase price of Disqualified Stock, of such Person at the time of determination plus accrued but unpaid dividends;

(7) every net payment obligation of such Person under interest rate swap, cap, collar or similar agreements or foreign currency hedge, exchange or similar agreements of such Person (collectively, "Hedging Obligations"); and

(8) every obligation of the type referred to in clauses (1) through (7) of another Person the payment of which, in either case, such Person has Guaranteed or is liable, directly or indirectly, as obligor, guarantor or otherwise, to the extent of such Guarantee or other liability;

provided, that obligations in respect of any payments due in connection with the termination or expiration of a lease that is not a Capital Lease Obligation pursuant to the terms of such lease shall not be deemed to be Indebtedness.

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

"Indenture Documents" means the Indenture, the Notes and the Collateral Documents.

"Indenture Obligations" means all Obligations in respect of the Notes or arising under the Indenture Documents, including the fees and expenses (including, without limitation, fees, expenses and disbursements of agents, counsel and professional advisors) of the Trustee and Collateral Agent. Indenture Obligations shall include all interest accrued (or which would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement of an insolvency or liquidation proceeding in accordance with and at the rate specified in the relevant Indenture Document whether or not the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

"Indirect Participant" means a Person who holds a beneficial interest in a Global Note through a Participant.

"Initial Notes" has the meaning set forth in the recitals hereto.

"Insolvency or Liquidation Proceeding" means:

(1) any voluntary or involuntary case or proceeding under the Bankruptcy Code or BIA or CCAA with respect to any Grantor;

(2) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to a material portion of their respective assets;

(3) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(4) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

"interest" with respect to the Notes means interest with respect thereto.

"Interest Payment Date" means January 31 and July 31 of each year to Stated Maturity.

"Investment Grade Rating" means (1) a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB− (or the equivalent) by S&P or (2) a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB− (or the equivalent) by S&P and an equivalent rating by any other Rating Agency.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of direct or indirect loans (including Guarantees of Indebtedness or other obligations), advances or capital contributions (excluding commissions, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided* that an acquisition of assets, Equity Interests or other securities by the Company or a Restricted Subsidiary of the Company for consideration consisting of common equity securities of the Company or such Restricted Subsidiary shall not be deemed to be an Investment, if the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that after giving effect to any such sale or disposition, such Person is no longer a direct or indirect Restricted Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Equity Interests of such Restricted Subsidiary not sold or disposed of. For purposes of the definition of Unrestricted Subsidiary and Section 4.07

(1) investments shall include the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Company's "Investment" in such Subsidiary at the time of such redesignation; less

(b) the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary of the Company shall be valued at its Fair Market Value at the time of such transfer.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Company or a Restricted Subsidiary of the Company in respect of such Investment.

"Issue Date" means January 31, 2012.

"Legal Holiday" means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or the province of Ontario.

"Lender Hedge Providers" means a Hedge Provider who enters into a Hedge Agreement that is permitted under the Secured Debt Documents and who at the time of entering into such Hedge Agreement is either (a) a lender under a Credit Facility, or (b) an Affiliate of a lender under a credit facility.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, encumbrance or hypothecation of any kind in respect of that asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any other agreement to give a security interest in and any filing of any financing statement under any Personal Property Security Act (or equivalent legislation) of any jurisdiction).

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

"Net Cash" means, as of the date of the declaration of a dividend pursuant to Section 4.07(b)(5) the sum of (1) the amount of undrawn and available borrowing capacity under Credit Facilities in existence on the date of the declaration of the dividend contemplated by such section, which, as of such date, may be Incurred by the Company or any of its Restricted Subsidiaries and (2) Available Cash.

"Net Income" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends, excluding, however, (1) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with (A) any Asset Sale (including dispositions pursuant to Sale and Leaseback Transactions) or (B) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Subsidiaries and (2) any extraordinary or nonrecurring gain (but not loss), together with any related provision for taxes on such extraordinary or nonrecurring gain (but not loss).

"Net Proceeds" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale (including any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale (including legal, accounting and investment banking fees and sales commissions) and any relocation expenses Incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and

any tax sharing arrangements), amounts required to be applied to the repayment of Indebtedness secured by a Lien on the asset or assets that were the subject of such Asset Sale and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

"Non-Recourse Debt" means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable as a guarantor or otherwise; and

(2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary of the Company) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity.

"Non-U.S. Person" means a Person who is not a U.S. Person.

"Notes" means the Initial Notes and more particularly means any Note authenticated and delivered under this Indenture. For all purposes of this Indenture, the term "Notes" shall also include any Additional Notes that may be issued.

"Note Documents" means the Indenture, the Notes, the Notes Guarantees, the Collateral Trust Agreement (and related Collateral Documents), each Parity Debt Sharing Confirmation, and all other agreements related to the Indenture, the Notes and the Notes Guarantees.

"Notes Guarantee" means a Guarantee of the Notes.

"Notes Secured Parties" means the holders of Indenture Obligations.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Obligor" means the Company, the Secured Obligations Guarantors and each other Person (if any) that at any time provides collateral security for any Secured Obligations.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer, the Controller, principal accounting officer or the Secretary of the Company or of any other Person, as the case may be.

"Officer's Certificate" means a certificate signed by any one of the chief executive officer, chief financial officer, president, senior vice-president, treasurer or principal accounting officer of the Company and delivered to the Trustee.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be in-house counsel or counsel to the Company.

"Parity Debt Representative" means:

(1) the case of the Notes and the Guarantees of the Notes, the Trustee; and

(2) in the case of any other Series of Parity Lien Debt, the trustee, agent or representative of the holders of such Series of Parity Lien Debt who maintains the transfer register for such Series of Parity Lien Debt and is appointed as a Parity Debt Representative (for purposes related to the administration of the Collateral Documents) pursuant to the credit agreement, Indenture or other agreement governing such Series of Parity Lien Debt, and who has executed a joinder to the Collateral Trust Agreement.

"Parity Debt Sharing Confirmation" means, as to any Series of Parity Lien Debt, the written agreement of the holders of that Series of Parity Lien Debt, as set forth in this Indenture or other agreement governing that Series of Parity Lien Debt, for the benefit of all holders of each other existing and future Series of Parity Lien Debt and each existing and future Parity Debt Representative, that all Parity Lien Obligations will be and are secured equally and ratably by all Liens at any time granted by the Company or any other Obligor to secure any Obligations in respect of such Series of Parity Lien Debt, whether or not upon property otherwise constituting Collateral, that all such Liens will be enforceable by the Collateral Agent for the benefit of all holders of Parity Lien Obligations equally and ratably, and that the holders of Obligations in respect of such Series of Parity Lien Debt are bound by the provisions of the Collateral Trust Agreement relating to the order of application of proceeds from enforcement of such Liens, and consent to and direct the Collateral Agent to perform its obligations under the Collateral Trust Agreement.

"Parity Lien" means a Lien granted by a Collateral Document to the Collateral Agent upon any property of the Company or any other Obligor to secure Parity Lien Obligations.

"Parity Lien Debt" means

(1) the Notes and the Notes Guarantees issued on the Issue Date; and

(2) any other Indebtedness (including Additional Notes) that is secured equally and ratably with the Notes by a Parity Lien that was permitted to be incurred and so secured under each applicable Secured Debt Document; provided, in the case of any Indebtedness referred to in this clause (2), that:

(a) on or before the date on which such Indebtedness is Incurred such Indebtedness is designated by the Company, in an Officer's Certificate delivered to each Parity Debt Representative and the Collateral Agent, as "Parity Lien Debt" for the purposes of the Secured Debt Documents; provided that no

Obligation or Indebtedness may be designated as both Parity Lien Debt and Priority Lien Debt;

(b) such Indebtedness is governed by an indenture or other agreement that includes a Parity Debt Sharing Confirmation; and

(c) all requirements set forth in the Collateral Trust Agreement as to the confirmation, grant or perfection of the Collateral Agent's Liens to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (c) will be conclusively established for purposes of entitling the holders of such indebtedness to share equally and ratably with other holders of Parity Lien Debt in the benefits and proceeds of the Collateral Agent's Liens on the Collateral if the Company delivers to the Collateral Agent an Officer's Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Parity Lien Debt").

"Parity Lien Documents" means, collectively, the Note Documents and each agreement, Indenture or instrument governing each other Series of Parity Lien Debt and all other agreements governing, securing or relating to any Parity Lien Obligations.

"Parity Lien Obligations" means Parity Lien Debt and all other Obligations in respect thereof.

"Parity Lien Secured Parties" means the holders of Parity Lien Obligations and any Parity Debt Representatives.

"Participant" means, with respect to the Depositary, DTC, Euroclear or Clearstream, a Person who has an account with the Depositary, DTC, Euroclear or Clearstream, respectively.

"Permitted Investments" means:

(1) any Investment in the Company or a Restricted Subsidiary of the Company;

(2) any Investment in cash or Cash Equivalents or the Notes;

(3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary of the Company or (B) such Person is merged into or amalgamated, arranged or consolidated with, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

(4) any Investment existing on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided* that the amount of any such Investment may be increased (x) as required by the terms of such

Investment as in existence on the Issue Date or (y) as otherwise permitted under this Indenture;

(5) any Restricted Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10.

(6) any Investment in loans, advances or other extensions of credit in the ordinary course of business, whether or not originated by the Company or any of its Subsidiaries;

(7) Hedging Obligations that are Incurred by the Company or any of its Restricted Subsidiaries for the purpose of fixing or hedging (A) interest rate risk with respect to any floating rate Indebtedness that is permitted by the terms of this Indenture to be outstanding or (B) currency exchange risk in connection with existing financial obligations and not for purposes of speculation;

(8) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits;

(9) loans and advances to officers, directors and employees of the Company and its Restricted Subsidiaries in the ordinary course of business not to exceed $2.0 million in the aggregate at any one time outstanding;

(10) any Investment consisting of a Guarantee permitted by Section 4.09;

(11) Investments consisting of non-cash consideration received in the form of securities, notes or similar obligations in connection with dispositions of assets permitted pursuant to the terms of this Indenture;

(12) Investments received in settlement of bona fide disputes or as distributions in bankruptcy, insolvency, foreclosure or similar proceedings;

(13) advances to suppliers in the ordinary course of business;

(14) investments consisting of purchases and acquisitions of supplies, materials and equipment or purchases or contract rights or licenses of intellectual property, in each case in the ordinary course of business;

(15) receivables owing to the Company or any of its Restricted Subsidiaries if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(16) Investments consisting of obligations of officers and employees to the Company or its Restricted Subsidiaries in connection with such officers' and employees' acquisition of Equity Interests in the Company (other than Disqualified Stock) so long as

no cash is actually advanced by the Company or any of its Restricted Subsidiaries in connection with the acquisition of such obligations; and

(17) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (17) that are at the time outstanding, not to exceed $7.5 million.

"Permitted Liens" means:

(1) Liens securing Priority Lien Obligations, in an aggregate principal amount not to exceed $32.5 million;

(2) Liens in favor of the Company or a Guarantor;

(3) Liens on property of a Person existing at the time such Person is merged into or amalgamated, arranged or consolidated with the Company or a Restricted Subsidiary of the Company, provided that such Liens were not created in connection with, or in contemplation of, such amalgamation, arrangement, merger or consolidation and do not extend to any assets other than those of the Person merged into or amalgamated, arranged or consolidated with the Company or a Restricted Subsidiary of the Company;

(4) Liens on property existing at the time of acquisition thereof by the Company or any Restricted Subsidiary of the Company, *provided* that such Liens were not created in connection with, or in contemplation of, such acquisition;

(5) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds, workmen's compensation or unemployment obligations or other obligations of a like nature, or to secure letters of credit issued with respect to such obligations, Incurred in the ordinary course of business;

(6) Liens consisting of deposits in connection with leases or other similar obligations, or securing letters of credit issued in lieu of such deposits, incurred in the ordinary course of business, and cash deposits in connection with acquisitions otherwise permitted under this Indenture;

(7) Liens securing Indebtedness (including Capital Lease Obligations) permitted by Section 4.09(b)(3) covering only the assets acquired with such Indebtedness and directly related assets such as proceeds (including insurance proceeds), products, replacements, substitutions and accessions thereto;

(8) Liens existing on the Issue Date and replacement Liens that do not encumber additional assets, unless such encumbrance is otherwise permitted;

(9) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent for more than 30 days or that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, *provided* that any

reserve or other appropriate provision as shall be required in conformity with GAAP shall have been made therefor;

(10) Liens securing Permitted Refinancing Debt, *provided* that the obligor under such Indebtedness was permitted to Incur such Liens with respect to the Indebtedness so refinanced under this Indenture and:

(a) the new Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Indebtedness renewed, refunded, refinanced replaced, defeased or discharged with such Permitted Refinancing Indebtedness; and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(11) statutory and common law Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen or other similar Liens arising in the ordinary course of business with respect to amounts that are not yet delinquent for more than 30 days or that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, *provided* that any reserve or other appropriate provision as shall be required in conformity with GAAP shall have been made therefor;

(12) Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review, *provided* that any reserve or other appropriate provision as shall be required in conformity with GAAP shall have been made therefor;

(13) Liens arising from filings of financing statements or similar documents regarding leases or otherwise for precautionary purposes relating to arrangements not constituting Indebtedness;

(14) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Company and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(15) Liens on Permitted Investments;

(16) to the extent not otherwise prohibited pursuant to this Indenture, Liens on assets pursuant to merger, amalgamation, or arrangement agreements, stock or asset purchase agreements and similar agreements in respect of the disposition of such assets;

(17) deposits made in the ordinary course of business to secure liability to insurance carriers;

(18) Liens on the Equity Interests or Indebtedness of Unrestricted Subsidiaries;

(19) Liens securing Indenture Obligations, including, without limitation, any Additional Notes permitted to be Incurred pursuant to this Indenture;

(20) Liens Incurred in the ordinary course of business of the Company or any Restricted Subsidiary of the Company with respect to obligations in an aggregate principal amount that does not exceed $5.0 million at any one time outstanding and that (A) are not Incurred in connection with the borrowing of money or the obtaining of advances or credit (other than trade credit in the ordinary course of business) and (B) do not in the aggregate materially detract from the value of the property or materially impair the use thereof in the operation of business by the Company or such Subsidiary;

(21) encumbrances or exceptions expressly permitted pursuant to the Collateral Documents;

(22) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including Liens securing letters of credit issued in the ordinary course of business in connection therewith;

(23) [Intentionally Omitted]; and

(24) pledges of Equity Interests of an Unrestricted Subsidiary of the Company securing Non-Recourse Debt of such Unrestricted Subsidiary.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest in connection with or in respect of any referenced Indebtedness.

"Permitted Refinancing Debt" means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net cash proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness of the Company or any of its Restricted Subsidiaries; *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Debt does not exceed the principal amount and premium, if any, plus accrued interest (or accreted value, if applicable) of the Indebtedness so extended, refinanced, renewed, replaced, defeased or refunded (plus the amount of any fees and expenses Incurred in connection therewith);

(2) such Permitted Refinancing Debt has a final scheduled maturity date later than the final scheduled maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Notes, such Permitted Refinancing Debt is subordinated in right of payment to, the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(4) such Indebtedness is Incurred either by the Company or by the Restricted Subsidiary of the Company that is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or would otherwise be permitted to Incur such Indebtedness.

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

"Post-Petition Interest" means any interest or entitlement to fees or expenses or other charges that accrues after the commencement of any bankruptcy proceeding, whether or not allowed or allowable in any such bankruptcy proceeding.

"PPSA" means the Personal Property Security Act (Alberta) and the Regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of the Collateral Agent's security interest in any Collateral is governed by the personal property security laws of any jurisdiction other than Alberta, PPSA means those personal property security laws in such other jurisdiction of Canada for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

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

"Priority Debt Representative" means:

(1) in the case of (i) the obligations under the Credit Agreement, and (ii) Hedge Obligations owed to a Lender Hedge Provider, the Credit Agreement Representative (subject to the Collateral Trust Agreement); and

(2) in the case of any other Series of Priority Lien Debt (including non-Lender Hedge Providers described in the Collateral Trust Agreement), the trustee, agent or representative of the holders of such Series of Priority Lien Debt who maintains the transfer register for such Series of Priority Lien Debt and is appointed as a Priority Debt

Representative (for purposes related to the administration of the Collateral Documents) pursuant to the credit agreement, Indenture or other agreement governing such Series of Priority Lien Debt, and who has executed a joinder to the Collateral Trust Agreement.

"Priority Debt Sharing Confirmation" means, as to any Series of Priority Lien Debt, the written agreement of the holders of such Series of Priority Lien Debt, as set forth in the agreement governing such Series of Priority Lien Debt, for the benefit of all holders of each other existing and future Series of Priority Lien Debt and each existing and future Priority Debt Representative, that all Priority Lien Obligations will be and are secured equally and ratably by all Liens at any time granted by the Company or any other Obligor to secure any Obligations in respect of such Series of Priority Lien Debt, whether or not upon property otherwise constituting Collateral, that all such Liens will be enforceable by the Collateral Agent for the benefit of all holders of Priority Lien Obligations equally and ratably, and that the holders of Obligations in respect of such Series of Priority Lien Debt are bound by the provisions in the Collateral Trust Agreement relating to the order of application of proceeds from enforceable of such Liens, and consent to and direct the Collateral Agent to perform its obligations under the Collateral Trust Agreement.

"Priority Lien Debt" means:

(1) Indebtedness under the Credit Agreement and the Guarantees thereof that, in each case, was permitted to be incurred and so secured under each applicable Secured Debt Document; provided that for certainty, all Obligations from time to time under the Credit Agreement are Priority Lien Debt whether or not permitted under each Secured Debt Document; and

(2) Indebtedness under any other credit facility, Hedge Agreement or any Guarantee thereof of an Obligor that is secured equally and ratably with the Credit Agreement by a Priority Lien that was permitted to be Incurred and so secured under each applicable Secured Debt Document; provided, in the case of any Indebtedness referred to in this clause (2), that:

(a) on or before the date on which such Indebtedness is Incurred such Indebtedness is designated by the Company, in an Officer's Certificate delivered to each Priority Debt Representative and the Collateral Agent, as "Priority Lien Debt" for the purposes of the Secured Debt Documents; provided that no Obligation or Indebtedness may be designated as both Parity Lien Debt and Priority Lien Debt;

(b) such Indebtedness is governed by a credit agreement, an Indenture or other agreement that includes a Priority Debt Sharing Confirmation;

(c) until the payment in full and discharge of all Obligations under the Credit Agreement or any Hedge Agreement with a lender or Affiliate of a lender, written acknowledgment from the Administrative Agent to the Collateral Agent that such Obligations are Priority Lien Debt; and

(d) all requirements set forth in the Collateral Trust Agreement as to the confirmation, grant or perfection of the Collateral Agent's Lien to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (iii) will be conclusively established if the Company delivers to the Collateral Agent an Officer's Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Priority Lien Debt").

"Priority Lien Documents" means, collectively, the Credit Agreement and the documents relating thereto or arising thereunder, Hedge Agreements and the credit agreements, indentures or other agreements governing any other Credit Facility pursuant to which Priority Lien Debt is incurred (and not prohibited to be incurred under each applicable Secured Debt Document) and all other agreements governing or securing any Priority Lien Obligations (and not prohibited to be so secured under each applicable Secured Debt Document).

"Priority Lien Obligations" means the Priority Lien Debt and all other Obligations in respect hereof.

"Priority Lien Secured Parties" means the holders of Priority Lien Obligations and any Priority Debt Representatives.

"Priority Liens" means a Lien granted to the Collateral Agent, for the benefit of the Priority Lien Secured Parties, upon any property of the Company or any other Obligor to secure Priority Lien Obligations.

"Private Placement Legend" means the legend set forth in Section 2.06(g)(i) to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Rating Agencies" means Moody's and S&P, or if Moody's or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company which shall be substituted for Moody's or S&P or both, as the case may be.

"Record Date" for the interest, if any, payable on any applicable Interest Payment Date means January 15 or July 15 (whether or not a Business Day) next preceding such Interest Payment Date.

"Redemption Date" means any date set for redemption of the Notes, in whole or in part, in accordance with Article 3.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. "Refinanced" and "refinancing" shall have correlative meanings.

"Regulation S" means Regulation S promulgated under the Securities Act.

"Regulation S Global Note" means a Global Note in the form of Exhibit A bearing the Global Note Legend and the Regulation S Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee.

"Regulation S Legend" means the legend set forth in Section 2.06(g)(ii).

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

"Restricted Definitive Note" means a Definitive Note bearing the Private Placement Legend.

"Restricted Global Note" means a Global Note bearing the Private Placement Legend.

"Restricted Investment" means an Investment other than a Permitted Investment.

"Restricted Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is not an Unrestricted Subsidiary.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Rule 903" means Rule 903 promulgated under the Securities Act.

"Rule 904" means Rule 904 promulgated under the Securities Act.

"S&P" means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies. Inc., or any successor to the rating agency business thereof.

"Sale and Leaseback Transaction" means an arrangement relating to property owned by the Company or one of its Subsidiaries on the Issue Date or thereafter acquired by the Company or one of its Subsidiaries whereby the Company or such Subsidiary transfers such property to a Person and the Company or such Subsidiary leases it from such Person.

"SEC" means the Securities and Exchange Commission, or any successor agency thereto.

"Secured Debt" means Parity Lien Debt and Priority Lien Debt.

"Similar Business" means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental, complementary or ancillary thereto, or a reasonable extension or expansion thereof.

"Stated Maturity" when used with respect to any security or any installment of interest thereon, means the date specified in such security as the fixed date on which the principal of such security or such installment of interest is due and payable.

"Subsidiary" means, with respect to any Person, (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person (or a combination thereof) and (2) any partnership (A) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (B) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

"TIA" means the Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder.

"Total Assets" means, as of any date, the total consolidated assets of the Company and its Restricted Subsidiaries on a consolidated basis, as shown on the consolidated balance sheet of the Company and its Restricted Subsidiaries as of the end of the most recently ended fiscal quarter prior to the applicable date of determination for which internal financial statements are available; provided that, for purposes of calculating "Total Assets" for purposes of testing the covenants under this Indenture in connection with any transaction, the total consolidated assets of the Company and its Restricted Subsidiaries shall be adjusted to reflect any acquisitions and dispositions of assets that have occurred during the period from the date of the applicable balance sheet through the applicable date of determination but without giving effect to the transaction being tested under this Indenture.

"Treasury Rate" means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption date to July 31, 2014; *provided, however,* that if the period from such redemption date to July 31, 2014 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trustee" means collectively Computershare Trust Company, N.A., as U.S. Trustee and Computershare Trust Company of Canada, as Canadian Trustee, until a successor replaces either or both of them in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Unrestricted Definitive Note" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"Unrestricted Global Note" means a permanent Global Note, substantially in the form of Exhibit A that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear the Private Placement Legend.

"Unrestricted Subsidiary" means, with respect to any Person, any Subsidiary of such Person that is designated by the Board of Directors of such Person as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors of such Person, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) except as permitted by Section 4.11, is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;

(3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(4) has not guaranteed or otherwise directly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries.

"U.S. Person" means a U.S. person as defined in Rule 902(k) under the Securities Act.

"U.S.A. Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended and signed into law October 26, 2001.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (B) the number of

years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by

(2) the then outstanding principal amount of such Indebtedness.

"Wholly Owned Subsidiary" of any Person means a Subsidiary of such Person all of the outstanding Capital Stock of which (other than directors' qualifying shares and nominal amounts required to be held by local nationals) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person (or any combination thereof).

Section 1.02 Other Definitions.

Term	Defined in Section
"Action"	11.09
"Additional Assets"	4.10
"Additional Notes Incurrence Test"	4.09
"Affiliate Transaction"	4.11
"Asset Sale Offer"	4.10
"Authentication Order"	2.02
"Canadian Placement Legend"	2.06
"Change of Control Offer"	4.14
"Change of Control Payment"	4.14
"Change of Control Payment Date"	4.14
"Collateral Document Order"	11.09
"Covenant Defeasance"	8.03
"DTC"	2.03
"Event of Default"	6.01
"Excess Proceeds"	4.10
"incur" or "incurrence"	4.09
"Legal Defeasance"	8.02
"Note Register"	2.03
"Offer Amount"	3.09
"Offer Period"	3.09
"Paying Agent"	2.03
"Permitted Debt"	4.09
"Purchase Date"	3.09
"Redemption Date"	3.07
"Refinancing Indebtedness"	4.09
"Registrar"	2.03
"Restricted Payments"	4.07
"Reversion Date"	4.16
"Successor Company"	5.01
"Successor Subsidiary Guarantor"	5.01
"Suspended Covenants"	4.16
"Suspension Period"	4.16

Section 1.03 Rules of Construction.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) words in the singular include the plural, and in the plural include the singular;

(e) "will" shall be interpreted to express a command;

(f) provisions apply to successive events and transactions;

(g) references to sections of, or rules under, the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(h) unless the context otherwise requires, any reference to an "Article", "Section", "clause" or "Exhibit" refers to an Article, Section, clause or Exhibit, as the case may be, of this Indenture;

(i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(j) "including" means "including, without limitation"; and

(k) any reference "$" or "dollars" shall be to Canadian dollars unless stated otherwise.

Section 1.04 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

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

(e) The Company may set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including the Depositary that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and the Depositary may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through its standing instructions and customary practices.

(h) The Company may fix a record date for the purpose of determining the Persons that are beneficial owners of interests in any Global Note held by the Depositary entitled under the procedures of such Depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed,

the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 90 days after such record date.

Section 1.05 Incorporation by Reference of the Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein are used herein as so defined.

ARTICLE 2

THE NOTES

Section 2.01 Form and Dating; Terms.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in denominations of $2,000 and integral multiples of $1,000 in excess thereof.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form, including Notes issued in definitive form on the Issue Date, shall be substantially in the form of Exhibit A (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06.

(c) [Intentionally Omitted]

(d) Terms. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and

to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

The Notes shall be subject to repurchase by the Company pursuant to an Asset Sale Offer as provided in Section 4.10 or a Change of Control Offer as provided in Section 4.14. The Notes shall not be redeemable, other than as provided in Article 3.

(e) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 Execution and Authentication.

At least one Officer shall execute the Notes on behalf of the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of a Company Order (an "Authentication Order"), authenticate and deliver the Initial Notes. In addition, at any time, from time to time, the Trustee shall, upon receipt of an Authentication Order, authenticate and deliver any Additional Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes issued hereunder.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

The Canadian Trustee hereby appoints and authorizes the U.S. Trustee to act as its authenticating agent with respect to the Notes, as required.

The Trustee shall have the right to decline to authenticate and deliver any Notes if (a) the Trustee, being advised by counsel, determines, in its reasonable discretion, that such action may not be taken lawfully, or (b) the Trustee in good faith by its Board of Directors or trustees, executive committee or a trust committee of directors and/or Responsible Officers shall determine, in its reasonable discretion, that such action would expose the Trustee to personal liability to Holders of any then outstanding Notes.

Section 2.03 Registrar and Paying Agent.

The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Notes ("Note Register") and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder. The Company shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such and all presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee. The Company or any of the Company's Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints CDS Clearing and Depository Services Inc. to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Paying Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

Section 2.04 Paying Agent to Hold Money in Trust.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA, Section 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least ten days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes.

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor Depositary or a nominee of such successor Depositary. A beneficial interest in a Global Note may not be exchanged for a Definitive Note unless (i) (x) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Note and a successor Depositary is not appointed by the Company within 90 days or (y) the Company notifies the Trustee in writing that the Company has elected to cause the issuance of Definitive Notes or (ii) there shall have occurred and be continuing an Event of Default with respect to the Notes. Upon the occurrence of any of the preceding events in subclause (i) or (ii), Definitive Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depositary (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the preceding events in subclause (i) or (ii) above and pursuant to Section 2.06(c). A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); provided, however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c).

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act and applicable securities laws and regulations in Canada. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, subject, however, to such transfer being in accordance with the transfer restrictions set forth in the Canadian Placement Legend, as applicable. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i), the transferor of such beneficial interest must deliver to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given

to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (B) (1) above. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act and/or applicable securities laws and regulations in Canada, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h).

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(ii) and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B, including the certifications in item (2) thereof.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(ii), and the Registrar receives the following:

(y) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C, including the certifications in item (1)(a) thereof; or

(z) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an

Unrestricted Global Note, a certificate from such holder in the form of Exhibit B, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 2.06(b)(iv)(D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and applicable securities laws and regulations in Canada and that the restrictions on transfer contained herein and the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to this Section 2.06(b)(iv) at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to this Section 2.06(b)(iv).

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to, Persons who take delivery thereof in the form of a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(i) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 and in a transaction not subject to, or exempt from, the prospectus qualification and dealer registration requirements of applicable securities laws in Canada, a certificate substantially in the form of Exhibit B, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance

with Rule 144, a certificate substantially in the form of Exhibit B, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Company or any of the Restricted Subsidiaries, a certificate substantially in the form of Exhibit B, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h), and the Company shall execute and the Trustee shall, upon receipt of an Authentication Order, authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(i) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(ii) [Intentionally Omitted]

(iii) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a), and the Registrar receives the following:

(y) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit C, including the certifications in item (1)(b) thereof; or

(z) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder substantially in the form of Exhibit B, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 2.06(c)(iii)(D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance

with the Securities Act and applicable securities laws and regulations in Canada and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iv) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon the occurrence of any of the events in subsection (i) or (ii) of Section 2.06(a) and satisfaction of the conditions set forth in Section 2.06(b)(ii), the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h), and the Company shall execute and the Trustee shall, upon receipt of an Authentication Order, authenticate and mail to the Person designated in the instructions a Definitive Note in the applicable principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depositary and the Participant or Indirect Participant. The Trustee shall mail such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(iv) shall not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(i) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 and in a transaction not subject to, or exempt from, the prospectus qualification and dealer registration requirements of applicable securities laws in Canada, a certificate substantially in the form of Exhibit B, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to the Company or any of the Restricted Subsidiaries, a certificate substantially in the form of Exhibit B, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the Regulation S Global Note.

(ii) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the Registrar receives the following:

(y) if the Holder of such Restrictive Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C, including the certifications in item (1)(c) thereof; or

(z) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B, including the certifications in item (4) thereof;

and, in each such case set forth in this Section 2.06(d)(ii)(D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and applicable securities laws and regulations in Canada and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(ii), the Trustee shall cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the applicable Unrestricted Global Note.

(iii) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Unrestricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of the applicable Unrestricted Global Note.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraph (ii) or (iii) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

(i) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 and in a transaction not subject to, or exempt from, the prospectus qualification and dealer registration requirements of applicable securities laws in Canada then the transferor must deliver a certificate in the form of Exhibit B, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B, including the certifications required by item (3) thereof, if applicable.

(ii) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(y) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit C, including the certifications in item (1)(d) thereof; or

(z) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder substantially in the form of Exhibit B, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) [Intentionally Omitted]

(g) Legends. The following legends shall appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(i) Private Placement Legend.

Except as permitted by subparagraph (v) below, in the case of any Notes offered in reliance on Rule 144A, each 144A Global Note and each Definitive Note issued in exchange for a beneficial interest in a Rule 144A Global Note (and all Notes issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

"THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS

NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS NOTE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE."

(ii) Regulation S Legend.

Except as permitted by subparagraph (v) below, in the case of any Notes offered in reliance on Regulation S, each Regulation S Global Note and each Definitive Note issued in exchange for or in lieu of a beneficial interest in a Regulation S Global Note or issued on the Issue Date (and all Notes issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

"CANADIAN RESALE RESTRICTION: UNLESS PERMITTED UNDER APPLICABLE CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE JUNE 1, 2012."

(iii) Global Note Legend.

Each Global Note shall bear a legend in substantially the following form:

"THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREIN REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. THIS NOTE MAY NOT BE TRANSFERRED TO OR EXCHANGED FOR NOTES REGISTERED IN THE NAME OF ANY PERSON OTHER THAN THE DEPOSITORY OR A NOMINEE THEREOF AND NO SUCH TRANSFER MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE

INDENTURE. EVERY NOTE AUTHENTICATED AND DELIVERED UPON REGISTRATION OF, TRANSFER OF, OR IN EXCHANGE FOR, OR IN LIEU OF, THIS NOTE SHALL BE A GLOBAL NOTE SUBJECT TO THE FOREGOING, EXCEPT IN SUCH LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS") TO THE CASH STORE FINANCIAL SERVICES INC. (THE "ISSUER") OR ITS SUCCESSOR OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN RESPECT THEREOF IS REGISTERED IN THE NAME OF CDS & CO., OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS (AND ANY PAYMENT IS MADE TO CDS & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED HOLDER HEREOF, CDS & CO., HAS A PROPERTY INTEREST IN THE SECURITIES REPRESENTED BY THIS NOTE HEREIN AND IT IS A VIOLATION OF ITS RIGHTS FOR ANOTHER PERSON TO HOLD, TRANSFER OR DEAL WITH THIS NOTE."

(iv) Each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form (the "Canadian Placement Legend"):

"CANADIAN RESALE RESTRICTION: UNLESS PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE JUNE 1, 2012."

(v) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraph (b)(iv), (c)(iii), (c)(iv), (d)(ii), (d)(iii), (e)(ii) or (e)(iii) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend or the Regulation S Legend.

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or cancelled in whole and not in part, each such Global Note shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such

other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

Notwithstanding anything to the contrary set out herein, all physical Global Notes issued to the Depository may be surrendered to the Trustee for an electronic position on the register of Noteholders to be maintained by the Trustee. All Global Notes maintained in such electronic position will be valid and binding obligations of the Company, entitling the registered holders thereof to the same benefits as those registered holders who hold Global Notes in physical form. This Indenture and the provisions contained herein will apply, *mutatis mutandis*, to such Notes held in such electronic position.

(i) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 or at the Registrar's request.

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.04).

(iii) Neither the Registrar nor the Company shall be required to register the transfer or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(iv) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(v) The Company shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption or tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer, an Asset Sale Offer or other tender offer, in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange any Note between a Record Date and the next succeeding Interest Payment Date.

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any

Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 4.02, the Company shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of like tenor, in any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, Notes may be exchanged for other Notes of like tenor, in any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at the office or agency of the Company designated pursuant to Section 4.02. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive Notes to which the Holder making the exchange is entitled in accordance with the provisions of Section 2.02.

(ix) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(x) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, the Registrar or the Company and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Company shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note of like tenor if the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is a contractual obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser under state law.

If the principal amount of any Note is considered paid under Section 4.01, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company, or by any Affiliate of the Company, shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Company shall prepare and the Trustee shall, upon receipt of an Authentication Order, authenticate definitive Notes in exchange for temporary Notes.

Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall destroy cancelled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all cancelled Notes shall be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Interest.

If the Company defaults in a payment of interest on the Notes, the Company shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01. The Company shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements as are satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; provided that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Company of such special record date. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) shall mail or cause to be mailed, first-class postage prepaid, to each Holder a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 2.13 CUSIP Numbers.

The Company in issuing the Notes may use CUSIP numbers and corresponding ISIN numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by

any defect in or omission of such numbers. The Company will as promptly as practicable notify the Trustee of any change in the CUSIP or ISIN numbers.

Section 2.14 Global Notes.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

Section 2.15 Issuance of Additional Notes.

After the Issue Date, the Company shall be entitled, subject to its compliance with Sections 4.09 and 4.12, to issue Additional Notes under this Indenture, which Notes shall have identical terms as the Notes issued on the Issue Date, other than with respect to the date of issuance and issue price. All Notes shall be equally and ratably entitled to the benefits of this Indenture. With respect to any Additional Notes, the Company shall set forth in a resolution of the Board of the Company and an Officer's Certificate, a copy of each which shall be delivered to the Trustee, the following information:

(a) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture; and

(b) the issue price, the issue date and the CUSIP number of such Additional Notes; provided that only those Additional Notes that are part of the "same issue" as all other Notes issued under this Indenture, as defined under Treasury Regulation Section 1.1275-1(f), or issued in a "qualified reopening" under Treasury Regulation Section 1.1275-2(k) will be issued with the same CUSIP number as the other Notes issued under this Indenture.

In authenticating such Additional Notes, and accepting the additional responsibilities under this Indenture in relation to such Additional Notes, the Trustee shall receive, and, subject to Section 7.01, shall be fully protected in relying upon:

(i) an executed supplemental indenture, if any;

(ii) an Officer's Certificate;

(iii) Opinion of Counsel delivered in accordance with Section 13.02; and

(iv) such other documents as it may reasonably require.

ARTICLE 3

REDEMPTION

Section 3.01 Notices to Trustee.

If the Company elects to redeem Notes pursuant to Section 3.07, it shall furnish to the Trustee, at least five Business Days (or such shorter time period as the Trustee may agree) before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to Section 3.03 but not more than 60 days before a redemption date, an Officer's Certificate setting forth (i) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of the Notes to be redeemed and (iv) the redemption price.

Section 3.02 Selection of Notes to Be Redeemed or Purchased.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee shall select the Notes to be redeemed or purchased (i) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed, (ii) if the Notes are not listed on a national securities exchange, on a pro rata basis or by lot to the extent practicable or (iii) by such other method in accordance with the applicable procedures of the Depositary. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of $2,000 or whole multiples of $1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

Subject to Section 3.09, the Company shall deliver electronically or mail or cause to be mailed by first-class mail, postage prepaid, notices of redemption at least 30 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at such Holder's registered address or otherwise in accordance with the procedures of the Depositary, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 12. Except as set forth in Section 3.07, notices of redemption may not be conditional; *provided* that a revocable notice of redemption may be made in advance of a prospective refinancing of the Notes, conditioned upon the consummation of such refinancing transaction, if an executed commitment letter (which may be

subject to customary conditions) is in place for such refinancing transaction at the time such notice of redemption is delivered.

The notice shall identify the Notes to be redeemed and shall state:

(a) the Redemption Date;

(b) the redemption price if then ascertainable, and otherwise the appropriate method for calculation of the redemption price, in which case the actual redemption price shall be set forth in an Officer's Certificate delivered to the Trustee no later than two (2) Business Days prior to the Redemption Date unless clause (2) of the definition of "Applicable Premium" is applicable, in which case such Officer's Certificate should be delivered on the Redemption Date;

(c) if any Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in a principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder of the Notes upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) whether such redemption is conditioned on the happening of a future event;

(g) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(h) the paragraph or subparagraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(i) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes;

Notes called for redemption become due on the date fixed for redemption unless such redemption is conditioned on the happening of a future event. At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense; provided that the Company shall have delivered to the Trustee, at least five Business Days (or such shorter period as the Trustee may agree) before notice of redemption is required to be mailed or caused to be mailed to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such

notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is delivered or mailed in accordance with Section 3.03, Notes called for redemption become irrevocably due and payable on the redemption date, unless such redemption is conditioned on the happening of a future event, at the applicable redemption price. The notice, if delivered or mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05, on and after the Redemption Date interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05 Deposit of Redemption or Purchase Price.

Prior to 11:00 a.m. (New York City time) on the redemption or purchase date, the Company shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest shall cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest accrued to the redemption or purchase date and not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Company shall issue and the Trustee shall authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered representing the same indebtedness to the extent not redeemed or purchased; provided that each new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Note.

Section 3.07 Optional Redemption.

(a) At any time prior to July 31, 2014, the Company may redeem all or a part of the Notes, upon notice as described under Section 3.03, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding the Redemption Date, subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(b) On and after July 31, 2014, the Company may redeem the Notes, in whole or in part, upon notice as described under Section 3.03, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon, if any, to, but excluding the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the periods indicated below:

For the period below	**Percentage**
On or after July 31, 2014	103.084%
On or after January 31, 2015	102.091%
On or after July 31, 2015	101.127%
On or after January 31, 2016	100.194%
On or after July 31, 2016	100.000%

(c) Prior to July 31, 2014, the Company shall be entitled at its option on one or more occasions to redeem up to 35% of the aggregate principal amount of the Notes (including any Additional Notes) originally issued under this Indenture at a redemption price of 111.500% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date (subject to the right of Holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date) if (i) such redemption is made with the proceeds of one or more Equity Offerings; (ii) at least 65% of the aggregate principal amount of the Notes (including Additional Notes) originally issued under this Indenture remain outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company or any of its Subsidiaries); and (iii) the redemption occurs within 90 days of such Equity Offering.

(d) The Company may at any time redeem all of the outstanding Notes, in whole but not in part, at a redemption price of 100% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption, and all Additional Amounts (if any) then due and which will become due on the Redemption Date as a result of the redemption or otherwise, if on the next date on which any amount would be payable in respect of the Notes, the Company has become or would become obligated to pay any Additional Amounts in respect of the Notes, and the Company cannot avoid any such payment obligation by taking reasonable measures available to it, as a result of (i) any change in or amendment to the laws (or regulations promulgated thereunder) of a relevant Tax Jurisdiction, or (ii) any change in or amendment to any official position regarding the application or interpretation of such laws or regulations, which change or amendment is announced and is effective on or after the Issue Date (or, if the applicable relevant Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date).

(e) Notice of any redemption upon any Equity Offering or other securities offering or financing, or in connection with a transaction (or series of related transactions) that constitutes a Change of Control may, at the Company's discretion, be given prior to the completion thereof and be subject to one or more conditions precedent, including, but not limited to, completion of the related Equity Offering, securities offering, financing or Change of Control.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06.

Section 3.08 Mandatory Redemption.

The Company shall not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 Offers to Repurchase by Application of Excess Proceeds.

(a) In the event that, pursuant to Section 4.10, the Company shall be required to commence an Asset Sale Offer, it shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five Business Days after the termination of the Offer Period (the "Purchase Date"), the Company shall apply all Excess Proceeds (the "Offer Amount") to the purchase of Notes or, if less than the Offer Amount has been tendered, all Notes tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

(c) If the Purchase Date is on or after a Record Date and on or before the related Interest Payment Date, accrued and unpaid interest, if any, up to but excluding the Purchase Date, shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(d) Upon the commencement of an Asset Sale Offer, the Company shall send, by first-class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered and accepted for payment shall continue to accrue interest;

(iv) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest after the Purchase Date;

(v) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in amounts of $2,000 or whole multiples of $1.000 in excess thereof only;

(vi) that Holders electing to have a Note purchased pursuant to any Asset Sale Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note completed, or transfer by book-entry transfer, to the Company, the Depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(vii) that Holders shall be entitled to withdraw their election if the Company, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(viii) that, if the aggregate principal amount of Notes surrendered by the Holders thereof exceeds the Offer Amount, the Company shall select the Notes to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes tendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of $2,000, or integral multiples of $1,000 in excess thereof, shall be purchased; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased); and

(ix) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer) representing the same indebtedness to the extent not repurchased.

(e) On or before the Purchase Date, the Company shall, to the extent lawful, (1) accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof so tendered.

(f) The Company, the Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Company for purchase, and the Company shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new

Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased; provided that each such new Note shall be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of any Asset Sale Offer on or as soon as practicable after the Purchase Date.

Other than as specifically provided in this Section 3.09 or Section 4.10, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06.

ARTICLE 4

COVENANTS

Section 4.01 Payment of Notes.

The Company shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary of the Company, holds as of 11:00 a.m. (New York City time) on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Company shall pay interest (including Post-Petition Interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, at the rate equal to the then applicable interest rate on the Notes plus 2.0% per annum to the extent lawful; it shall pay interest (including Post-Petition Interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same increased rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

The Company shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be presented or surrendered for registration of transfer or for payment or exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission shall

in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03.

Section 4.03 Reports and Other Information.

(a) The Company shall electronically deliver to the Trustee, no later than 15 calendar days after the time such report is required to be filed with the SEC pursuant to the Exchange Act (including, without limitation, to the extent applicable, any extension permitted by Rule 12b-25 under the Exchange Act), a copy of each report the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; *provided, however,* that the Company shall not be required to deliver to the Trustee any material for which the Company has sought and obtained confidential treatment by the SEC; *provided further,* each such report will be deemed to be so delivered to the Trustee if the Company files such report with the SEC through the SEC's EDGAR database.

(b) In the event the Company is at any time while any Notes are outstanding no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act or the reporting requirements of the Securities Act (Ontario), the Company shall continue to provide, no later than 15 calendar days after the date the Company would have been required to file the same with the SEC, the reports the Company would have been required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act if the Company were subject to the reporting requirements of such sections, by (1) distributing such reports electronically to the Trustee and (2) making available such reports (x) to the public on its website or (y) to any beneficial owner of Notes that certifies that it is such a beneficial owner, any prospective investor that certifies that it is a QIB, an institutional accredited investor (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or is not a U.S. person (under the meaning set forth in 902(k) of Regulation S under the Securities Act) or any security analyst, in each case, who so requests by sending such reports via electronic mail or by posting such reports on a non-public web site or Intralinks (or any comparably password protected online data system); *provided* that the Company shall make readily available any password or other login information to any such Holder of Notes, prospective investor or security analyst. Within five business days after the delivery or any report pursuant to this Section 4.03(b), the Company shall conduct a conference call to discuss such report and answer questions about such report, which conference call shall be open to all Holders of Notes and prospective investors. Details of such conference call will be posted on the Company's website or on a password-protected website created by the Company.

(c) In addition, the Company will, for so long as any Notes remain outstanding, furnish to the Holders of Notes and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. The Company also shall comply with the other provisions of Section 314(a) of the TIA.

Section 4.04 Compliance Certificate.

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Company and the Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge). The individual signing any certificate given by the Company pursuant to this Section 4.04 shall be the principal executive, financial or accounting officer of such Person.

(b) When any Default has occurred and is continuing under this Indenture, or if the Trustee or the holder of any other evidence of Indebtedness of the Company or any Subsidiary of the Company gives any notice or takes any other action with respect to a claimed Default, the Company shall promptly (which shall be no more than ten Business Days after any Officer first becomes aware of such Default) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer's Certificate specifying such event, the status of such event and what action the Company is taking or proposing to take in respect thereof.

Section 4.05 Taxes.

The Company shall pay, and shall cause each of the Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate negotiations or proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06 Stay, Extension and Usury Laws.

The Company and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 Limitation on Restricted Payments.

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

(I) declare or pay any dividend on, or make any other payment or distribution in respect of, its Equity Interests (including any dividend or distribution payable in connection with any amalgamation, arrangement, exchange offer, merger or consolidation involving the Company) or similar payment to the direct or indirect holders thereof in their capacity as such (other than any dividends or distributions payable solely in its Equity Interests (other than Disqualified Stock) and dividends or distributions payable to the Company or any of its Restricted Subsidiaries);

(II) purchase, redeem or otherwise acquire or retire for value any Equity Interests of the Company held by any Person (other than Equity Interests held by the Company or a Restricted Subsidiary of the Company), including in connection with any amalgamation, arrangement, exchange offer, merger or consolidation and including the exercise of any option to exchange any Equity Interests (other than into Equity Interests of the Company that are not Disqualified Stock);

(III) make any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to the scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Indebtedness that is contractually subordinated in right of payment to the Notes or any Notes Guarantee thereof (other than the payment of interest and other than the purchase, repurchase, redemption, defeasance or other acquisition of such Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition); or

(IV) make any Restricted Investment,

(all such payments and other actions set forth in clauses (I) through (IV) (other than any exception thereto) above being collectively referred to as "Restricted Payments"), unless, at the time of such Restricted Payment:

(1) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) the Company would, at the time of such Restricted Payment and after giving *pro forma* effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to Incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a); and

(3) such Restricted Payment, together with the aggregate of all other Restricted Payments made by the Company and its Restricted Subsidiaries after the Issue Date (without duplication and excluding Restricted Payments permitted by clauses (2), (3), (6) through (8) and (11) of Section 4.07(b)), is, at the time of determination, less than the sum of:

(a) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) beginning on October 1, 2011 and ending on the last day of the Company's most recently ended fiscal quarter for which

internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit), *plus*

(b) 100% of the aggregate net cash proceeds or the Fair Market Value of assets received by the Company from the issuance or sale of its Equity Interests (other than Disqualified Stock) subsequent to the Issue Date (other than an issuance or sale to a Subsidiary of the Company) and 100% of any cash capital contribution or the Fair Market Value of any other capital contribution received by the Company from its shareholders subsequent to the Issue Date, *plus*

(c) the amount by which the principal amount of any Indebtedness of the Company or a Restricted Subsidiary of the Company is reduced upon the conversion or exchange (other than by a Restricted Subsidiary of the Company) subsequent to the Issue Date of any Indebtedness of the Company or a Restricted Subsidiary of the Company convertible or exchangeable for Equity Interests (other than Disqualified Stock) of the Company (less the amount of any cash, or the fair value of any other property, distributed by the Company or a Restricted Subsidiary of the Company upon such conversion or exchange); *provided, however,* that the foregoing amount shall not exceed the net cash proceeds received by the Company or any Restricted Subsidiary of the Company from the sale of such Indebtedness (excluding net cash proceeds from sales to a Restricted Subsidiary of the Company), *plus*

(d) the amount equal to the sum of (x) the net reduction in the Restricted Investments made by the Company or any Restricted Subsidiary of the Company in any Person resulting from repurchases, repayments or redemptions of such Investments by such Person, proceeds realized on the sale or other disposition of such Investment and proceeds representing the return of capital (excluding dividends and distributions to the extent included in Consolidated Net Income), in each case realized by the Company or any Restricted Subsidiary of the Company, and (y) in the event that any Unrestricted Subsidiary of the Company is redesignated as a Restricted Subsidiary, the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary, *plus*

(e) 100% of any dividends received by the Company or a Guarantor after the Issue Date from an Unrestricted Subsidiary of the Company, to the extent such dividends were not otherwise included in the Consolidated Net Income of the Company for such period.

(b) The foregoing provisions of Section 4.07(a) shall not prohibit:

(1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at said date of declaration such payment would have complied with the provisions of this Indenture or the redemption of any Indebtedness that is

contractually subordinated in right of payment to the Notes within 60 days after the notice thereof if at said date of notice such redemption would have complied with the provisions of this Indenture;

(2) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, any Restricted Payment made in exchange for, or with the net cash proceeds from, the substantially concurrent sale of Equity Interests of the Company (other than any Disqualified Stock and other than Equity Interests issued or sold to a Subsidiary of the Company) or a substantially concurrent cash capital contribution received by the Company from its shareholders; *provided* that the net cash proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from Section 4.07(a)(3)(b);

(3) the defeasance, redemption, repurchase, retirement or other acquisition of Indebtedness of the Company or any Guarantor that is contractually subordinated in right of payment to the Notes or to any Notes Guarantee in exchange for, or with the net cash proceeds from, an Incurrence of Permitted Refinancing Debt;

(4) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, the redemption, repurchase, retirement or other acquisition for value of any Equity Interests of the Company or any Restricted Subsidiary of the Company held by employees, former employees, directors, former directors, officers, former officers, consultants or former consultants of the Company (or any of its Subsidiaries); *provided* that the aggregate amount of such repurchases and other acquisitions (excluding amounts representing cancellation of Indebtedness) shall not exceed $1.5 million in any fiscal year and $6.0 million in the aggregate (in each case plus the amount of net cash and proceeds received by the Company and its Restricted Subsidiaries (a) in respect of "key-man" life insurance and (b) from the issuance of Equity Interests by the Company to members of management of the Company and its Subsidiaries, to the extent that those amounts did not provide the basis for any previous Restricted Payment);

(5) the declaration and payment of cash dividends on the Company's Common Shares in an amount not to exceed $0.12 per Common Share per fiscal quarter (which amount shall be (a) proportionately decreased in the event the Company shall issue additional Common Shares to then current holders of Common Shares in a stock dividend, stock distribution, subdivision or other similar transaction or (b) proportionately increased in the event the outstanding Common Shares shall be combined or consolidated, by reclassification or otherwise, into a lesser number of Common Shares); *provided, however,* that (x) at the time of the declaration of any such cash dividend, (1) no Default or Event of Default has occurred and is continuing or would be caused thereby, (2) the Common Shares are publicly traded on the Toronto Stock Exchange or a United States national securities exchange; (y) (1) immediately after giving pro forma effect thereto as if such payment of cash dividends had occurred at the beginning of the applicable period, the Company would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) of this Indenture and (z) after giving effect to any such payment

of cash dividends, the Company's Net Cash would be equal to or greater than (1) $8.0 million or, (2) if Additional Notes have been issued pursuant to this Indenture, an amount sufficient to satisfy all amounts due in respect to the Notes on the next succeeding Interest Payment Date (including, without limitation, any amounts due in respect of principal or premium on such date); provided further, that any adjustment contemplated by clause (a) or (b) of this clause (5) of Section 4.07(b) shall be made in good faith by the Board of Directors of the Company as of the effective date of the applicable transaction and as evidenced by a resolution of the Board of Directors of the Company as set forth in an Officer's Certificate;

(6) payments of dividends on Disqualified Stock issued pursuant to Section 4.09;

(7) repurchases of Capital Stock deemed to occur upon exercise of stock options if such Capital Stock represents a portion of the exercise price of such options;

(8) cash payments in lieu of the issuance of fractional shares in connection with (a) any amalgamation, arrangement, exchange offer, merger, consolidation or similar transaction or (b) the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company; *provided, however,* that any such cash payment shall not be for the purpose of evading the limitations of this Section 4.07;

(9) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, payments of intercompany subordinated Indebtedness, the Incurrence of which was permitted by Section 4.09(b)(5);

(10) the repurchase, redemption or other acquisition or retirement for value of any Indebtedness of the Company or any Guarantor that is contractually subordinated in right of payment to the Notes or to any Notes Guarantee pursuant to change of control provisions similar to those set forth in Section 4.14; *provided* that all Notes tendered by Holders in connection with a Change of Control Offer have been repurchased, redeemed or acquired for value;

(11) payments or distributions to dissenting shareholders in accordance with applicable law;

(12) the payment of any dividend by a Restricted Subsidiary that is not a Wholly Owned Subsidiary to the holders of Capital Stock on a *pro rata* basis;

(13) payments or distributions of Equity Interests in or Indebtedness or assets of an Unrestricted Subsidiary; or

(14) Restricted Payments in an amount which, when taken together with all Restricted Payments previously made pursuant to this clause (14), does not exceed $2.0 million.

The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of the Restricted Payment of the assets proposed to be transferred by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

(c) The Company will not permit any Unrestricted Subsidiary of the Company to become a Restricted Subsidiary of the Company except pursuant to Section 4.19(c). For purposes of designating any Restricted Subsidiary of the Company as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investment." Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time pursuant to Section 4.07 or pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

Section 4.08 Dividend and Other Payment Restrictions Affecting Subsidiaries.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary of the Company to:

(1) pay dividends or make any other distributions to the Company or any of its Restricted Subsidiaries with respect to its Capital Stock or any other interest or participation in, or measured by, its profits (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);

(2) pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(3) make any loans or advances to the Company or any of its Restricted Subsidiaries (it being understood that the subordination of loans or advances made to the Company or any Restricted Subsidiary of the Company to other Indebtedness Incurred by the Company or any Restricted Subsidiary of the Company shall not be deemed a restriction on the ability to make loans or advances); or

(4) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries (it being understood that such transfers shall not include any type of transfer described in clause (1), (2) or (3) of this Section 4.08(a)).

(b) The foregoing restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(1) any agreements in effect or entered into on the Issue Date, including agreements governing Existing Indebtedness as in effect on the Issue Date, and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof; *provided* that such amendments, modifications,

restatements, renewals, increases, supplements, refunding, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in the agreements governing such Indebtedness as in effect on the Issue Date;

(2) the Credit Agreement as in effect as of the Issue Date, and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof and any additional Credit Facilities permitted under this Indenture; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements, refinancings or additional facilities are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in the Credit Agreement as in effect on the Issue Date;

(3) the Indenture Documents;

(4) applicable law and any applicable rule, regulation or order;

(5) customary non-assignment provisions in leases, licenses or other agreements entered into in the ordinary course of business;

(6) purchase money obligations, Capital Lease Obligations, security agreements or mortgages that impose restrictions of the nature described in clause (4) of Section 4.08(a) on the property so acquired;

(7) any agreement for the sale or other disposition of all or substantially all of the Capital Stock or assets of a Restricted Subsidiary of the Company that restricts distributions by that Restricted Subsidiary pending its sale or other disposition thereof;

(8) any agreement or other instrument of a Person acquired by the Company or any Restricted Subsidiary of the Company in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(9) Liens that limit the right of the Company or any of its Restricted Subsidiaries to dispose of the asset or assets subject to such Lien;

(10) customary provisions limiting the disposition or distribution of assets or property in partnership, joint venture, asset sale agreements, stock sale agreements and other similar agreements, which limitation is applicable only to the assets that are the subject of such agreements;

(11) Permitted Refinancing Debt, *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Debt are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and

(12) restrictions on cash or other deposits or net worth imposed by landlords, suppliers and customers under contracts entered into in the ordinary course of business.

Section 4.09 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Debt) and the Company will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; *provided, however,* that the Company and any Guarantor may Incur Indebtedness (including Acquired Debt) and the Company may issue shares of Disqualified Stock, if the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is Incurred or such Disqualified Stock is issued would have been at least 2.5 to 1.0 (or, solely with respect to the Incurrence of Additional Notes pursuant to this Section 4.09(a) and, unless specifically stated, not for any other purposes under this Indenture, at least 2.9 to 1.0 prior to the first anniversary of the Issue Date and 3.0 to 1.0 thereafter (the "Additional Notes Incurrence Test")), determined on a *pro forma* basis (including a *pro forma* application of the net cash proceeds therefrom, including the effect of acquisitions or repayments or redemptions of Indebtedness to be funded by such proceeds), as if the additional Indebtedness had been Incurred, or the Disqualified Stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The foregoing provisions of Section 4.09(a) will not prohibit the Incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(1) the Incurrence by the Company or any Guarantor (including any Guarantees thereof) of Indebtedness pursuant to Credit Facilities in an aggregate principal amount not to exceed $32.5 million;

(2) the Incurrence by the Company and the Guarantors of Indebtedness represented by the Notes (including the related Notes Guarantees but excluding Additional Notes);

(3) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness (including Capital Lease Obligations, mortgage financings or purchase money obligations) for the purpose of financing (or refinancing) all or any part of the purchase price or cost of construction or improvement of property (real or personal), plant or equipment used or useful in a Similar Business that, added to all other Indebtedness Incurred pursuant to this clause (3) and then outstanding, will not exceed $5.0 million;

(4) the Incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Debt in exchange for, or the net cash proceeds of which are used to extend, refinance, renew, replace, defease or refund, Indebtedness that was Incurred pursuant to Section 4.09(a) or pursuant to clause (2) or (8) or this clause (4) of this Section 4.09(b);

(5) the Incurrence of intercompany indebtedness of the Company or any Restricted Subsidiary of the Company for so long as such Indebtedness is held by the Company or a Guarantor; *provided* that (i) such Indebtedness shall be unsecured and if owing by the Company or any Guarantor, contractually subordinated in all respects (other than with respect to the maturity thereof) to the obligations of the Company under the Notes or such Guarantor under its Notes Guarantee, as the case may be and (ii) if as of any date any Person other than the Company or a Guarantor owns or holds any such Indebtedness or holds a Lien in respect of such Indebtedness (other than Permitted Liens of the type described in clause (1) of the definition thereof that secure Priority Lien Obligations that are permitted under this Indenture or a Permitted Lien of the type described in clause (19) of the definition thereof), such date shall be deemed the incurrence of Indebtedness not permitted under this clause (5) by the issuer of such Indebtedness;

(6) Guarantees by the Company or any Restricted Subsidiary of the Company of Indebtedness of the Company or any Restricted Subsidiary of the Company otherwise permitted hereunder so long as the Person giving such Guarantee could have Incurred the Indebtedness that is being Guaranteed; *provided* that if the Indebtedness being guaranteed (x) is subordinated to the Notes or a Notes Guarantee, then the Guarantee must be subordinated to the same extent as the Indebtedness being guaranteed or (y) is owed by any Restricted Subsidiary of the Company that is not a Guarantor, such Guarantee shall be subordinated to the prior payment in full of the Notes in the case of the Company or the Notes Guarantees in the case of a Guarantor;

(7) the Incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations that are Incurred for the purpose of fixing or hedging (A) interest rate risk with respect to any floating rate indebtedness that is permitted by the terms of this Indenture to be outstanding or (B) currency exchange risk in connection with existing financial obligations, in each case, Incurred in the ordinary course of business and not for purposes of speculation;

(8) the Incurrence of Existing Indebtedness (other than Indebtedness described in clause (1), (2) or (5) of Section 4.09(b);

(9) Indebtedness in respect of insurance or self-insurance and in the form of letters of credit, bank guarantees, performance, bid and surety bonds and completion guarantees provided by the Company or any of its Restricted Subsidiaries, in each case, Incurred in the ordinary course of business;

(10) the Incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however,* that such Indebtedness is extinguished within 10 days of its Incurrence;

(11) Indebtedness of the Company or any Restricted Subsidiary of the Company consisting of the financing of insurance premiums in the ordinary course of business;

(12) Indebtedness consisting of promissory notes or similar Indebtedness issued by the Company or any Restricted Subsidiary of the Company to current, future or former officers, directors and employees thereof, or to their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Company or a Restricted Subsidiary of the Company to the extent described in Section 4.07(b)(4); and

(13) Indebtedness arising from agreements of the Company or any of its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred in connection with the disposition of any business, assets or Subsidiary, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition; *provided* that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company or such Restricted Subsidiary in connection with such disposition.

(c) For purposes of determining compliance with this covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (1) through (13) of Section 4.09(b) or Section 4.09(a), the Company shall, in its sole discretion, divide and classify such item of Indebtedness in any manner that complies with this Section 4.09 and will only be required to include the amount and type of such Indebtedness in one of such clauses or pursuant to Section 4.09(a), and may re-classify any such item of Indebtedness from time to time among such clauses or Section 4.09(a), so long as such item meets the applicable criteria for such category. For the avoidance of doubt, Indebtedness may be classified as Incurred in part pursuant to one of the clauses (1) through (13) of Section 4.09(b), and in part under one or more other clauses or under Section 4.09(a). Notwithstanding the foregoing, all Indebtedness outstanding and secured by Liens permitted pursuant to clause (1) of the definition of "Permitted Liens" and all Indebtedness outstanding under the Credit Agreement shall be treated as Incurred pursuant to clause (1) of Section 4.09(b), as applicable, and may not be reclassified, and all Indebtedness that is Parity Lien Debt may only be Incurred pursuant to (and reclassified as Incurred under) the Additional Notes Incurrence Test or clause (1) of Section 4.09(b), as applicable.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

Accrual of interest and dividends, accretion of accreted value, issuance of securities paid-in-kind, amortization of original issue discount, changes to amounts outstanding in respect of Hedging Obligations solely as a result of fluctuations in foreign currency exchange rates or interest rates or by reason of fees, indemnities and compensation payable thereunder shall not be deemed to be an Incurrence of indebtedness for purposes of this covenant.

The Company will not incur, and will not permit any other Guarantor to incur, any Indebtedness that is contractually subordinated in right of payment to any other Indebtedness of the Company or such other Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Notes Guarantee on substantially identical terms; *provided, however,* that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness solely by virtue of being unsecured or by virtue of being secured on a junior Lien or priority basis.

Section 4.10 Asset Sales.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Sale (except with respect to an Event of Loss) unless:

(1) the Company, or the Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value (measured at the time of contractually agreeing to such Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary is in the form of cash or Cash Equivalents;

provided that the amount of (x) any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet) of the Company or any Restricted Subsidiary of the Company (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Notes Guarantee thereof) that are assumed by the transferee of any such assets and with respect to which the Company or such Restricted Subsidiary is unconditionally released from further liability; and (y) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted within 60 days by the Company or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in that conversion), will be deemed to be cash for purposes of this provision.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale by the Company or a Restricted Subsidiary of the Company, the Company or such Restricted Subsidiary may apply such Net Proceeds at its option:

(1) to permanently reduce Indebtedness under any Credit Facility (and to correspondingly reduce commitments with respect thereto);

(2) with respect to Asset Sales of assets of a Restricted Subsidiary of the Company that is not a Guarantor, to permanently reduce Indebtedness of a Restricted Subsidiary of the Company that is not a Guarantor (and to correspondingly reduce commitments with respect thereto), other than Indebtedness owed to the Company or another Subsidiary of the Company; and/or

(3) to the making of a capital expenditure or to acquire assets that are used or useful in a Similar Business, including the making or purchase of loans, advances or other extensions of credit in the ordinary course of business.

(c) Pending the final application of any such Net Proceeds, the Company or a Restricted Subsidiary of the Company may temporarily reduce Indebtedness under any Credit Facility or otherwise invest such Net Proceeds in any manner that is not prohibited by this Indenture.

(d) Any Net Proceeds from Asset Sales that are not applied or invested (by election or as a result of the passage of time) as provided in Section 4.10(b) will be deemed to constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds exceeds $7.5 million, the Company will be required to make an offer (an "Asset Sale Offer") to all Holders of Notes to purchase the maximum principal amount of Notes that may be purchased out of the Excess Proceeds. The offer price for such Asset Sale Offer shall be an amount in cash equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (subject to the right of Holders of the Notes on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures set forth in Article 3.

(e) To the extent that the aggregate amount of Notes tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company and its Restricted Subsidiaries may use any remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes surrendered by Holders thereof exceeds the amount of the Excess Proceeds, the Trustee shall select the Notes to be purchased on a *pro rata* basis based upon principal balance (subject to adjustments so that no Notes in an unauthorized denomination are repurchased in part). Upon completion of such offer to purchase, the amount of Excess Proceeds shall be reset at zero.

(f) The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. If (a) the notice is mailed in a manner herein provided and (b) any Holder fails to receive such notice or a Holder receives such notice but it is defective, such Holder's failure to receive such notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such notice without defect. The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of this Indenture, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.10 by virtue of such compliance.

Section 4.11 Transactions with Affiliates.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, exchange, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any contract, agreement, understanding, loan, advance or Guarantee with, or for the benefit of, any Affiliate (each of the foregoing, an "Affiliate Transaction"), unless:

(1) such Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction at the time in an arm's-length transaction with a person who was not an Affiliate; and

(2) if such Affiliate Transaction involves an amount in excess of $5.0 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the non-employee directors of the Company disinterested with respect to such Affiliate Transaction has determined in good faith that the criteria set forth in clause (1) are satisfied and has approved the relevant Affiliate Transaction as evidenced by a resolution of the Board of Directors of the Company set forth in an Officer's Certificate; and

(3) if such Affiliate Transaction or series of related Affiliate Transactions involves an amount in excess of $10.0 million, the Company obtains an opinion as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing in the United States or Canada or that such Affiliate Transaction is no more restrictive to the Company and its Subsidiaries than could reasonably be expected to be obtained at the time in an arm's-length transaction with a person who was not an Affiliate.

(b) The foregoing provisions of Section 4.11(a) will not apply to the following:

(1) any reasonable and customary employment agreement or compensation plan or arrangement and other benefits (including retirement, health, severance, stock option and other benefit plans) entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business of the Company or such Restricted Subsidiary;

(2) transactions exclusively between or among the Company and/or its Restricted Subsidiaries; *provided* that such transactions are not otherwise prohibited by this Indenture;

(3) reasonable and customary compensation of and indemnity arrangements in favor of, directors of the Company and its Subsidiaries;

(4) the issuance or transfer of Equity Interests (other than Disqualified Stock) of the Company to any Affiliate, director, officer, employee or consultant (or their respective estates, investment funds, investment vehicles, spouses or former spouses) of the Company or any of its Restricted Subsidiaries and the granting and performing of reasonable and customary registration rights with respect to such Equity Interests;

(5) Restricted Payments that are permitted by the provisions of Section 4.07 and Permitted Investments of the type described in clause (8) of the definition thereof;

(6) any agreement as in effect as of the Issue Date that is disclosed in the Final Offering Circular under the caption "Certain Relationships and Related Party Transactions", as such agreements may be amended, modified, supplemented, extended

or renewed from time to time, so long as any such amendment, modification, supplement, extension or renewal is not more disadvantageous to the Holders of the Notes in any material respect, when taken as a whole, than the terms of the agreements in effect on the Issue Date;

(7) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by, merged into or amalgamated, arranged or consolidated with the Company or a Restricted Subsidiary of the Company; provided that such agreement was not entered into in contemplation of such acquisition, merger, amalgamation, arrangement or consolidation and any amendment thereto (so long as any such amendment is not disadvantageous to the Holders of the Notes, when taken as a whole, as compared to the applicable agreement as in effect on the date of such acquisition, merger, amalgamation, arrangement or consolidation);

(8) transactions between the Company or any of its Restricted Subsidiaries and any Person that is an Affiliate solely because one or more of its directors is also a director of the Company or any Restricted Subsidiary of the Company; *provided* that such director abstains from voting as a director of the Company or such Restricted Subsidiary, as the case may be, on any matter involving such other Person;

(9) any merger, amalgamation, arrangement, consolidation or other reorganization of the Company with an Affiliate solely for the purpose and with the sole effect of forming a holding company or reincorporating the Company in a new jurisdiction;

(10) the entering into of a tax sharing agreement, or payments pursuant thereto, between the Company and one or more Subsidiaries, on the one hand, and any other Person with which the Company and such Subsidiaries are required or permitted to file a consolidated tax return or with which the Company and such Subsidiaries are part of a consolidated group for tax purposes, on the other hand, which payments by the Company and the Restricted Subsidiaries are not in excess of the tax liabilities that would have been payable by them on a stand-alone basis; and

(11) pledges of Equity Interests in or Indebtedness of Unrestricted Subsidiaries of the Company.

Section 4.12 Liens.

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

Any reference to a "Permitted Lien" is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien in favor of the Collateral Agent in respect of the Collateral.

Section 4.13 Corporate Existence.

Subject to Article 5, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (i) its company existence, and the corporate, partnership, limited liability company or other existence of each of the Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended, supplemented or otherwise modified from time to time) of the Company or any such Restricted Subsidiary and (ii) the rights (charter and statutory), licenses and franchises of the Company and the Restricted Subsidiaries; provided that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership, limited liability company or other existence of any of the Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Restricted Subsidiaries, taken as a whole.

Section 4.14 Offer to Repurchase Upon Change of Control.

(a) Within 30 days following any Change of Control, unless the Company has previously or concurrently mailed a redemption notice with respect to all of the outstanding Notes pursuant to Section 3.03 and Section 3.07, the Company will offer to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of each holder's Notes pursuant to the offer described below at a purchase price in cash equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest on the relevant interest payment date) (the "Change of Control Payment") by mailing a notice to each holder with a copy to the Trustee (the "Change of Control Offer") stating:

(1) that a Change of Control has occurred and that such holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to the Change of Control Payment;

(2) the circumstances and relevant facts regarding such Change of Control;

(3) the purchase date (which shall be no earlier than 30 days no later than 60 days from the date such notice is mailed); and

(4) the instructions, as determined by the Company, consistent with this Section 4.14 and Article 3, that a Holder must follow in order to have its Notes purchased.

The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.14 by virtue thereof.

(b) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third-party makes an offer to repurchase all of the outstanding Notes in the manner, at the times and otherwise in conformity with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(c) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon such Change of Control occurring, if a definitive agreement is in place for the Change of Control at the time of making the Change of Control Offer.

(d) On a date that is at least 30 but no more than 60 days from the date on which the Company mails notice of the Change of Control (the "Change of Control Payment Date"), the Company will, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;

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

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Company.

(e) The Paying Agent will promptly mail to each Holder of Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(f) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to the provisions of Sections 3.02, 3.05 and 3.06.

Section 4.15 Additional Guarantees.

(a) The Company will cause each future Restricted Subsidiary that is not a Guarantor that guarantees Indebtedness of the Company or any Guarantor under any Credit Facility after the Issue Date to:

(1) as promptly as reasonably practicable, execute and deliver (A) to the Trustee a supplemental indenture, pursuant to which such Restricted Subsidiary will unconditionally guarantee, on a senior secured basis, all of the Company's Obligations under the Indenture Documents on the terms set forth in this Indenture;

(2) execute and deliver to the Collateral Agent such amendments or supplements to the Collateral Documents necessary in order to grant to the Collateral

Agent, for the benefit of the Notes Secured Parties, a perfected security interest in the Equity Interests of such Subsidiary, subject to Permitted Liens and the Collateral Trust Agreement, which are owned by the Company or a Guarantor and are required to be pledged pursuant to the Collateral Documents;

(3) take such actions as are necessary to grant to the Collateral Agent for the benefit of the Notes Secured Parties a perfected security interest in the assets of such Subsidiary, subject to Permitted Liens and the Collateral Trust Agreement, including making appropriate fillings under the applicable PPSA or other applicable law, in each case as may be required by the Collateral Documents;

(4) take such further action and execute and deliver such other documents specified in the Indenture Documents or as otherwise may be reasonably requested by the Trustee or Collateral Agent to give effect to the foregoing; and

(5) deliver to the Trustee and the Collateral Agent an Opinion of Counsel that (i) such supplemental indenture and any other documents required to be delivered have been duly authorized, executed and delivered by such Subsidiary and constitute legal, valid, binding and enforceable obligations of such Subsidiary and (ii) the Collateral Documents to which such Subsidiary is a party create a valid perfected Lien on the Collateral covered thereby.

Section 4.16 Suspension of Covenants.

(a) If on any date (i) the Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event"), the Company and its Restricted Subsidiaries will not be subject to the following covenants (collectively, the "Suspended Covenants"):

(1) Section 4.07;

(2) Section 4.08;

(3) Section 4.09;

(4) Section 4.10, but only to the extent relating to properties or assets of the Company or any Restricted Subsidiary that do not constitute Collateral;

(5) Section 4.11; and

(6) Section 5.01(a)(3);

(b) In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of Section 4.16(a), and on any subsequent date (the "Reversion Date") one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an

Investment Grade Rating, then the Company and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events.

(c) The period of time between the Covenant Suspension Event and the Reversion Date is referred to in this description as the "Suspension Period." In the event of any such reinstatement, no action taken or omitted to be taken by the Company or any of its Restricted Subsidiaries prior to such reinstatement that would otherwise be a breach of any Suspended Covenant will give rise to a Default or Event of Default under this Indenture with respect to the Notes; provided that (x) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though Section 4.07 had been in effect prior to, but not during, the Suspension Period, and all events set forth in Section 4.07(a)(3) (including Consolidated Net Income earned) occurring during a Suspension Period shall be disregarded for purposes of determining the amount of Restricted Payments the Company or any of its Restricted Subsidiaries is permitted to make pursuant to such Section 4.07(a)(3) after the applicable Reversion Date, and (y) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 4.09(b)(8).

(d) No Subsidiaries of the Company shall be designated as Unrestricted Subsidiaries of the Company during any Suspension Period.

(e) The Company shall deliver promptly to the Trustee an Officer's Certificate notifying it of any such occurrence under this Section 4.16.

Section 4.17 Further Assurances; After Acquired Property.

The Company shall, and shall cause each Guarantor to, at their sole cost and expense, (i) execute and deliver all such agreements and instruments as may be necessary and as the Collateral Agent shall reasonably request to more fully or accurately describe the property intended to be Collateral or the obligations intended to be secured by the Collateral Documents and (ii) make such registrations and file any such notice filings or other agreements or instruments as may be reasonably necessary under applicable law to perfect (and maintain the perfection and priority of) the Liens created by the Collateral Documents, subject to Permitted Liens, at such times and at such places as the Collateral Agent may reasonably request, in each case subject to the terms of the Collateral Documents.

Section 4.18 Information Regarding Collateral.

The Company shall furnish to the Collateral Agent, with respect to the Company or any Guarantor, prompt written notice of any change in such Person's (i) organizational name, (ii) jurisdiction of organization or formation, (iii) identity or organizational structure or (iv) organizational identification number. The Company and the Guarantors shall make all registration and notice filings or such other filings that are required by applicable law in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral.

Section 4.19 Designation of Resignation and Unrestricted Subsidiaries.

(a) The Board of Directors of the Company may designate any Restricted Subsidiary of the Company to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary of the Company is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 4.07 or under one or more clauses of the definition of Permitted Investments, as determined by the Company. That designation will only be permitted if the Restricted Payment or Investment would be permitted at the time of the designation.

(b) Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07.

(c) The Company and its Restricted Subsidiaries will not permit any Unrestricted Subsidiary to incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of its Restricted Subsidiaries. The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if such Indebtedness (1) is permitted pursuant to Section 4.09 calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Section 4.20 Sale and Leaseback Transactions

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale and Leaseback Transaction with respect to any property unless:

(1) the Company or such Restricted Subsidiary would be entitled to (A) incur Indebtedness in an amount equal to the Attributable Debt relating to such Sale and Leaseback Transaction pursuant to Section 4.09 and (B) Incur a Lien on such property securing such Attributable Debt pursuant to Section 4.12;

(2) the net proceeds of such Sale and Leaseback Transaction are at least equal to the Fair Market Value of the property that is the subject of such Sale and Leaseback Transaction; and

(3) the transfer of assets in such Sale and Leaseback Transaction is permitted by, and the Company applies the Net Proceeds of such transaction in compliance with, Section 4.10.

(b) Section 4.20(a) will not apply to transactions among the Company and any of the Guarantors, among the Guarantors or solely among Subsidiaries of the Company that are not Guarantors.

Section 4.21 Business Activities

The Company will not and will not permit any of its Restricted Subsidiaries to, engage in any business other than Similar Businesses, except to such extent as would not be material to the Company and its Restricted Subsidiaries taken as a whole.

Section 4.22 Additional Amounts.

(a) Payments made by the Company under or with respect to the Notes or any of the Guarantors with respect to any Notes Guarantee will be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, assessment or other governmental charge, including any related interest, penalties or additions to tax ("Taxes"), unless the withholding or deduction of such Taxes is then required by law.

(b) If any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of (1) any jurisdiction in which the Company or any Guarantor is then organized, engaged in business for tax purposes or resident for tax purposes or any political subdivision thereof or therein or (2) any jurisdiction from or through which payment is made by or on behalf of the Company or any Guarantor (including the jurisdiction of any Paying Agent) or any political subdivision thereof or therein (each, a "Tax Jurisdiction") is at any time required to be made from any payments made by the Company under or with respect to the Notes or any of the Guarantors with respect to any Notes Guarantee, the Company or the relevant Guarantor, as applicable, will pay to each Holder of Notes that are outstanding on the date of the required payment, such additional amounts ("Additional Amounts") as may be necessary so that the net amount received by such Holder (including the Additional Amounts) after such withholding or deduction (including with respect to any Additional Amounts) will not be less than the amount such Holder would have received if such Taxes had not been withheld or deducted; *provided* that no Additional Amounts are payable with respect to a payment to a Holder of the Notes (an "Excluded holder"):

(1) with which the Company does not deal at arm's length (within the meaning of the Income Tax Act (Canada)) at the time of making such payment;

(2) which is subject to such Taxes by reason of its being connected with a relevant Tax Jurisdiction or any province or territory thereof otherwise than by the mere holding of the Notes or the receipt of payments in respect of such Notes or a Notes Guarantee;

(3) which, following a timely request by the Company, failed to provide any certification, documentation, information or other evidence concerning such Holder's (or its beneficial owner's) nationality, residence, entitlement to treaty benefits, identity or connection with a Tax Jurisdiction, if and to the extent that due and timely compliance is required by applicable law,

applicable regulation, published administrative practice or an applicable treaty as a precondition to exemption from, or a reduction in the rate of deduction or withholding of any Taxes as to which Additional Amounts would have otherwise been payable to such holder but for this clause; or

(4) any combination of clauses (1), (2) or (3).

The Company or the relevant Guarantor will also (x) make such withholding or deduction, and (y) remit the full amount deducted or withheld to the relevant authority in accordance with applicable law.

(c) The Company or the relevant Guarantor will furnish, within 30 days after the date the payment of any Taxes are due pursuant to applicable law, to the Trustee on behalf of the Holders of Notes that are outstanding on the date of the required payment, copies of tax receipts, if any (or other documentation), evidencing the payments of Taxes made by the Company, or a Guarantor, as the case may be, on behalf of the Holders.

(d) The Company and the Guarantors will indemnify and hold harmless each Holder of Notes that are outstanding on the date of the required payment (other than an Excluded holder) and upon written request reimburse each such Holder for the amount of:

(1) any Taxes so levied or imposed and paid by such Holder as a result of payments made under or with respect to the Notes;

(2) any liability (including penalties, interest and expense) arising therefrom or with respect thereto; and

(3) any Taxes imposed with respect to any reimbursement under clause (1) or (2) of this Section 4.22(d).

(e) In addition to the other obligations set forth in this Section 4.22, the Company and the Guarantors will also pay and indemnify each Holder for any present or future stamp, issue, registration, transfer, court or documentary taxes, or any other excise or property taxes, charges or similar levies (including penalties, interest and any other liabilities related thereto) which are levied by any relevant Tax Jurisdiction on the execution, delivery, issuance, or registration of any of the Indenture Documents or any other document referred to therein, or the receipt of any payments with respect thereto, or enforcement of, any of the Notes or any Notes Guarantee.

(f) At least 30 days prior to each date on which any payment under or with respect to the Notes is due and payable, if the Company or a Guarantor becomes obligated to pay Additional Amounts with respect to such payment, the Company or the relevant Guarantor, as applicable, will deliver to the Trustee an Officer's Certificate stating the fact that such Additional Amounts will be payable, and the amounts so payable and will set forth such other information as is necessary to enable the Trustee to pay such Additional Amounts to the Holders of the Notes on the payment date.

(g) Whenever in this Indenture there is mentioned, in any context:

(1) the payment of principal (and premium, if any);

(2) purchase prices in connection with a repurchase of Notes;

(3) interest; or

(4) any other amount payable on or with respect to any of the Notes or any Guarantee,

such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section 4.22 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

(h) The obligations set forth in this Section 4.22 will survive any termination, defeasance or discharge of this Indenture, any transfer by a Holder or beneficial owner of its Notes, and apply, *mutatis mutandis*, to any jurisdiction in which any successor Person to the Company or any Guarantor is incorporated, engaged in business for tax purposes or resident for tax purposes or any jurisdiction from or through which such Person makes any payment on the Notes (or any Notes Guarantee) and any department or political subdivision thereof or therein.

Section 4.23 Currency of Payment.

The principal of, and interest and premium (if any) on, the Notes will be payable in Canadian dollars.

Section 4.24 Registration Rights.

In the event the Company is at any time while any Notes are outstanding no longer subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, the Company shall use its reasonable best efforts to cause the registration of the Notes pursuant to the Securities Act such that the Notes will be freely tradable. The Company may, at its option, effect such registration on any available registration statement then available to the Company (including an exchange offer registration statement). The Company will be deemed to have fully satisfied its obligations under this Section 4.24 with respect to any Holder of Notes if such Holder's Notes are freely tradable pursuant to Rule 144 of the Securities Act without reliance on the current public information requirements of Rule 144.

ARTICLE 5

SUCCESSORS

Section 5.01 Merger, Consolidation or Sale of Assets.

(a) The Company may not, in any transaction or series of related transactions, amalgamate, arrange or consolidate with or merge with or into (whether or not the Company survives), or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets whether as an entirety or substantially as an entirety, to any Person, unless:

(1) either;

(A) if the transaction or series of transactions is an amalgamation, arrangement or consolidation with or a merger of the Company with or into any other Person, the Company shall be the surviving Person of such amalgamation, arrangement, merger or consolidation; or

(B) the Person formed by any amalgamation, arrangement, consolidation or merger with or into the Company or to which all or substantially all of the properties and assets of the Company and its Restricted Subsidiaries, taken as a whole, are sold, assigned, conveyed, transferred, leased or otherwise disposed of (the "Successor Company") shall be a corporation organized and existing under the federal laws of Canada or the laws of any province thereof or the laws of the United States, any state thereof or the District of Columbia, and such Person shall expressly assume by (i) a supplemental indenture executed and delivered to the Trustee, all of the obligations of the Company under the Notes and this Indenture and, in each case, the Indenture, as so supplemented, shall remain in full force and effect and (ii) an amendment, supplement or other instrument, executed and delivered to the Trustee, all obligations of the Company under the Collateral Documents, and in connection therewith shall cause such instruments to be filed and recorded in such jurisdictions and take such other actions as may be required by applicable law to perfect or continue the perfection of the Lien created under the Collateral Documents on the Collateral owned by or transferred to the surviving entity; and

(2) immediately after giving effect to such transaction or series of transactions on a *pro forma* basis (including any Indebtedness Incurred or anticipated to be Incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing; and

(3) immediately after giving *pro forma* effect to such transaction as if such transaction had occurred at the beginning of the applicable period (but without giving effect to the costs and expenses of such transaction), the Company or the Successor Company would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a).

(b) Notwithstanding anything to the contrary contained in Section 5.01(a), clauses (2) and (3) of Section 5.01(a) shall not apply to any transaction of the Company with a Restricted Subsidiary of the Company or for the purpose of reincorporating the Company in any jurisdiction in Canada or the United States.

In connection with any amalgamation, arrangement, consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition contemplated by Section 5.01(a), the Company shall deliver, or cause to be delivered, to the Trustee an Officer's Certificate stating that such amalgamation, arrangement, consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition and the supplemental indenture in respect thereof comply with the requirements of this Indenture and an Opinion of Counsel.

The successor entity shall succeed to, and be substituted for, and may exercise every right and power of the predecessor company under the applicable Indenture Documents, and the predecessor company shall be released from all its obligations and covenants under the applicable Indenture Documents.

(c) The Company will not permit any Guarantor, in any transaction or series of related transactions, to amalgamate, arrange or consolidate with or merge into (whether or not such Guarantor survives), or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to, any Person, unless either:

(1) either:

(A) if the transaction or series of transactions is an amalgamation, arrangement, or consolidation of such Guarantor with or a merger of such Guarantor with or into any other Person, such Guarantor shall be the surviving Person of such amalgamation, arrangement, consolidation or merger; or

(B) the Person formed by any amalgamation, arrangement, consolidation or merger with or into such Guarantor, or to which all or substantially all of the properties and assets of such Guarantor and its Subsidiaries, taken as a whole, as the case may be, are sold, assigned, conveyed, transferred, leased or otherwise disposed of shall be a corporation, partnership, limited liability company or trust organized and existing under the federal laws of Canada or the laws of any province thereof or the laws of the United States, any state thereof or the District of Columbia and shall expressly assume by (i) a supplemental indenture executed and delivered to the Trustee, all of the obligations of such Guarantor under its Notes Guarantee and this Indenture and, in each case, the Indenture, as so supplemented, shall remain in full force and effect and (ii) an amendment, supplement or other instrument, executed and delivered to the Trustee, all obligations of such Guarantor under the Collateral Documents, and in connection therewith shall cause such instruments to be filed and recorded in such jurisdictions and take such other actions as may be required by applicable law to perfect or continue the perfection of the Lien created under the Collateral Documents on the Collateral owned by or transferred to the surviving entity; or

(C) the transaction is made in compliance with Section 4.10.

(d) Sections 5.01(a), (b) and (c) shall not apply to any transaction or series of transactions involving the sale, assignment, conveyance, transfer, lease or other disposition of any properties or assets by any Subsidiary of the Company to the Company or any Guarantor, or the amalgamation, arrangement, consolidation or merger of any Subsidiary of the Company with or into the Company or any Guarantor, or, for the avoidance of doubt, the consolidation or merger of any Subsidiary of the Company that is not a Guarantor with or into any other Subsidiary of the Company that is not a Guarantor.

In connection with any amalgamation, arrangement, consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition contemplated by Section 5.01(c)(1), such Guarantor shall deliver, or cause to be delivered, to the Trustee an Officer's Certificate stating that such amalgamation, arrangement, consolidation, merger, sale, assignment, conveyance, transfer, lease or other disposition and the supplemental indenture in respect thereof comply with the requirements of this Indenture and an Opinion of Counsel.

The successor entity shall succeed to, and be substituted for, and may exercise every right and power of the predecessor company under this Indenture and the Notes Guarantee, and the predecessor company shall be released from all its obligations under this Indenture and the Notes Guarantee.

Section 5.02 Successor Corporation Substituted.

Upon any consolidation, amalgamation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the successor corporation formed by such consolidation or into or with which the Company is merged or amalgamated or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, amalgamation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Company shall refer instead to the successor corporation and not to the Company), and may exercise every right and power of the Company under this Indenture, the Collateral Documents and the Notes with the same effect as if such successor Person had been named as the Company herein; provided that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest, if any, on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the Company's assets that meets the requirements of Section 5.01

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

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

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due of the principal, or premium, if any, of any Note when due at maturity, upon optional redemption, upon required purchase, upon acceleration or otherwise;

(3) failure by the Company or any of its Restricted Subsidiaries to comply with its obligations under Section 4.10, Section 4.14 or Section 5.01;

(4) failure to perform any other covenant or agreement of the Company or any of its Restricted Subsidiaries under the Indenture Documents for 30 days (or, in the case of Section 4.03, 90 days) after written notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is Guaranteed by the Company or any of its Restricted Subsidiaries) whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, which default (A) is caused by a failure to pay principal at final stated maturity (after giving effect to all applicable grace periods provided in such Indebtedness) (a "Payment Default") or (B) results in the acceleration of such Indebtedness prior to its final stated maturity and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates in excess of $12.5 million (or its foreign currency equivalent);

(6) failure by the Company or any of its Restricted Subsidiaries to pay final and non-appealable judgments aggregating in excess of $12.5 million (or its foreign currency equivalent), which judgments are not paid, discharged or stayed for a period of 60 days following such judgment becoming final, and in the event such judgment is covered by insurance, any enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(7) (i) any security interest created by any Collateral Document ceases to be in full force and effect (except as permitted by the terms of this Indenture or the Collateral Documents) or (ii) the breach or repudiation by the Company or any of its Restricted Subsidiaries of any of their obligations under any Collateral Document; provided that, in the case of clauses (i) and (ii), such cessation, breach or repudiation, individually or in the aggregate, results in Collateral having a Fair Market Value in excess of $5.0 million not being subject to a valid, perfected security interest;

(8) except as permitted by this Indenture, any Notes Guarantee of a Significant Subsidiary of the Company or any group of Guarantors that, when taken together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03), would constitute a Significant Subsidiary of the Company shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor that is a Significant Subsidiary of the Company or any group of Guarantors that, when taken together, would constitute a Significant Subsidiary of the Company, or any Person acting on behalf of any such Guarantor or Guarantors, shall deny or disaffirm its obligations under its Notes Guarantee; and

(9) the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial

statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary), pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;

(iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) generally is not paying its debts as they become due;

(10) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary) in a proceeding in which the Company or any such Restricted Subsidiary that is a Significant Subsidiary or any such group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary), or for all or substantially all of the property of the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary); or

(iii) orders the liquidation of the Company or any Significant Subsidiary (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary);

and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) In the event of any Event of Default specified in clause (5) of Section 6.01(a), such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) shall be annulled, waived and rescinded,

automatically and without any action by the Trustee or the Holders of Notes, if within 20 days after such Event of Default arose the Company delivers an Officer's Certificate to the Trustee stating that:

(1) the Indebtedness or Guarantee that is the basis for such Event of Default has been rescinded, cured or discharged, or holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default;

(2) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction; and

(3) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

(c) If a Default is deemed to occur solely because a Default (the "Initial Default") already existed, and such Initial Default is subsequently cured and is not continuing, the Default or Event of Default resulting solely because the Initial Default existed shall be deemed cured, and will be deemed annulled, waived and rescinded without any further action required.

Section 6.02 Acceleration.

If any Event of Default (other than an Event of Default specified in clause (9) or (10) of Section 6.01(a)) occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable immediately.

Notwithstanding the foregoing, in the case of an Event of Default arising under clause (9) or (10) of Section 6.01(a), all outstanding Notes shall be due and payable immediately without further action or notice.

Section 6.03 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue, or may direct the Collateral Agent to pursue, subject to the Collateral Trust Agreement, any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

The Holders of at least a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under this Indenture except a continuing Default or Event of Default in the payment of principal, premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

Subject to the terms of the Collateral Documents, Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such direction is unduly prejudicial to such Holders) or that would involve the Trustee in personal liability.

Section 6.06 Limitation on Suits.

Subject to Section 6.07, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing;

(2) Holders of at least 25% in principal amount of the total outstanding Notes have requested the Trustee to pursue the remedy;

(3) Holders of the Notes have offered and, if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense in relation to such Holder's pursuit of such remedy;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being

understood that the Trustee has no affirmative duty to ascertain whether or not any such use by any Holder is prejudicial to another Holder).

Section 6.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(a)(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 Restoration of Rights and Remedies.

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

Section 6.10 Rights and Remedies Cumulative.

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

Section 6.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee, the Collateral Agent or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee, the Collateral Agent or to

the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Collateral Agent or by the Holders, as the case may be.

Section 6.12 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent and their respective agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee and the Collateral Agent shall consent to the making of such payments directly to the Holders, to pay to the Trustee and the Collateral Agent any amount due to them for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent and their respective agents and counsel, and any other amounts due the Trustee and the Collateral Agent under Section 7.06. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their agents and counsel, and any other amounts due the Trustee and the Collateral Agent under Section 7.06 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee and the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee and the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13 Priorities.

Subject to the terms of the Collateral Documents, with respect to any proceeds of Collateral, any money or property collected by the Trustee or the Collateral Agent pursuant to this Article 6 and any money or other property distributable in respect of any Grantor's Obligations under this Indenture after an Event of Default shall be applied in the following order:

FIRST: to pay Obligations in respect of any reasonable expenses, reimbursements or indemnities then due to the Trustee or the Collateral Agent;

SECOND: to pay interest then due and payable in respect of the Notes;

THIRD: to pay or prepay principal payments in respect of the Notes; and

FOURTH: to pay all other Obligations with respect to the Notes, the Notes Guarantees and this Indenture;

provided, however, that if sufficient funds are not available to fund all payments required to be made in any of clauses FIRST through FOURTH above, the available funds being applied to the Obligations specified in any such clause (unless otherwise specified in such clause) shall be allocated to the payment of such Obligations ratably, based on the proportion of the relevant party's interest in the aggregate outstanding Obligations described in such clause.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.13.

Section 6.14 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 Duties of Trustee.

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

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

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders of the Notes unless the Holders have offered to the Trustee indemnity or security satisfactory to the Trustee in its sole discretion against any loss, liability, cost or expense in relation to such exercise.

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

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely, as to the truth of statements and the correctness of the opinions expressed therein, upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or

any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

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

(f) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture. Delivery of reports to the Trustee pursuant to Section 4.03 shall not constitute actual knowledge of, or notice to, the Trustee of the information contained therein.

(g) In no event shall the Trustee be responsible or liable for any special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

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

(j) The Trustee may request that the Company and any Subsidiary Guarantor deliver an Officer's Certificate setting forth the names of the individuals and/or titles of Officers (with specimen signatures) authorized at such times to take specific actions pursuant to this Indenture, which Officer's Certificate may be signed by any persons specified as so authorized in any certificate previously delivered and not superseded.

(k) The Trustee shall receive and retain the financial reports and statements of the Company as provided herein, but shall have no duties whatsoever with respect to the contents thereof, including no duty to review or analyze such reports or statements to determine compliance with covenants or other obligations of the Company.

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09.

Section 7.04 Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Notes, the Collateral Documents or the Final Offering Circular, and it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes, in the Offering Circular or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail or otherwise deliver in accordance with the procedures of CDS to Holders of Notes a notice of the Default within 90 days after it occurs, unless such default shall have been cured or waived. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as the Board of Directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 Compensation and Indemnity.

The Company shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services provided hereunder as Trustee and Paying Agent, and as Collateral Agent hereunder and under the Collateral Documents, as the parties shall agree in writing from time to time. The Trustee's and the Collateral Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee and the Collateral Agent promptly upon request for all reasonable disbursements, advances and expenses incurred or made by them in addition to the compensation for their services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's and the Collateral Agent's agents and counsel. Any amount due under this Section 7.06 and unpaid 30 days after request for such payment shall bear interest from the expiration of such 30 days at a rate per annum equal to the then current rate charged by the Trustee from time to time, payable on demand. After default, all amounts so payable and the interest thereon payable out of any funds coming into the possession of the Trustee or its

successors in the trusts hereunder in priority to any payment of the principal of, or interest or Premium, if any, on, the Notes.

The Company and the Guarantors, jointly and severally, shall indemnify the Trustee and the Collateral Agent for, and hold the Trustee and the Collateral Agent, their officers, directors, employees, representatives and agents, harmless against, any and all loss, damage, claim, liability or expense (including attorneys' fees) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder and under the Collateral Documents (including the costs and expenses of enforcing this Indenture against the Company or any of the Guarantors (including this Section 7.06) or defending itself against any claim whether asserted by any Holder, the Company or any Subsidiary Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee or the Collateral Agent shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee or the Collateral Agent to so notify the Company shall not relieve the Company of its obligations hereunder. The Company and the Guarantors shall defend the claim and the Trustee and the Collateral Agent may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or the Collateral Agent through the Trustee's or the Collateral Agent's own willful misconduct or gross negligence.

The obligations of the Company and the Guarantors under this Section 7.06 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee or the Collateral Agent, as applicable.

To secure the payment obligations of the Company and the Guarantors in this Section 7.06, the Trustee and the Collateral Agent shall have a Lien prior to the Notes and rights of the Holders on all money or property held or collected by the Trustee or the Collateral Agent, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee or the Collateral Agent incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(9) or (10) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(a) the Trustee fails to comply with Section 7.09;

(b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a custodian or public officer takes charge of the Trustee or its property; or

(d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.09, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.06. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

Section 7.08 Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.09 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder (acting singly or together with a co-Trustee) that (a) is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that satisfies the requirements of TIA § 310(a)(1), (2) and (5), that is subject to supervision or examination by federal or state authorities and (b) is authorized to carry on the business of a trust company in all provinces of Canada.

Section 7.10 Collateral Documents.

By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and Collateral Agent, as the case may be, to execute and deliver the Collateral Documents in which the Trustee or the Collateral Agent, as applicable, is named as a party, including the Collateral Documents executed after the Issue Date. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Collateral Agent are not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under or pursuant to, the Collateral Documents, the Trustee and the Collateral Agent each shall have all of the rights, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements).

Section 7.11 Preferential Collection of Claims Against Company.

The Trustee shall be subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee that has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

Section 7.12 Calculations in Respect of the Notes.

The Company shall be responsible for making calculations called for under the Notes, including, but not limited to, determination of premiums, Additional Notes, original issue discount, conversion rates and adjustments, if any. The Company shall make the calculations in good faith and, absent manifest error, its calculations shall be final and binding on the Holders of the Notes. The Company shall provide a schedule of its calculations to the Trustee when applicable, and the Trustee shall be entitled to rely conclusively on the accuracy of the Company's calculations without independent verification.

Section 7.13 Brokerage Confirmations.

The Company acknowledges that regulations of the Comptroller of the Currency grant the Company the right to receive brokerage confirmations of the Note transactions as they occur. To the extent contemplated by law, the Company specifically waives any such notification relating to the Notes transactions contemplated herein; *provided, however,* that the Trustee shall send to the Company periodic cash transaction statements that describe all investment transactions.

Section 7.14 Third Party Interests.

Each party to this Indenture hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Indenture, for or to the credit of such party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such party hereto agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

Section 7.15 Trustee Not Bound to Act.

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to the other parties to this Indenture, provided (i) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Trustee's satisfaction within such 10-day period, then such resignation shall not be effective.

Section 7.16 Privacy Laws.

The parties acknowledge that Canadian federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "Privacy Laws") applies to obligations and activities under this Indenture. Despite any other provision of this Indenture, no party to this Indenture shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Company shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws.

Section 7.17 SEC Reporting.

The Company confirms that it has either (i) a class of securities registered pursuant to Section 12 of the Exchange Act; or (ii) a reporting obligation pursuant to Section 15(d) of the Exchange Act, and has provided the Trustee with an Officers' Certificate (in a form provided by the Trustee) certifying such reporting obligation and other information as requested by the Trustee. The Company covenants that in the event that any such registration or reporting obligation shall be terminated by the Company in accordance with the Exchange Act, the Company shall promptly notify the Trustee of such termination and such other information as the Trustee may require at the time. The Company acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain SEC obligations with respect to those clients who are filing with the SEC.

Section 7.18 Trustee Not Liable in Respect of Depository

The Trustee shall not have any liability whatsoever for:

(1) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Notes held by and registered in the name of a Depository or any Book-Entry-Only ("BEO") participant;

(2) maintaining, supervising or reviewing any records relating to such beneficial ownership interests; or

(3) any advice or representation made or given by or with respect to a Depository and made or given herein with respect to rules of such Depository or any action to be taken by a Depository or at the direction of a BEO participant.

Section 7.19 Interests in Global Note

Notes issued to a Depository in the form of a Global Note shall be subject to the following:

(1) the Trustee may deal with the Depository as the authorized representative of the beneficial owners of such Notes;

(2) the rights of the beneficial owners of such Notes shall be exercised only through such Depository;

(3) such Depository will make book-entry transfers among the BEO participants and will receive and transmit distributions of principal and interest on the Notes to the BEO participants; and

(4) the BEO participants shall have no rights under this Indenture or under or with respect to any of the Notes held on their behalf by such Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Notes represented by such Global Notes for all purposes whatsoever.

Section 7.20 Joint Trustees

The rights, powers, duties and obligations conferred and imposed upon each Trustee are conferred and imposed upon and shall be exercised and performed by the U.S. Trustee and the Canadian Trustee either jointly or severally, except to the extent otherwise provided herein and except to the extent that either Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by a Trustee which is not so incompetent or unqualified to the extent it can do so under applicable law, and except that neither Trustee shall be liable or responsible for the acts or omissions of the other Trustee. If the Trustees are unable to agree jointly to act or refrain from acting with respect to any right, power, duty or obligation conferred jointly upon the Trustees hereunder, the U.S. Trustee shall be entitled to act without the Canadian Trustee, and any action by the U.S. Trustee, or decision of the U.S. Trustee to act or refrain from acting, shall be binding upon the Canadian Trustee and each other Person as if the Canadian Trustee so acted or refrained from acting but, in such case, the Canadian Trustee shall have no liability for any acts or omissions by the U.S. Trustee. The performance or discharge by the Canadian Trustee of any rights, powers, duties or responsibilities under this Indenture shall be made in compliance with the laws of Ontario and the federal laws of Canada applicable therein.

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option to Effect Legal Defeasance and Covenant Defeasance.

The Company may, at its option and at any time, elect to have either Section 8.02 or 8.03 applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 Legal Defeasance and Discharge.

Upon the Company's exercise under Section 8.01 of the option applicable to this Section 8.02, the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04, be deemed to have been discharged from their obligations with respect to all outstanding Notes and Notes Guarantee on the date the conditions set forth below are satisfied ("Legal Defeasance"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 and the other Sections of this Indenture referred to in clauses (a) and (b) below, and to have satisfied all its other obligations under such Notes and this Indenture and the Collateral Documents, including the obligations of the Guarantors (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders of Notes to receive payments in respect of the principal of, premium, if any, and interest on the Notes when such payments are due solely out of the trust created pursuant to this Indenture referred to in Section 8.04;

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

(c) the rights, powers, trusts, duties and immunities of the Trustee, and the Company's obligations in connection therewith; and

(d) this Section 8.02.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03.

Section 8.03 Covenant Defeasance.

Upon the Company's exercise under Section 8.01 of the option applicable to this Section 8.03, the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04, be released from their obligations under the covenants contained in Sections 3.09, 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.17, 4.18,

4.19, 4.22 and 4.23, Section 5.01(a)(3) and Section 5.01(c) with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 are satisfied ("Covenant Defeasance"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's, exercise under Section 8.01 of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04, Sections 6.01(a)(3), 6.01(a)(4), 6.01(a)(5), 6.01(a)(6), 6.01(a)(7), 6.01(8), 6.01(a)(9) (solely with respect to Significant Subsidiaries (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary)), and 6.01(a)(10) (solely with respect to Significant Subsidiaries (or group of Restricted Subsidiaries that together (determined as of the most recent consolidated financial statements of the Company for a fiscal quarter end provided as required pursuant to Section 4.03) would constitute a Significant Subsidiary)), shall not constitute Events of Default.

Section 8.04 Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 8.02 or 8.03 to the outstanding Notes:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in Canadian dollars, non-callable Canadian Government Securities or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent certified public accountants, to pay the principal of, premium, if any, and interest due on the Notes on the Stated Maturity or on the applicable Redemption Date, as the case may be, of such principal, premium, if any, or interest on such Notes and the Company must specify whether such Notes are being defeased to maturity or to a particular Redemption Date;

(2) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions,

(a) the Company has received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the Notes shall not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that, subject to customary assumptions and exclusions, the Holders of the Notes shall not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the granting of Liens with respect thereto);

(5) such deposit, defeasance and discharge or deposit and defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(6) the Company must have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Notes over the other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and

(7) the Company must have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to the deposit, defeasance and discharge or the deposit and defeasance have been complied with.

Section 8.05 Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.06, all money and Canadian Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company or any of the Company's Subsidiaries acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or Canadian Government Securities held by it as provided in Section 8.04 which, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a)), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to Company.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium or interest on any Note and remaining unclaimed for two years after such principal, and premium or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 8.07 Reinstatement.

If the Trustee or Paying Agent is unable to apply any Canadian dollars or Canadian Government Securities in accordance with Section 8.02 or 8.03, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03, as the case may be; provided that, if the Company makes any payment of principal of, premium or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders of Notes.

Notwithstanding the first paragraph of Section 9.02, the Company, any Guarantor (with respect to a Notes Guarantee or this Indenture) and the Trustee and, if applicable, the Collateral Agent, may amend or supplement any Indenture Document to:

(1) cure any ambiguity, defect or inconsistency or to make a modification of a formal, minor or technical nature or to correct a manifest error;

(2) provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) comply with Article 5;

(4) provide for the assumption of the Company's or any Guarantor's obligations to Holders of Notes in the case of an amalgamation, arrangement, merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets; provided that the Company delivers to the Trustee:

(A) an Opinion of Counsel to the effect that Holders of the Notes will not recognize income, gain or loss for U.S. Federal income tax purposes as a result of such assumption by a successor corporation and will be subject to U.S. Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such assumption had not occurred, and

(B) an Opinion of Counsel in Canada to the effect that Holders of the Notes will not recognize income, gain or loss for Canadian tax purposes as a result of such assumption by a successor corporation and will be subject to Canadian taxes (including withholding taxes) on the same amounts, in the same manner and at the same times as would have been the case if such assumption had not occurred;

(5) add Guarantees with respect to the Notes or to secure the Notes;

(6) add to the covenants of the Company or any Guarantor for the benefit of the Holders of the Notes or surrender any right or power conferred upon the Company or any Guarantor;

(7) make any change that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under this Indenture Documents of any such Holder;

(8) if it becomes necessary to qualify the Indenture under the Trust Indenture Act or similar applicable laws of Canada or any province thereof, to comply with the TIA or such similar applicable laws of Canada or any province thereof;

(9) (i) enter into additional or supplemental Collateral Documents or (ii) release Collateral or Guarantors in accordance with the terms of this Indenture and the Collateral Documents;

(10) evidence and provide for the acceptance and appointment of a successor trustee pursuant to the requirements of this Indenture;

(11) make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including to facilitate the

issuance and administration of the Notes or to comply with the rules of any applicable securities depository; provided, however, that (i) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(12) conform the text of the Indenture Documents to any provision of this Description of Notes to the extent that such provision in this Description of Notes was intended to be a verbatim recitation of a provision of the Indenture Documents; or

(13) provide for or confirm the issuance of Additional Notes in accordance with the terms of this Indenture.

Upon the request of the Company accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02, the Trustee and/or the Collateral Agent shall join with the Company and the Guarantors in the execution of any amended or supplemental indenture or security documents, intercreditor agreement or amendments thereto, in each case, authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee and/or the Collateral Agent shall not be obligated to enter into such amended or supplemental indenture or security documents, intercreditor agreement or any amendment thereto that affects their own rights, duties or immunities under this Indenture or otherwise. The delivery of an Opinion of Counsel and an Officer's Certificate may be required, upon request by the Trustee, in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D.

Section 9.02 With Consent of Holders of Notes.

Except as provided below in this Section 9.02, the Company and the Trustee and the Collateral Agent may amend or supplement any Indenture Document with the consent of the Holders of at least a majority in principal amount of the Notes (including Additional Notes, if any) then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of the Indenture Documents may be waived with the consent of the Holders of at least a majority in principal amount of the then outstanding Notes (including Additional Notes, if any) voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 and Section 2.09 shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of

Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02, the Trustee and/or the Collateral Agent shall join with the Company in the execution of such amended or supplemental indenture or security documents or intercreditor agreement unless such amended or supplemental indenture directly affects their own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee and/or the Collateral Agent may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture or security documents or intercreditor agreement.

It shall not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to Holders of Notes a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice to all Holders (or any defect in such notice), however, shall not in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder of Notes, an amendment or waiver may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of, premium, if any, or extend the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than with respect to Section 4.10 or Section 4.14 prior to the time at which an obligation to make such an offer has arisen or provisions relating to notice);

(3) reduce the rate of or extend the time for payment of interest on any Note;

(4) waive a Default in the payment of principal of, premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in any currency other than Canadian dollars;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, premium, if any, or interest on the Notes;

(7) release any Guarantor from any of its obligations under its Notes Guarantee or this Indenture, except in accordance with the terms of this Indenture; or

(8) make any change in the foregoing or succeeding amendment and waiver provisions.

In addition, any amendment to, or waiver of, the provisions of the Indenture Documents that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of the Holders of at least 66 ⅔% in aggregate principal amount of the Notes then outstanding.

Section 9.03 Revocation and Effect of Consents.

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

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 9.04 Notation on or Exchange of Notes.

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

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

Section 9.05 Trustee and Collateral Agent to Sign Amendments, Etc.

The Trustee and Collateral Agent shall sign any amendment, supplement or waiver authorized pursuant to this Article 9, except that the Trustee or the Collateral Agent, as applicable, need not sign any amendment, supplement or waiver that the Trustee or Collateral Agent, as applicable, determines in its reasonable discretion that such amendment, supplement or waiver adversely affects the rights, duties, liabilities or immunities of the Trustee or Collateral Agent, as applicable. The Company may not sign an amendment, supplement or waiver until the Board of Directors of the Company approves it. In executing any amendment, supplement or waiver to any Notes Document, the Trustee and Collateral Agent shall be entitled to receive and (subject to Section 7.01) shall be fully protected in relying upon, in addition to the documents required by Section 13.02, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this

Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Company and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof.

Section 9.06 Payment for Consents.

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Notes or any other Indenture Document unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Section 9.07 Compliance with the Trust Indenture Act.

Every amendment to this Indenture or the Notes shall be set forth in a supplemental indenture hereto that complies with the TIA.

ARTICLE 10

GUARANTEES

Section 10.01 Guarantee.

Subject to this Article 10, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (a) the principal of, interest and premium on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders, the Trustee or the Collateral Agent hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay or perform the same immediately. Each Subsidiary Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes, this Indenture or the obligations of the Company hereunder or thereunder, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or

any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Subsidiary Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Subsidiary Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Subsidiary Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Subsidiary Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference", "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Guarantee issued by any Subsidiary Guarantor shall be a general senior obligation of such Subsidiary Guarantor and shall be *pari passu* in right of payment with all existing and future senior Indebtedness of such Subsidiary Guarantor, if any.

Each payment to be made by a Subsidiary Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 10.02 Limitation on Subsidiary Guarantor Liability.

Each Subsidiary Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Subsidiary Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law or similar foreign law for the relief of debtors to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Subsidiary Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Subsidiary Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under this Article 10, result in the obligations of such Subsidiary Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Subsidiary Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed Obligations under this Indenture to a contribution from each other Subsidiary Guarantor in an amount equal to such other Subsidiary Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

Section 10.03 Execution and Delivery.

To evidence its Guarantee set forth in Section 10.01, each Subsidiary Guarantor hereby agrees that this Indenture shall be executed on behalf of such Subsidiary Guarantor by one of its Officers.

Each Subsidiary Guarantor hereby agrees that its Guarantee set forth in Section 10.01 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

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

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

If required by Section 4.15, the Company shall cause any newly created or acquired Restricted Subsidiary to comply with the provisions of Section 4.15 and this Article 10, to the extent applicable.

The Guarantee of each Subsidiary Guarantor shall remain in full force and effect and continue to be effective notwithstanding the execution and delivery of any future Guarantee by any Restricted Subsidiary.

Section 10.04 Subrogation.

Each Subsidiary Guarantor shall be subrogated to all rights of Holders of Notes against the Company in respect of any amounts paid by any Subsidiary Guarantor pursuant to the provisions of Section 10.01; provided that, if an Event of Default has occurred and is continuing, no Subsidiary Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Company under this Indenture or the Notes shall have been paid in full.

Section 10.05 Benefits Acknowledged.

Each Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 10.06 Release of Guarantees.

A Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Company or the Trustee is required for the release of such Guarantor's Guarantee, upon:

(1) (A) any sale or other disposition of all or substantially all of the assets of such Subsidiary Guarantor (including by way of amalgamation, arrangement, exchange offer, merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company, if the sale or other disposition complies with Section 4.10 of this Indenture;

(B) any sale, issuance or other disposition of Capital Stock of such Guarantor to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company, if the sale, issuance or other disposition complies with Section 4.10 of this Indenture and such Guarantor ceases to be a Restricted Subsidiary of the Company as a result of such sale, issuance or other disposition;

(C) the designation by the Company of such Guarantor or any Restricted Subsidiary of the Company of which such Guarantor is a Subsidiary to be an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture;

(D) the requirement that such Guarantor become a Guarantor under the provisions of Section 4.15 of this Indenture at such time as such Guarantor shall cease to Guarantee any Indebtedness of the Company or any other Guarantor under any Credit Facility; or

(E) the Company exercising its Legal Defeasance option or Covenant Defeasance option in accordance with Article 8 of this Indenture or the Company's obligations under this Indenture being discharged in accordance with Article 12 of this Indenture; and

(2) such Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to the transaction permitting the release of such Guarantee have been complied with.

ARTICLE 11

COLLATERAL

Section 11.01 Grant of Security Interests; Collateral Trust Agreement.

(a) The Company and the Guarantors:

(1) shall grant a security interest in the Collateral as set forth in the Collateral Documents to the Collateral Agent for the benefit of the Holders, the Trustee and the Collateral Agent to secure the due and punctual payment of the principal of, premium, if any, and interest on the Notes and amounts due hereunder and under the Note Guarantees when and as the same shall be due and payable, whether at Stated Maturity thereof, on an Interest Payment Date, by acceleration, purchase, repurchase, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest (to the extent permitted by law), if any, on the Notes and the performance of all other Obligations of the Company and the Guarantors to the Holders, the Collateral Agent and the Trustee under this Indenture, the Collateral Documents, the Note Guarantees and the Notes, subject to the terms of the Collateral Trust Agreement and any other Permitted Liens;

(2) hereby covenant (A) to perform and observe their obligations under the Collateral Documents and (B) take any and all commercially reasonable actions (including without limitation the covenants set forth in the Collateral Documents and in this Article 11) required to cause the Collateral Documents to create and maintain, as security for the Obligations contained in this Indenture, the Notes, the Collateral Documents and the Note Guarantees, valid and enforceable, perfected (except as expressly provided herein or therein) security interests in and on all the Collateral, in favor of the Collateral Agent, superior to and prior to the rights of all third Persons, and subject to no other Liens (other than Permitted Liens), in each case, except as expressly permitted herein or therein (including, without limitation, in the Collateral Trust Agreement); and

(3) shall do or cause to be done, at their sole cost and expense, all such actions and things as may be necessary, or as may be required by the provisions of the Collateral Documents, to confirm to the Collateral Agent the security interests in the Collateral contemplated hereby and by the Collateral Documents, as from time to time constituted, so as to render the Collateral available for the security and benefit of this Indenture and of

the Notes and Note Guarantees secured hereby, according to the intent and purpose herein and therein expressed.

(b) Each Holder, by its acceptance of a Note:

(1) appoints the Collateral Agent to act as its agent (and by its signature below, the Collateral Agent accepts such appointment); and

(2) consents and agrees to the terms of each Collateral Document, as the same may be in effect or may be amended, restated, supplemented or otherwise modified from time to time in accordance with their respective terms, and authorizes and directs the Collateral Agent to enter into the Collateral Documents and to perform its obligations and exercise its rights thereunder in accordance therewith.

(c) Subject to the terms of this Indenture and the Collateral Documents, the Trustee will determine the circumstances and manner in which the Collateral will be disposed of, including, but not limited to, the determination of whether to release all or any portion of the Collateral from the Liens created by the Collateral Documents and whether to foreclose on the Collateral following a Default or Event of Default.

Section 11.02 Recording and Opinions.

(a) The Company shall, and shall cause each of the Guarantors to, at their sole cost and expense, take or cause to be taken all commercially reasonable action required to perfect (except as expressly provided in the Collateral Documents), maintain (with the priority required under the Collateral Documents), preserve and protect the security interests in the Collateral granted by the Collateral Documents, including (i) the filing of financing statements, continuation statements, collateral assignments and any instruments of further assurance, in such manner and in such places as may be required by law to preserve and protect fully the rights of the Holders, the Collateral Agent, and the Trustee under this Indenture and the Collateral Documents to all property comprising the Collateral pursuant to the terms of the Collateral Documents, and (ii) the delivery of the certificates, if any, evidencing the certificated securities pledged under the Collateral Documents, duly endorsed in blank or accompanied by undated stock powers or other instruments of transfer executed in blank. The Company shall from time to time promptly pay all financing and continuation statement recording and/or filing fees, charges and recording and similar taxes relating to this Indenture, the Collateral Documents and any amendments hereto or thereto and any other instruments of further assurance required pursuant thereto. Neither the Company nor any Guarantor will be permitted to take any action, or omit to take any action, which action or omission might or would have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Collateral Agent, the Trustee or the Holders except as expressly set forth herein or the Collateral Documents.

(b) If property of a type constituting Collateral is acquired by the Company or any Guarantor that is not automatically subject to a Lien or perfected security interest under the Collateral Documents or there is a new Guarantor, then the Company or such Guarantor will, as soon as reasonably practicable after such property's acquisition or such Subsidiary becoming a

Guarantor and in any event within 10 Business Days, grant Liens on such property (or, in the case of a new Guarantor, all of its assets constituting the type that is Collateral) in favor of the Collateral Agent and deliver certain certificates (including in the case of real property title insurance) and any filings or other documentation in respect thereof as required by this Indenture or the Collateral Documents and take all necessary steps to perfect the security interest represented by such Liens.

(c) The Company shall furnish to the Trustee and the Collateral Agent (if other than the Trustee), on or within one month of December 31 of each year, commencing December 31, 2012, an Opinion of Counsel either (1) stating that, in the opinion of such counsel, all action necessary to perfect or continue the perfection of the security interests created by the Collateral Documents have been taken, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given; or (2) stating that, in the opinion of such counsel, no such action is necessary to perfect or continue the perfection of any security interest created under any of the Collateral Documents.

Section 11.03 Release of Collateral.

(a) Subject to the terms of the Collateral Trust Agreement, the Company and the Guarantors will be entitled to releases of assets included in the Collateral from the Liens securing Obligations under this Indenture under any one or more of the following circumstances:

(1) upon satisfaction and discharge of the Indenture pursuant to Article 12;

(2) upon a Legal Defeasance or Covenant Defeasance of the Notes pursuant to Article 8;

(3) upon payment in full and discharge of all Notes outstanding under this Indenture and all Obligations that are outstanding, due and payable under the Indenture at the time the Notes are paid in full and discharged; or

(4) in whole or in part, with the consent of the Holders of the requisite percentage of Notes in accordance Article 9.

(b) [Intentionally Omitted]

(c) Subject to the terms of the Collateral Trust Agreement, upon receipt of any necessary or proper instruments of termination, satisfaction or release prepared by the Company or any Guarantor, as the case may be, the Collateral Agent shall execute, deliver or acknowledge such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Collateral Documents; *provided* that the Company or such Guarantor, as the case may be, execute and deliver an Officer's Certificate to the Trustee and Collateral Agent certifying that the release of such Collateral is permitted under the terms of the Indenture and that all conditions precedent to such release have been satisfied.

(d) The release of any Collateral from the terms of the Collateral Documents shall not be deemed to impair the security under this Indenture in contravention of the provisions hereof if

and to the extent the Collateral is released pursuant to this Indenture and the Collateral Documents.

Section 11.04 Form and Sufficiency of Release.

In the event that the Company or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that may be sold, exchanged or otherwise disposed of by the Company or any Guarantor to any Person other than the Company or a Guarantor, and the Company or any Guarantor requests in writing that the Collateral Agent furnish a written disclaimer, release or quit-claim of any interest in such property under this Indenture and the Collateral Documents, the Collateral Agent shall execute, acknowledge and deliver to the Company or such Guarantor (in proper form prepared by the Company or such Guarantor) such an instrument promptly after satisfaction of the conditions set forth herein for delivery of any such release, including the delivery to the Collateral Agent of an Officer's Certificate and Opinion of Counsel that all conditions thereto have been satisfied. Notwithstanding the preceding sentence, all purchasers and grantees of any property or rights purporting to be released herefrom shall be entitled to rely upon any release executed by the Collateral Agent hereunder as sufficient for the purpose of this Indenture and as constituting a good and valid release of the property therein described from the Lien of this Indenture or of the Collateral Documents.

Section 11.05 Authorization of Actions to be Taken by the Collateral Agent Under the Collateral Documents.

Subject to the provisions of the applicable Collateral Documents, the Trustee and each Holder, by acceptance of any Notes agrees that (a) the Collateral Agent shall execute and deliver, as applicable, the Collateral Documents, and all agreements, documents and instruments incidental thereto, and act in accordance with the terms thereof, (b) the Collateral Agent may, in its sole discretion and without the consent of the Trustee or the Holders, take all actions it deems necessary or appropriate in order to (i) enforce any of the terms of the Collateral Documents and (ii) collect and receive any and all amounts payable in respect of the Obligations of the Company and the Guarantors hereunder and under the Notes, the Note Guarantees and the Collateral Documents and (c) the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any act that may be unlawful or in violation of the Collateral Documents or this Indenture, and suits and proceedings as the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Trustee and the Holders in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest thereunder or be prejudicial to the interests of the Collateral Agent, the Holders or the Trustee). Notwithstanding the foregoing, the Collateral Agent may, at the expense of the Company, request the direction of the Holders with respect to any such actions and upon receipt of the written consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes, shall take such actions; *provided* that all actions so taken shall, at all times, be in conformity with the requirements of the Collateral Trust Agreement.

Section 11.06 Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.

The Collateral Agent is authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Collateral Documents and to the extent not prohibited under the Collateral Trust Agreement, for turnover to the Trustee to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of this Indenture.

Section 11.07 Replacement of Collateral Agent.

A resignation or removal of the Collateral Agent and appointment of a successor Collateral Agent shall be effected pursuant to the terms of the Collateral Trust Agreement and this Section 11.07.

Subject to the appointment and acceptance of a successor Collateral Agent as provided below, the Collateral Agent may resign at any time by giving notice thereof to the Company, the Guarantors, the Trustee and the Holders. Upon receipt of such notice, the Company shall appoint a successor Collateral Agent. Upon acceptance by a successor Collateral Agent of an appointment to serve as Collateral Agent hereunder and under the Collateral Trust Agreement and the other Indenture Documents, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, duties and obligations of the retiring Collateral Agent without further act. Any successor to the Collateral Agent by merger or acquisition of stock or acquisition of the corporate trust business shall continue to be Collateral Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

Section 11.08 Equal and Ratable Sharing of Collateral by Holders of Parity Lien Debt.

(a) The Holders of Notes, the Trustee and the Collateral Agent agree that, notwithstanding:

(1) anything to the contrary contained in the Collateral Documents;

(2) the time of incurrence of any Series of Parity Lien Debt;

(3) the order or method of attachment or perfection of any Liens securing any Series of Parity Lien Debt;

(4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;

(5) the time of taking possession or control over any Collateral;

(6) that any Parity Lien may not have been perfected or may be or have become subordinated, by equitable subordination or otherwise, to any other Lien; or

(7) the rules for determining priority under any law governing relative priorities of Liens,

(i) all Liens at any time granted to secure any of the Parity Lien Debt will secure, equally and ratably, all present and future Parity Lien Obligations; and (ii) all proceeds from enforcement of all Liens at any time granted to secure any of the Parity Lien Debt and other Parity Lien Obligations will be allocated and distributed equally and ratably on account of the Parity Lien Debt and other Parity Lien Obligations; *provided*, that in the absence of an Event of Default, the Company shall be entitled to utilize cash proceeds of Collateral in the ordinary course of its business or as may be required by its financing agreements.

(b) Section 11.08(a) is intended for the benefit of, and will be enforceable as a third party beneficiary by, each present and future holder of Parity Lien Obligations, each present and future Parity Debt Representative and the Collateral Agent as holder of Parity Liens. The Parity Debt Representative of each future Series of Parity Lien Debt will be required to deliver a Parity Debt Sharing Confirmation to the Collateral Agent and the Trustee at the time of incurrence of such Series of Parity Lien Debt.

Section 11.09 Ranking of Note Liens.

(a) The Holders of Notes, the Trustee and the Collateral Agent agree that, notwithstanding:

(1) anything to the contrary contained in the Collateral Documents;

(2) the time of incurrence of any Series of Secured Debt;

(3) the order or method of attachment or perfection of any Liens securing any Series of Secured Debt;

(4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;

(5) the time of taking possession or control over any Collateral;

(6) that any Priority Lien may not have been perfected or may be or have become subordinated, by equitable subordination or otherwise, to any other Lien; or

(7) the rules for determining priority under any law governing relative priorities of Liens,

all Liens at any time granted to secure any of the Parity Lien Obligations will be subject and subordinate to all Priority Liens securing Priority Lien Obligations.

(b) Section 11.09(a) is intended for the benefit of, and will be enforceable as a third party beneficiary by, each present and future holder of Priority Lien Obligations, each present and future Priority Debt Representative and the Collateral Agent as holder of Priority Liens. No other Person will be entitled to rely on, have the benefit of or enforce this provision. The Parity

Debt Representative of each future Series of Parity Lien Debt will be required to deliver a Parity Debt Sharing Confirmation to the Collateral Agent and each Priority Debt Representative at the time of incurrence of such Series of Parity Lien Debt.

(c) Section 11.09(a) is intended solely to set forth the relative ranking, as Liens, of the Parity Liens securing Parity Lien Debt as against the Priority Liens. Neither the Notes nor any other Parity Lien Obligations nor the exercise or enforcement of any right or remedy for the payment or collection thereof are intended to be, or will ever be by reason of the foregoing provision, in any respect subordinated, deferred, postponed, restricted or prejudiced.

Section 11.10 Relative Rights.

(a) The Holders of Notes, the Trustee and the Collateral Agent agree that nothing in the Note Documents will:

(1) impair, as between the Company and the Holders of the Notes, the obligation of the Company to pay principal of, premium and interest, if any, on the Notes in accordance with their terms or any other obligation of the Company or any other Obligor under the Note Documents;

(2) affect the relative rights of Holders of Notes as against any other creditors of the Company or any other Obligor under the Note Documents (other than holders of Priority Liens or other Parity Liens);

(3) restrict the right of any Holder of Notes to sue for payments that are then due and owing (but not enforce any judgment in respect thereof against any Collateral to the extent specifically prohibited by the Collateral Trust Agreement;

(4) restrict or prevent any Holder of Notes or other Parity Lien Obligations, the Trustee, the Collateral Agent or other Person on their behalf from exercising any of its rights or remedies upon a Default or Event of Default not specifically restricted or prohibited by the Collateral Trust Agreement; and

(5) restrict or prevent any Holder of Notes or other Parity Lien Obligations, the Trustee, the Collateral Agent or any other Person on their behalf from taking any lawful action in a bankruptcy, insolvency, liquidation or similar proceeding not specifically restricted or prohibited by the Collateral Trust Agreement.

Section 11.11 Further Assurances.

(a) Neither the Company nor any Guarantor will enter into any agreement that requires the proceeds received from any sale of Collateral to be applied to repay, redeem, defease or otherwise acquire or retire any Indebtedness of any Person, other than as permitted or required to by this Indenture or the Collateral Documents.

(b) The Company shall, and shall cause any Guarantor to, at their sole cost and expense, (i) execute and deliver all such agreements and instruments and take all further action as the Collateral Agent or the Trustee may reasonably request to more fully or accurately

describe the property intended to be Collateral or the obligations intended to be secured by the Collateral Documents; and (ii) file any such notice filings or other agreements or instruments as may be reasonably necessary under applicable law to perfect the Liens created by the Collateral Documents.

ARTICLE 12

SATISFACTION AND DISCHARGE

Section 12.01 Satisfaction and Discharge.

(a) This Indenture will be discharged and will cease to be of further effect (except as to surviving rights and immunities of the Trustee and rights of registration of transfer or exchange of Notes, as expressly provided for herein) as to all outstanding Notes if:

(1) the Company will have paid or caused to be paid the principal of, premium, if any, and interest as and when the same will have become due and payable; all outstanding Notes (except lost, stolen or destroyed Notes which have been replaced or paid) have been delivered to the Trustee for cancellation; or all Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable by reason of the mailing of a notice of redemption or (ii) (A) shall become due and payable at their Stated Maturity within one (1) year or (B) are to be called for redemption within one year under arrangements reasonably satisfactory to the Trustee, and the Company has irrevocably deposited or caused to be deposited with the Trustee funds in trust of cash in Canadian dollars, non-callable Canadian Government Securities, or a combination thereof in an amount sufficient to pay and discharge the principal, premium, if any, and interest on the Notes to the date of Stated Maturity or such redemption, as the case may be;

(2) the Company has paid all other sums payable by it under the Indenture Documents; and

(3) the Company has delivered an Officer's Certificate and an Opinion of Counsel stating that all conditions have been met.

Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to Section 12.01(a)(3), the provisions of Section 12.02 and Section 8.06 shall survive.

Section 12.02 Application of Trust Money.

Subject to the provisions of Section 8.06, all money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose

payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01; provided that if the Company has made any payment of principal of, premium or interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13

MISCELLANEOUS

Section 13.01 Notices.

Any notice or communication by the Company, any Subsidiary Guarantor, the Trustee or the Collateral Agent to the others is duly given if in writing and published, delivered in person or mailed by first-class mail (registered or certified, return receipt requested), fax or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Guarantor:

The Cash Store Financial Services Inc.
17631 – 103 Avenue
Edmonton, Alberta, Canada T5S 1N8
Attention: Nancy Bland, Chief Financial Officer

with copies to:

Cassels Brock & Blackwell LLP
40 King Street West, Suite 2100
Toronto, Ontario, Canada M5H 3C2
Attention: Paul Stein

Paul, Weiss, Rifkind, Wharton & Garrison LLP
77 King Street West, Suite 3100
Toronto, Ontario, Canada M5K 1J3
Attention: Adam M. Givertz

If to the Trustee or the Collateral Agent:

Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: 416-981-9777

Computershare Trust Company, N.A.
Attn: John Wahl or Rose Stroud
350 Indiana Street, Suite 750
Golden, CO 80401
Facsimile: 303-262-0608

With a copy to:

William A Harris
Computershare
480 Washington Boulevard, Jersey City NJ 07310
Facsimile: 201-680-4610

The Company, any Subsidiary Guarantor, the Trustee or the Collateral Agent, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: on the first date on which publication is made, if published; at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; when receipt acknowledged, if faxed; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; provided that any notice or communication delivered to the Trustee or the Collateral Agent shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, the Company shall mail a copy to the Trustee, the Collateral Agent and each Agent at the same time.

Section 13.02 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company or any of the Guarantors to the Trustee to take any action under this Indenture, the Company or such Guarantor, as the case may be, shall furnish to the Trustee or, if such action relates to a Collateral Document, the Collateral Agent:

(a) An Officer's Certificate in form and substance reasonably satisfactory to the Trustee or the Collateral Agent, as applicable (which shall include the statements set forth in Section 13.03) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; provided that an Officer's Certificate shall not be required in connection with the issuance of Notes or the entering into any of the Notes Documents on the Issue Date; and

(b) An Opinion of Counsel in form and substance reasonably satisfactory to the Trustee or the Collateral Agent, as applicable (which shall include the statements set forth in Section 13.03), stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.03 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and also shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 13.04 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.05 No Personal Liability of Directors, Officers, Employees, Incorporators, Members, Partners and Stockholders.

No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Company or any Subsidiary Guarantor or any of their parent companies or entities shall have any liability for any obligations of the Company or the Guarantors under the Notes, the Notes Guarantees, the Collateral Documents or this Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.06 Governing Law.

THIS INDENTURE, THE NOTES, AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 13.07 Waiver of Jury Trial.

THE ISSUER, EACH OF THE GUARANTORS, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.08 Consent to Service and Jurisdiction; Appointment of Agent; Etc.

(a) The Company, each Guarantor, the Collateral Agent and the Trustee agree that any legal suit, action or proceeding arising out of or relating to any Indenture Document or Collateral Document, and each of the Company and the Guarantors agrees that any legal suit, action or proceeding arising out of or relating to the Notes or the Notes Guarantees, may be instituted in any federal or state court in the Borough of Manhattan, The City of New York, waives any objection which it may now or hereafter have to the laying of the venue of any such legal suit, action or proceeding, waives any immunity from jurisdiction or to service of process in respect of any such suit, action or proceeding, and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

(b) Each of the Company, the Trustee, the Collateral Agent and the Guarantors further submits to the jurisdiction of the courts of its own corporate domicile in any legal suit, action or proceeding arising out of or relating to the Indenture Documents, the Collateral Documents, the Notes or the Notes Guarantee.

(c) (1) Each of the Company and the Guarantors hereby designates and appoints CT Corporation System ("CT Corporation"), 111 Eighth Avenue, New York, 10011, as its authorized agent upon which process may be served in any legal suit, action or proceeding arising out of or relating to the Indenture Documents, the Collateral Documents, the Notes or the

Notes Guarantees which may be instituted in any State or U.S. federal court in The City of New York and County of New York, and further:

(2) agrees that service of process upon such agent, and written notice of said service to the Company or a Guarantor by the Person serving the same, shall be deemed in every respect effective service of process upon the Company (if such notice is given to the Company) or upon such Guarantor (if such notice is given to a Guarantor) in any such suit, action or proceeding, and irrevocably consents, to the fullest extent it may effectively do so under applicable law, to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the above-mentioned authorized agent or successor authorized agent, as the case may be, such service to become effective 30 days after such mailing,

(3) agrees that a final action in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other lawful manner,

(4) designates its domicile, the domicile of CT Corporation specified above and any domicile CT Corporation may have in the future as its domicile to receive any notice hereunder (including service of process),

(5) agrees to take any and all action, including the execution and filing of all such instruments and documents, as may be necessary to continue such designation and appointment in full force and effect for so long as the Notes remain outstanding, or until the designation and irrevocable appointment of a successor authorized agent and such successor's acceptance of such appointment, but in no event shall the appointment continue beyond the date on which all amounts in respect of the interest and principal and premium, if any, on the Notes and any other amounts payable hereunder have become due and have been paid in full to the Trustee, and

(6) agrees that nothing herein shall affect the right of the Trustee, the Collateral Agent or any Holder to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against any of the Company or the Guarantors in any jurisdiction.

Section 13.09 Foreign Currency Equivalents

For purposes of determining compliance with any Canadian dollar-denominated restriction or amount, the Canadian dollar equivalent principal amount of any amount denominated in a foreign currency will be the Canadian Dollar Equivalent calculated on the date the Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt or other transaction was entered into; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a currency other than Canadian dollars, and such refinancing would cause the applicable Canadian dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Canadian dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the

principal amount of such Indebtedness being refinanced. Notwithstanding any other provision in this Indenture, no restriction or amount will be exceeded solely as a result of fluctuations in the exchange rate of currencies.

Section 13.10 Force Majeure.

In no event shall the Trustee or the Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemics, governmental action or judicial order, earthquakes , or other similar causes, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services. Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 13.10.

Section 13.11 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or the Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.12 Successors.

All agreements of the Company in this Indenture and the Notes shall bind its respective successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Subsidiary Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.05.

Section 13.13 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.14 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 13.15 Table of Contents, Headings.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 13.16 Collateral Trust Agreement Governs.

Reference is made to the Collateral Trust Agreement. Each Holder, by its acceptance of a Note, (a) consents to the payment priority provided for in the Collateral Trust Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Collateral Trust Agreement and (c) authorizes and instructs the Collateral Agent to enter into the Collateral Trust Agreement as Collateral Agent and on behalf of such Holder. The foregoing provisions are intended as an inducement to the lenders under the Credit Agreement to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Collateral Trust Agreement.

Section 13.17 U.S.A. Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions, and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may reasonably request as required in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 13.18 Communication by Holders of Notes with Other Holders of Notes.

Holders of the Notes may communicate pursuant to TIA § 312(b) with other Holders of Notes with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

[Remainder of page left intentionally blank. Signature page follows.]

THE CASH STORE FINANCIAL SERVICES INC.

By: _____

Name: Gordon Reykdal
Title: Chairman and CEO

[Signature page to the Indenture]

7252331 CANADA INC.

By: _____
Name: Gordon Reykdal
Title: Chairman and CEO

[Signature page to the Indenture]

5515433 MANITOBA INC.

By: _____
Name: Gordon Reykdal
Title: Chairman and CEO

THE CASH STORE INC.

By: _____

Name: Gordon Reykdal
Title: Chairman and CEO

[Signature page to the Indenture]

INSTALOANS INC.

By: _____
Name: Gordon Reykdal
Title: Chairman and CEO

[Signature page to the Indenture]

TCS CASH STORE INC.

By: _____

Name: Gordon Reykdal
Title: Chairman and CEO

THE CASH STORE FINANCIAL LIMITED

By: _____
Name: Gordon Reykdal
Title: Chairman and CEO

IN THE PRESENCE OF

_____
Name of Witness
Nancy Bland

17, 26323 TWP Rd 532A

Spruce Grove, Alberta, T7X 4M1
Address

[Signature page to the Indenture]

THE CASH STORE LIMITED

By: _____
Name: Gordon Reykdal
Title: Chairman and CEO

IN THE PRESENCE OF

_____
Name of Witness
Nancy Bland

17, 26323 TWP Rd 532A

Spruce Grove, Alberta, T7X 4M1
Address

[Signature page to the Indenture]

CSF INSURANCE SERVICES LIMITED

By: _____
Name: Gordon Reykdal
Title: Chairman and CEO

IN THE PRESENCE OF

_____
Name of Witness
Nancy Bland

17, 26323 TWP Rd 532A

Spruce Grove, Alberta, T7X 4M1
Address

[Signature page to the Indenture]

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Canadian Trustee

By: _____
Name: Kemi Atawo
Title: Corporate Trust Officer

By: _____
Name: Charles Cuschieri
Title: Associate Trust Officer

[Signature page to the Indenture]

COMPUTERSHARE TRUST COMPANY, N.A.,
as U.S. Trustee

By: _____
Name: John M. Wahl
Title: Corporate Trust Officer

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Collateral Agent

By: _____
Name: Kemi Atawo
Title: Corporate Trust Officer

By: _____
Name: Danny Snider
Title: Corporate Trust Officer

SCHEDULE I

List of Guarantors

Subsidiary	Jurisdiction of Incorporation
7252331 Canada Inc.	Canada
5515433 Manitoba Inc.	Manitoba
The Cash Store Inc.	Alberta
Instaloans Inc.	Alberta
TCS – Cash Store Inc.	Alberta
The Cash Store Financial Limited	United Kingdom
The Cash Store Limited	United Kingdom
CSF Insurance Services Limited	United Kingdom

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Legend, if applicable, pursuant to the provisions of the Indenture]

CUSIP [ ]
ISIN [ ][1]

[RULE 144A][REGULATION S] GLOBAL NOTE
representing up to
$[_____]
11 ½% Senior Secured Notes due 2017

No. ___ [$_____]

The Cash Store Financial Services Inc.

promises to pay to [CDS & CO.] or registered assigns, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto] [of _____ Canadian Dollars] on January 31, 2017.

Interest Payment Dates: January 31 and July 31

Record Dates: January 15 and July 15

[1] Rule 144A Note CUSIP: 14756FAB9
Rule 144A Note ISIN: CA 14756FAB90
Regulation S Note CUSIP: C21768AA1
Regulation S Note ISIN: CA C21768AA11

IN WITNESS HEREOF, the Company has caused this instrument to be duly executed.

Dated:

THE CASH STORE FINANCIAL SERVICES INC.

By:_____
Authorized Signatory

COMPUTERSHARE TRUST COMPANY OF CANADA, as Trustee

By:_____
Authorized Signatory

[Back of Note]

11 ½% Senior Secured Notes due 2017

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. The Cash Store Financial Services Inc., an Ontario corporation, promises to pay interest on the principal amount of this Note at 11 ½% per annum from January 31, 2012 (or the most recent Interest Payment Date) until maturity. The Company will pay interest semi-annually in arrears on January 31 and July 31 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "Interest Payment Date"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that the first Interest Payment Date shall be July 31, 2012. The Company will pay interest (including Post-Petition Interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the interest rate on the Notes plus 2.0% per annum; it shall pay interest (including Post-Petition Interest in any proceeding under any Bankruptcy Law) on overdue installments of interest, if any (without regard to any applicable grace periods), from time to time on demand at the interest rate on the Notes plus 2.0% per annum, to the extent lawful. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. METHOD OF PAYMENT. The Company will pay interest on the Notes, if any, to the Persons who are registered Holders of Notes at the close of business on the January 15 or July 15 (whether or not a Business Day), as the case may be, next preceding the Interest Payment Date, even if such Notes are cancelled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payment of interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders, provided that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium, if any, on all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Company or the Paying Agent. Such payment shall be in the currency of Canada as at the time of payment is legal tender for payment of public and private debts.

3. PAYING AGENT AND REGISTRAR. Initially, the Trustee under the Indenture will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without prior written notice to the Holders. The Company or any of the Company's Subsidiaries may act in as paying agent or registrar.

4. INDENTURE. The Company issued the Notes under an Indenture, dated as of January 31, 2012 (the "Indenture"), among the Company., the Guarantors named therein and the Trustee. This Note is one of a duly authorized issue of notes of the Company designated as its 11 ½% Senior Secured Notes due 2017. The Company may issue Additional Notes pursuant to Sections 2.01 and 2.15 of the Indenture, so long as the incurrence thereof is permitted by Sections 4.09 and 4.12 of the Indenture. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for

a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. OPTIONAL REDEMPTION.

(a) Except as set forth below under clauses 5(b), 5(d) and 5(e) hereof, the Notes will not be redeemable at the Company's option before July 31, 2014.

(b) At any time prior to July 31, 2014, the Company may redeem all or a part of the Notes, upon notice as described under Section 3.03 of the Indenture, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but excluding the date of redemption (any applicable date of redemption hereunder, the "Redemption Date"), subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date.

(c) On and after July 31, 2014, the Company may redeem the Notes, in whole or in part, upon notice as described under Section 3.03 of the Indenture, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest thereon, if any, to, but excluding the applicable Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Interest Payment Date, if redeemed during the periods indicated below:

For the period below	**Percentage**
On or after July 31, 2014	103.084%
On or after January 31, 2015	102.091%
On or after July 31, 2015	101.127%
On or after January 31, 2016	100.194%
On or after July 31, 2016	100.000%

(d) Prior to July 31, 2014, the Company shall be entitled at its option on one or more occasions to redeem up to 35% of the aggregate principal amount of the Notes (including any Additional Notes) originally issued under the Indenture at a redemption price of 111.500% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date (subject to the right of Holders of the Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date) if (i) such redemption is made with the proceeds of one or more Equity Offerings; (ii) at least 65% of the aggregate principal amount of the Notes (including Additional Notes) originally issued under the Indenture remain outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company or any of its Subsidiaries); and (iii) the redemption occurs within 90 days of such Equity Offering.

(e) The Company may at any time redeem all of the outstanding Notes, in whole but not in part, at a redemption price of 100% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption, and all

Additional Amounts (if any) then due and which will become due on the Redemption Date as a result of the redemption or otherwise, if on the next date on which any amount would be payable in respect of the Notes, the Company has become or would become obligated to pay any Additional Amounts in respect of the Notes, and the Company cannot avoid any such payment obligation by taking reasonable measures available to it, as a result of (i) any change in or amendment to the laws (or regulations promulgated thereunder) of a relevant Tax Jurisdiction, or (ii) any change in or amendment to any official position regarding the application or interpretation of such laws or regulations, which change or amendment is announced and is effective on or after the Issue Date (or, if the applicable relevant Tax Jurisdiction became a Tax Jurisdiction on a date after the Issue Date, such later date).

(f) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Sections 3.01 through 3.07 of the Indenture.

6. MANDATORY REDEMPTION. The Company shall not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, notice of redemption will be delivered or mailed by first-class mail, postage prepaid, at least 30 days but not more than 60 days before the Redemption Date (except that redemption notices may be mailed more than 60 days prior to the Redemption Date if the notice is issued in connection with Article 8 or Article 12 of the Indenture) to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date interest ceases to accrue on Notes or portions thereof called for redemption.

8. OFFERS TO REPURCHASE.

(a) Upon the occurrence of a Change of Control, the Company shall make an offer (a "Change of Control Offer") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (the "Change of Control Payment"). The Change of Control Offer shall be made in accordance with Section 4.14 of the Indenture.

(b) When the aggregate amount of Excess Proceeds exceeds $7.5 million, the Company will be required to make an Asset Sale Offer to all Holders of Notes to purchase the maximum principal amount of Notes that may be purchased out of the Excess Proceeds. The offer price for such Asset Sale Offer shall be an amount in cash equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the date of purchase (subject to the right of Holders of the Notes on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures set forth in Article 3. To the extent that the aggregate amount of Notes tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company and its Restricted Subsidiaries may use any remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes surrendered by Holders thereof exceeds the amount of the

Excess Proceeds, the Trustee shall select the Notes to be purchased on a *pro rata* basis based upon principal balance (subject to adjustments so that no Notes in an unauthorized denomination are repurchased in part). Upon completion of such offer to purchase, the amount of Excess Proceeds shall be reset at zero.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption or tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer, an Asset Sale Offer or other tender offer, in whole or in part, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 Business Days before a selection of Notes to be redeemed.

10. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

11. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Notes Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

12. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then total outstanding Notes may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Notes Guarantees except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, or interest) if and so long as it determines that withholding notice is in their interest. Except as provided in the Indenture, the Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default and its consequences under the Indenture and rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest, if any, or premium that has become due solely because of the acceleration) have been cured or waived. The Company and each Guarantor is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required within five Business Days after becoming aware of any Default, to deliver to the Trustee a statement specifying such event.

13. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

14. GOVERNING LAW. THE INDENTURE, THE NOTES AND ANY NOTES GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

15. SECURITY. The Notes and the Notes Guarantees will be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture and the Collateral Documents. The Trustee and the Collateral Agent, as the case may be, hold the Collateral in trust for the benefit of the Trustee and the Holders, in each case pursuant to the Collateral Documents. Each Holder, by accepting this Note, consents and agrees to the terms of the Collateral Documents as the same may be in effect or may be amended from time to time in accordance with their terms and the Indenture and authorizes and directs the Collateral Agent to enter into the Collateral Documents and to perform its obligations and exercise its rights thereunder in accordance therewith.

16. COUNTERPARTS. This Note may be executed in counterparts, each of which shall be an original and all of which, when taken together, shall constitute one binding Note.

17. CUSIP NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Notes, and the Trustee may use CUSIP or ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to the Company at the following address:

The Cash Store Financial Services Inc.
17631 – 103 Avenue
Edmonton, Alberta, Canada T5S 1N8
Attention: Nancy Bland, Chief Financial Officer

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or (we) assign and transfer this Note to:_____
(Insert assignee's legal name)

_____
(Insert assignee's soc. sec. or tax I.D. no.)

_____
_____
_____
_____
(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature:_____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee:* _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

[ ] Section 4.10 [ ] Section 4.14

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee:* _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $_____. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized officer of Trustee or Note Custodian

* This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER
c/o The Cash Store Financial Services Inc.
17631 – 103 Avenue
Edmonton, Alberta, Canada T5S 1N8
Attention: Chief Financial Officer

c/o Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: 416-981-9777

c/o Computershare Trust Company, N.A.
Attn: John Wahl or Rose Stroud
350 Indiana Street, Suite 750
Golden, CO 80401
Facsimile: 303-262-0608

Re: 11 ½% Senior Secured Notes due 2017

Reference is hereby made to the Indenture, dated as of January 31, 2012 (the "Indenture"), among The Cash Store Financial Services Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "Transferor") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "Transfer"), to _____ (the "Transferee"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE 144A GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

2. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE REGULATION S GLOBAL NOTE OR A DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with applicable securities laws and regulations in Canada and Rule 903 or Rule 904, as applicable, under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is in accordance with, or pursuant to an exemption from, or in a transaction not subject to, the dealer registration and prospectus requirements under any applicable securities laws in Canada and not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act and (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Indenture (including the Canadian resales restriction for so long as applicable) and the Securities Act.

3. [ ] CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with applicable securities laws and regulations in Canada and the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) [ ] such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and applicable securities laws and regulations in Canada;

or

(b) [ ] such Transfer is being effected to the Company or a subsidiary thereof;

or

(c) [ ] such Transfer is being effected pursuant to an effective registration statement under the Securities Act and, if applicable, in compliance with the prospectus delivery requirements of the Securities Act.

4. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) [ ] CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with applicable securities laws and regulations in Canada and the transfer restrictions contained in the Indenture (including the Canadian resales restriction for so long as applicable) and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture (subject to the Canadian resales restriction for so long as applicable).

(b) [ ] CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with applicable securities laws and regulations in Canada and with Rule 903 or Rule 904 under the Securities Act, as applicable, and in compliance with the transfer restrictions contained in the Indenture (including the Canadian resales restriction for so long as applicable) and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture (subject to the Canadian resales restriction for so long as applicable).

(c) [ ] CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with applicable securities laws and regulations in Canada and the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture (subject to the Canadian resales restriction for so long as applicable).

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

[Insert Name of Transferor]

By: _____
Name:

Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) [ ] a beneficial interest in the:

(i) [ ] 144A Global Note (CUSIP [•]), or

(ii) [ ] Regulation S Global Note (CUSIP [•]), or

(b) [ ] a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) [ ] a beneficial interest in the:

(i) [ ] 144A Global Note (CUSIP [•]), or

(ii) [ ] Regulation S Global Note (CUSIP [•]), or

(iii) [ ] Unrestricted Global Note (CUSIP [ ]); or

(b) [ ] a Restricted Definitive Note; or

(c) [ ] an Unrestricted Definitive Note, in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE
c/o The Cash Store Financial Services Inc.
c/o The Cash Store Financial Services Inc.
17631 – 103 Avenue
Edmonton, Alberta, Canada T5S 1N8
Attention: Chief Financial Officer

c/o Computershare Trust Company of Canada
100 University Avenue
9th Floor, North Tower
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: 416-981-9777

c/o Computershare Trust Company, N.A.
Attn: John Wahl or Rose Stroud
350 Indiana Street, Suite 750
Golden, CO 80401
Facsimile: 303-262-0608

Re: 11 ½% Senior Secured Notes due 2017

Reference is hereby made to the Indenture, dated as of January 31, 2012 (the "Indenture"), among The Cash Store Financial Services Inc., the Guarantors named therein and the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____ (the "Owner") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE

(a) [ ] CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with

applicable securities laws and regulations in Canada and the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with applicable securities laws and regulations in Canada and any applicable blue sky securities laws of any state of the United States.

(b) [ ] CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with applicable securities laws and regulations in Canada and the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with applicable securities laws and regulations in Canada and any applicable blue sky securities laws of any state of the United States.

(c) [ ] CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with applicable securities laws and regulations in Canada and the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with applicable securities laws and regulations in Canada and any applicable blue sky securities laws of any state of the United States.

(d) [ ] CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with applicable securities laws and regulations in Canada and the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with applicable securities laws and regulations in Canada and any applicable blue sky securities laws of any state of the United States.

2. EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES

(a) [ ] CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture (including the Canadian resales restriction for so long as applicable) and the Securities Act and applicable securities laws and regulations in Canada.

(b) [ ] CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] [ ] 144A Global Note [ ] Regulation S Global Note, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with applicable securities laws and regulations in Canada and the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture (including the Canadian resales restriction for so long as applicable) and the Securities Act and applicable securities laws and regulations in Canada.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT D

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "Supplemental Indenture"), dated as of _____, among _____ (the "Guaranteeing Subsidiary"), a subsidiary of The Cash Store Financial Service Inc., an Ontario corporation, as Company (under the Indenture referred to below), each of the other Guarantors (under the Indenture referred to below) party hereto and [•]as trustee (under the Indenture referred to below) (the "Trustee").

WITNESSETH

WHEREAS, each of the Company and the Guarantors has heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of January 31, 2012, providing for the issuance of an unlimited aggregate principal amount of 11 ½% senior secured notes due 2017 (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Agreement to Guarantee. The Guaranteeing Subsidiary hereby agrees to be a Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Guarantors, including Article 10 thereof.

3. Execution and Delivery. The Guaranteeing Subsidiary agrees that the Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

4. Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

5. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY],
as Guaranteeing Subsidiary

By:_____
Name:
Title:

THE CASH STORE FINANCIAL SERVICES INC.,
as Company

By:_____
Name:
Title:

[•],
as Trustee

By:_____
Name:
Title:

This is Exhibit "B" referred to in the Affidavit of PATRICIA WAKELIN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

THE CASH STORE FINANCIAL SERVICES INC., as Borrower and Issuer

- and -

THE INITIAL GUARANTORS, as Guarantors

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Administrative Agent

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA and **COMPUTERSHARE TRUST COMPANY, NA**, collectively as Indenture Trustee

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, as Collateral Trustee

COLLATERAL TRUST AND INTERCREDITOR AGREEMENT

January 31, 2012

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COLLATERAL TRUST AND INTERCREDITOR AGREEMENT

THIS COLLATERAL TRUST AND INTERCREDITOR AGREEMENT (this "**Agreement**") is made effective as of the 31st day of January, 2012,

AMONG:

THE CASH STORE FINANCIAL SERVICES INC., as Borrower

- and -

THE INITIAL GUARANTORS, as Guarantors

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Administrative Agent

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA and **COMPUTERSHARE TRUST COMPANY, NA**, collectively as Indenture Trustee

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA, as Collateral Trustee

RECITALS:

(A) The Cash Store Financial Services Inc. (the "**Borrower**"), a corporation under the laws of Ontario, has entered into a letter agreement dated as of September 1, 2011, as amended by that certain amending letter dated December 30, 2011, (as further amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Credit Agreement**") among the Borrower, each of the guarantors named therein (the "**Initial Guarantors**"), the lenders party thereto providing the first lien secured revolving facilities (the "**Lenders**") and Canadian Imperial Bank of Commerce, as administrative agent for the Lenders (in such capacity and together with its successors, the "**Administrative Agent**"), which Credit Agreement will provide for a CDN $25,000,000 revolving credit facility, including a CDN $5,000,000 letter of credit sub-facility (the "**Canadian Loan Facility**").

(B) The Borrower intends to issue 11½% senior secured notes due 2017 (the "**Notes**") in an aggregate principal amount of CDN $132,500,000 pursuant to an Indenture dated as of the date hereof (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Indenture**") among the Borrower, as issuer, each of the guarantors named therein and Computershare Trust Company of Canada and Computershare Trust Company, NA, as trustee (in such capacity and together with its successors in such capacity, the "**Indenture Trustee**").

(C) The Obligors may from time to time hereafter enter into Hedge Agreements with the Hedge Providers.

(D) The Obligors intend to secure the Obligations under the Credit Agreement Documents, the Hedge Obligations and the holders of Priority Lien Debt on a priority basis and, subject to such priority, Obligations under the Indenture and any future Parity Lien Debt, with Liens in all present and future Collateral to the extent that such Liens have been provided for in the applicable Security Documents.

(E) This Agreement sets forth the terms on which each Secured Party has appointed the Collateral Trustee to act as the trustee for the present and future holders of the Secured Obligations to receive, hold, maintain, administer and distribute the Collateral at any time delivered to the Collateral Trustee or the subject of the Security Documents, and to enforce the Security Documents and all interests, rights, powers and remedies of the Collateral Trustee with respect thereto or thereunder and the proceeds thereof.

NOW THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINITIONS; PRINCIPLES OF CONSTRUCTION

1.1 **Defined Terms**. The following terms will have the following meanings:

"**Act of Instructing Debtholders**" means, as to any matter at any time:

(a) prior to the Discharge of Priority Lien Obligations, a direction in writing delivered to the Collateral Trustee by or with the written consent of the holders of more than 50% of the sum of:

(i) the aggregate outstanding principal amount of Priority Lien Debt (including the undrawn amount of outstanding letters of credit whether or not then available to be drawn and Hedge Obligations owed to Lender Hedge Providers); and

(ii) other than in connection with the exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute Priority Lien Debt; and

(b) at any time after the Discharge of Priority Lien Obligations, a direction in writing delivered to the Collateral Trustee by or with the written consent of the Parity Debt Representatives representing the Required Parity Debtholders.

For purposes of this definition, neither Hedge Obligations owed to Non-Lender Hedge Providers nor Secured Debt registered in the name of, or beneficially owned by, the Borrower or any Affiliate of the Borrower will be deemed to be outstanding and votes will be determined in accordance with Section 10.2.

"**Actionable Default**" means:

(a) prior to the Discharge of Priority Lien Obligations, the occurrence of any event of default under any Priority Lien Document, the result of which is that:

(i) the holders of Priority Lien Debt under such Priority Lien Document have the right to declare all of the Secured Obligations thereunder to be due and payable prior to the stated maturity thereof; or

(ii) such Secured Obligations automatically become due and payable prior to the stated maturity thereof; and

(b) at any time after the Discharge of Priority Lien Obligations, the occurrence of any event of default under any Parity Lien Document, the result of which is that:

(i) the holders of Parity Lien Debt under such Parity Lien Document have the right to declare all of the Secured Obligations thereunder to be due and payable prior to the stated maturity thereof; or

(ii) such Secured Obligations automatically become due and payable prior to the stated maturity thereof.

"**Administrative Agent**" means Canadian Imperial Bank of Commerce or any successor agent appointed under the Credit Agreement.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "common control with" have correlative meanings.

"**Board of Directors**" means (a) with respect to a corporation, the board of directors of the corporation, (b) with respect to a partnership, the general partners or the management committee of the partnership, (c) with respect to a limited liability company, the board of managers of the limited liability company or (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Business Day**" means any day that is neither a Saturday or Sunday nor a legal holiday on which the commercial banks are authorized or required to be closed in Calgary, Alberta, Toronto, Ontario or New York, New York.

"**Capital Lease Obligation**" of any Person means the obligations of such Person to pay rent or other amounts under a lease of (or other Indebtedness arrangements conveying the right to use) real or personal property which are required to be classified and accounted for as a capital lease or capitalized on a balance sheet of such Person determined in accordance with GAAP and the amount of such obligations shall be the capitalized amount thereof in accordance with GAAP

and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease or other arrangement prior to the first date upon which such lease or other arrangement may be terminated by the lessee without payment of a penalty; provided that any obligations of the Borrower and its Subsidiaries either existing on the date of this Agreement or created prior to the recharacterization described below (i) that were not included on the consolidated balance sheet of the Borrower as capital lease obligations and (ii) that are subsequently recharacterized as capital lease obligations due to a change in accounting treatment or otherwise, shall for all purposes of this Agreement not be treated as Capital Lease Obligations or Indebtedness.

"**Capital Stock**" means:

(a) in the case of a corporation, corporate stock or shares;

(b) in the case of an association or business entity other than a corporation, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited);

(d) in the case of a trust, trust units; and

(e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person,

but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with such Capital Stock.

"**Class**" means (a) in the case of Parity Lien Debt, every Series of Parity Lien Debt, taken together, and (b) in the case of Priority Lien Debt, every Series of Priority Lien Debt, taken together.

"**Collateral**" means, in the case of each Series of Secured Debt, any and all property and assets of the Borrower and the Guarantors now owned or hereafter acquired in which Liens have been granted to the Collateral Trustee under any of the Security Documents to secure the Secured Obligations in respect of such Series of Secured Debt.

"**Collateral Records**" means books, records, ledgers, files, correspondence, customer lists, supplier lists, blueprints, technical specifications, manuals, computer software and related documentation, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection or use thereof or realization thereupon.

"**Collateral Trustee**" means Computershare Trust Company of Canada and its successors appointed in accordance herewith from time to time as the Collateral Trustee and in whose name Liens in the Collateral will be granted for the benefit of the Secured Parties under and pursuant

to this Agreement and the other Security Documents, and including any Affiliate of the Collateral Trustee which carries on business in a jurisdiction outside of Canada where the Collateral is located for the purpose of holding the Liens in the Collateral on behalf of the Secured Parties.

"**Collateral Trust Joinder**" means an agreement substantially in the form of Exhibit A.

"**Credit Agreement**" has the meaning set forth in Recital A.

"**Credit Agreement Documents**" means the Credit Agreement, the Guarantees of the Credit Agreement, each Priority Debt Sharing Confirmation and the Security Documents (other than any Security Documents, if any, solely for the benefit of the holders of Parity Lien Obligations).

"**Credit Facilities**" means one or more debt facilities, including the Credit Agreement, or other financing arrangements (including, without limitation, commercial paper facilities or indentures) in favour of an Obligor providing for revolving credit loans, term loans, letters of credit or other long term indebtedness, including any note, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof (provided that such increase in borrowings is permitted pursuant to the Indenture) or adds Guarantors as additional Borrower.

"**Discharge of Priority Lien Obligations**" means the occurrence of all of the following:

(a) termination of all commitments to extend credit that would constitute Priority Lien Debt;

(b) payment in full in cash of the principal of and interest, fees and premium (if any) on all Priority Lien Debt (other than any undrawn letters of credit);

(c) discharge or cash collateralization (at the lower of (i) 105% of the aggregate undrawn amount and (ii) the percentage of the aggregate undrawn amount required for release of liens under the terms of the applicable Priority Lien Document) of all outstanding letters of credit and bankers' acceptances constituting Priority Lien Debt; and

(d) payment in full in cash of all other Priority Lien Obligations that are outstanding and unpaid at the time the Priority Lien Debt is paid in full in cash (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at such time).

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

(a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(b) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock convertible or exchangeable solely at the option of the Borrower or a Subsidiary of the Borrower; provided that any such conversion or exchange will be deemed an Incurrence of Indebtedness or Disqualified Stock, as applicable); or

(c) is redeemable at the option of the holder thereof, in whole or in part,

in the case of each of clauses (a), (b) and (c) on or prior to the 91st day after the stated maturity of the Notes; provided that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an "asset sale" or "change of control" occurring on or prior to the 91st day after the stated maturity of the Notes will not constitute Disqualified Stock if the terms of such Capital Stock provide that such Person may not repurchase or redeem any such Capital Stock pursuant to such provisions prior to the Borrower's purchase of the Notes as are required to be purchased pursuant to the provisions of the Indenture.

"**equally and ratably**" means, in reference to sharing of Liens or proceeds thereof as between Secured Parties of the same Class, that such Liens or proceeds:

(a) will be allocated and distributed first to the Secured Debt Representative for each outstanding Series of Secured Debt within that Class, for the account of the holders of such Series of Secured Debt, ratably in proportion to the principal of, and interest, fees and premium (if any) and reimbursement obligations (contingent or otherwise) with respect to letters of credit, if any, outstanding (whether or not drawings have been made under such letters of credit) on each outstanding Series of Secured Debt within that Class when the allocation or distribution is made, and thereafter

(b) will be allocated and distributed (if any remain after payment in full of all of the principal of, and interest, fees and premium (if any) and reimbursement obligations (contingent or otherwise) with respect to letters of credit, if any, outstanding (whether or not drawings have been made on such letters of credit) on, all outstanding Secured Obligations within that Class) to the Secured Debt Representative for each outstanding Series of Secured Obligations within that Class, for the account of the holders of any remaining Secured Obligations within that Class, ratably in proportion to the aggregate unpaid amount of such remaining Secured Obligations within that Class due and demanded (with written notice to the applicable Secured Debt Representative and the Collateral Trustee) prior to the date such distribution is made.

"**equity interests**" means, with respect to any Person, shares of Capital Stock of such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of Capital Stock of such Person, securities convertible into or exchangeable for shares of Capital Stock of such Person or warrants, rights or options for the purchase or other acquisition from

such Person of such shares of Capital Stock, whether voting or non-voting, and whether or not such shares of Capital Stock, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

"**GAAP**" means generally accepted accounting principles in the United States of America in effect on the date of the Indenture.

"**Guarantee**" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"**Guarantors**" means the Initial Guarantors and each other Person (if any) that at any time provides a guarantee and security in respect of any of the Secured Obligations and their respective successors and assigns.

"**Hedge Agreements**" means any commodity swap, future or option contracts, interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, and other hedging agreements or swap contracts with respect to the management of risks related to commodities, interest rate or currency fluctuations which is permitted under each applicable Secured Debt Document.

"**Hedge Obligations**" means the actual Indebtedness of the Borrower or any other Obligor to a Hedge Provider under or pursuant to a Hedge Agreement to which it is a party.

"**Hedge Providers**" means any Person who enters into a Hedge Agreement with the Borrower or any other Obligor to the extent permitted under each applicable Secured Debt Document and who has complied with Section 3.8 or is a Lender Hedge Provider.

"**Incur**" means, with respect to any indebtedness or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume (pursuant to an amalgamation, arrangement, merger, consolidation, acquisition or other transaction), Guarantee or otherwise become liable in respect of such Indebtedness or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and "incurrence" and "incurred" shall have meanings correlative to the foregoing); provided, however, that a change in GAAP that results in an obligation of such Person that exists at such time becoming Indebtedness shall not be deemed an Incurrence of such Indebtedness. Indebtedness otherwise incurred by a Person before it becomes a Subsidiary of the Borrower shall be deemed to have been Incurred at the time it becomes such a Subsidiary.

"**Indebtedness**" means (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person and whether or not contingent:

(a) obligations of such Person in respect of principal for money borrowed;

(b) obligations of such Person in respect of principal evidenced by bonds, debentures, notes or other similar instruments;

(c) every reimbursement obligation of such Person with respect to letters of credit, banker's acceptances or similar facilities issued for the account of such Person, other than obligations with respect to letters of credit securing obligations, other than obligations referred to in clauses (a), (b) and (e) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 10th day following payment on the letter of credit;

(d) every obligation of such Person issued or assumed as the deferred purchase price of property or services that is recorded as a liability under GAAP (but excluding trade payables, credit on open account, provisional credit, accrued liabilities or similar terms arising in the ordinary course of business which are not overdue by more than 30 days or which are being contested in good faith);

(e) every Capital Lease Obligation of such Person;

(f) the maximum fixed redemption or repurchase price of Disqualified Stock, of such Person at the time of determination plus accrued but unpaid dividends;

(g) every net payment obligation of such Person under Hedge Agreements; and

(h) every obligation of the type referred to in clauses (a) through (g) of another Person the payment of which, in either case, such Person has Guaranteed or is liable, directly or indirectly, as obligor, guarantor or otherwise, to the extent of such Guarantee or other liability,

provided, that obligations in respect of any payments due in connection with the termination or expiration of a lease that is not a Capital Lease Obligation pursuant to the terms of such lease shall not be deemed to be Indebtedness.

"**Indemnified Liabilities**" means any and all liabilities (including all environmental liabilities), obligations, losses, damages, penalties, actions, judgments, suits, costs, taxes, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, performance, administration or enforcement of this Agreement or any of the other Security Documents, including any of the foregoing relating to the use of proceeds of any Secured Debt or the violation of, non-compliance with or liability under, any law (including environmental laws) applicable to or enforceable against the Borrower or any of their Subsidiaries or any of the Collateral and all reasonable costs and expenses (including reasonable fees and expenses of legal counsel selected by the Indemnitee (on a solicitor and his own client full indemnity basis)) incurred by any Indemnitee in connection with any claim, action, investigation or proceeding in any respect relating to any of the foregoing, whether or not suit is brought.

"**Indemnitee**" has the meaning set forth in Section 10.12(a).

"**Indenture**" has the meaning set forth in Recital B.

"**Indenture Trustee**" has the meaning set forth in Recital B.

"**Initial Guarantors**" has the meaning set forth in Recital A.

"**Insolvency Proceeding**" means:

(a) any proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Borrower or any other Obligor, any bankruptcy, insolvency, plan of arrangement, receivership or assignment for the benefit of creditors relating to the Borrower or any other Obligor or any similar case or proceeding relative to the Borrower or any other Obligor including any case proceeding under the Bankruptcy and Insolvency Act (Canada), the *Companies' Creditors Arrangements Act* (Canada), the *Winding-up and Restructuring Act* (Canada), the *Insolvency Act 1986* (England, UK), Title 11 of the United States Code entitled "**Bankruptcy**" or any comparable law, or any successor bankruptcy law, in each case whether or not voluntary;

(b) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Borrower or any other Obligor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

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

"**Junior Trust Estate**" has the meaning set forth in Section 2.2.

"**Lender Hedge Provider**" means a Hedge Provider who enters into a Hedge Agreement that is permitted under the Secured Debt Documents and who at the time of entering into such Hedge Agreement is either (a) a lender under a Credit Facility, or (b) an Affiliate of a lender under a Credit Facility.

"**Lien**" means with respect to any assets, any mortgage, lien (statutory or otherwise) pledge, charge, security interest or encumbrance upon with respect to any property of any kind, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement (but excluding a title retention agreement to the extent it constitutes an operating lease under Canadian law), any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA of any jurisdiction.

"**Moody's**" means Moody's Investors Service and its successors and assigns.

"**Non-Lender Hedge Provider**" means any Hedge Provider that is not a Lender Hedge Provider where the Hedge Agreement to which it is a party is permitted under the Secured Debt Documents at the time it is entered into.

"**Note Documents**" means the Indenture (including the Guarantee contained therein and any related Guarantee), the Notes, the Guarantee of Notes, each Parity Debt Sharing Confirmation

and the Security Documents (other than any Security Documents, if any, solely for the benefit of the holders of Priority Lien Obligations).

"**Notes**" has the meaning set forth in Recital B.

"**Notice of Actionable Default**" means a written notice given to the Collateral Trustee stating that an Actionable Default has occurred and is continuing, delivered by:

(a) prior to the Discharge of Priority Lien Obligations, the Secured Debt Representative for the holders of Priority Lien Obligations that are governed by the Secured Debt Document pursuant to which the Actionable Default has occurred; and

(b) following the Discharge of Priority Lien Obligations, the Secured Debt Representative for the holders of Parity Lien Obligations that are governed by the Secured Debt Document pursuant to which the Actionable Default has occurred.

"**Obligations**" means with respect to any Indebtedness of any Person (collectively, without duplication):

(a) all debt, financial liabilities and obligations of such Person of whatsoever nature and howsoever evidenced (including principal, interest, fees, reimbursement obligations, cash cover obligations, penalties, indemnities and legal and other expenses, whether due after acceleration or otherwise) to the providers or holders of such Indebtedness or to any agent, trustee or other representative of such providers or holders of such Indebtedness under or pursuant to each agreement, document or instrument evidencing, securing, guaranteeing or relating to such Indebtedness, financial liabilities or obligations relating to such Indebtedness (including Secured Debt Documents applicable to such Indebtedness (if any)), in each case, direct or indirect, primary or secondary, fixed or contingent, now or hereafter arising out of or relating to any such agreement, document or instrument;

(b) any and all sums advanced by the Collateral Trustee or any other Person in order to preserve the Collateral or any other collateral securing such Indebtedness or to preserve the Liens and security interests in the Collateral or any other collateral, securing such Indebtedness; and

(c) the costs and expenses of collection and enforcement of the obligations referred to in clauses (a) and (b) of this definition, including: (i) the costs and expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on any Collateral or any other collateral; (ii) the costs and expenses of any exercise by the Collateral Trustee or any other Person of its rights under the Security Documents or any other security documents; and (iii) reasonable legal fees and court costs.

"**Obligor**" means the Borrower, the Guarantors and each other Person (if any) that at any time provides collateral security for any Secured Obligations.

"**Officers' Certificate**" means a certificate with respect to compliance with a condition or covenant provided for in this Agreement, signed on behalf of the Borrower by a Responsible Officer, including:

(a) a statement referencing the condition or covenant in question;

(b) a statement that the Person making such certificate has read such covenant or condition;

(c) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(d) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(e) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

"**Parity Debt Representative**" means:

(a) in the case of the Notes and the Guarantees of the Notes, the Indenture Trustee; and

(b) in the case of any other Series of Parity Lien Debt, the trustee, agent or representative of the holders of such Series of Parity Lien Debt who maintains the transfer register for such Series of Parity Lien Debt and is appointed as a Parity Debt Representative (for purposes related to the administration of the Security Documents) pursuant to the credit agreement, indenture or other agreement governing such Series of Parity Lien Debt, and who has executed a Collateral Trust Joinder.

"**Parity Debt Sharing Confirmation**" means, as to any Series of Parity Lien Debt, the written agreement of the holders of that Series of Parity Lien Debt, as set forth in the indenture or other agreement governing that Series of Parity Lien Debt, for the benefit of all holders of each other existing and future Series of Parity Lien Debt and each existing and future Parity Debt Representative, that all Parity Lien Obligations will be and are secured equally and ratably by all Liens at any time granted by the Borrower or any other Obligor to secure any Obligations in respect of such Series of Parity Lien Debt, whether or not upon property otherwise constituting Collateral, that all such Liens will be enforceable by the Collateral Trustee for the benefit of all holders of Parity Lien Obligations equally and ratably, and that the holders of Obligations in respect of such Series of Parity Lien Debt are bound by the provisions in this Agreement relating to the order of application of proceeds from enforcement of such Liens, and consent to and direct the Collateral Trustee to perform its obligations under this Agreement.

"**Parity Lien**" means a Lien granted by a Security Document to the Collateral Trustee upon any property of the Borrower or any other Obligor to secure Parity Lien Obligations.

"**Parity Lien Debt**" means:

(a) the Notes and the Guarantees of the Notes issued on the date hereof; and

(b) any other Indebtedness (including additional notes) that is secured equally and ratably with the Notes by a Parity Lien that was permitted to be incurred and so secured under each applicable Secured Debt Document; provided, in the case of any Indebtedness referred to in this clause (b), that:

(i) on or before the date on which such Indebtedness is incurred by the Borrower such Indebtedness is designated by such Borrower, in an Officers' Certificate delivered to each Parity Debt Representative and the Collateral Trustee, as "Parity Lien Debt" for the purposes of the Secured Debt Documents; provided that no Obligation or Indebtedness may be designated as both Parity Lien Debt and Priority Lien Debt;

(ii) such Indebtedness is governed by an indenture or other agreement that includes a Parity Debt Sharing Confirmation; and

(iii) all requirements set forth in this Agreement as to the confirmation, grant or perfection of the Collateral Trustee's Liens to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (iii) will be conclusively established for purposes of entitling the holders of such indebtedness to share equally and ratably with other holders of Parity Lien Debt in the benefits and proceeds of the Collateral Trustee's Liens on the Collateral if the Borrower delivers to the Collateral Trustee an Officers' Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Parity Lien Debt").

"**Parity Lien Documents**" means, collectively, the Note Documents and each agreement, indenture or instrument governing each other Series of Parity Lien Debt and all other agreements governing, securing or relating to any Parity Lien Obligations.

"**Parity Lien Obligations**" means Parity Lien Debt and all other Obligations in respect thereof.

"**Parity Lien Secured Parties**" means the holders of Parity Lien Obligations and any Parity Debt Representatives.

"**Parties**" means the parties to this Agreement, and "Party" means any one of them.

"**Permitted Prior Liens**" means Liens that are permitted to rank senior in priority to both Priority Lien Debt and Parity Lien Debt in accordance with the Secured Debt Documents.

"**Person**" means any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

"**PPSA**" means the *Personal Property Security Act* as in effect in any province or territory of Canada, the Uniform Commercial Code or similar statute as in effect in any state of the United States or any similar legislation in any other jurisdictions (in each case, together with the regulations thereunder), as applicable.

"**Priority Debt Representative**" means:

(a) in the case of (i) the Canadian Loan Facility, and (ii) Hedge Obligations owed to a Lender Hedge Provider, the Administrative Agent (subject to Section 3.8(c)); and

(b) in the case of any other Series of Priority Lien Debt (including Non-Lender Hedge Providers described in the proviso at the end of Section 3.8(c)(ii)), the trustee, agent or representative of the holders of such Series of Priority Lien Debt who maintains the transfer register for such Series of Priority Lien Debt and is appointed as a Priority Debt Representative (for purposes related to the administration of the Security Documents) pursuant to the credit agreement, indenture or other agreement governing such Series of Priority Lien Debt, and who has executed a Collateral Trust Joinder.

"**Priority Debt Sharing Confirmation**" means, as to any Series of Priority Lien Debt, the written agreement of the holders of such Series of Priority Lien Debt, as set forth in the credit agreement, indenture or other agreement governing such Series of Priority Lien Debt, for the benefit of all holders of each other existing and future Series of Priority Lien Debt and each existing and future Priority Debt Representative, that all Priority Lien Obligations will be and are secured equally and ratably by all Liens at any time granted by the Borrower or any other Obligor to secure any Obligations in respect of such Series of Priority Lien Debt, whether or not upon property otherwise constituting Collateral, that all such Liens will be enforceable by the Collateral Trustee for the benefit of all holders of Priority Lien Obligations equally and ratably, and that the holders of Obligations in respect of such Series of Priority Lien Debt are bound by the provisions in this Agreement relating to the order of application of proceeds from enforcement of such Liens, and consent to and direct the Collateral Trustee to perform its obligations under this Agreement.

"**Priority Lien**" means a Lien granted to the Collateral Trustee, for the benefit of the Priority Lien Secured Parties, upon any property of the Borrower or any other Obligor to secure Priority Lien Obligations.

"**Priority Lien Debt**" means:

(a) Obligations and any other amounts owing pursuant to the Credit Agreement and the Guarantees thereof; provided that for certainty, all Obligations from time to time under the Credit Agreement are Priority Lien Debt whether or not permitted under each Secured Debt Document, provided that unless so permitted, principal obligations that are "Priority Lien Debt" under this paragraph (a) are limited to $32,500.00; and

(b) Indebtedness under any other Credit Facility, Hedge Agreement or any Guarantee thereof of an Obligor that is secured by a Priority Lien that was permitted to be

incurred and so secured under each applicable Secured Debt Document; provided, in the case of any Indebtedness referred to in this clause (b), that:

(i) on or before the date on which such Indebtedness is incurred by the Borrower such Indebtedness is designated by such Borrower, in an Officers' Certificate delivered to each Priority Debt Representative, if any, and the Collateral Trustee, as "Priority Lien Debt" for the purposes of the Secured Debt Documents; provided that no Obligation or Indebtedness may be designated as both Parity Lien Debt and Priority Lien Debt;

(ii) such Indebtedness is governed by a credit agreement, an indenture or other agreement that includes a Priority Debt Sharing Confirmation;

(iii) until the payment in full and discharge of all Obligations under the Canadian Loan Facility or any Hedge Agreement with a Lender or Affiliate of a Lender, written acknowledgment from the Administrative Agent to the Collateral Trustee that such Obligations are Priority Lien Debt, and

(iv) all requirements set forth in this Agreement as to the confirmation, grant or perfection of the Collateral Trustee's Lien to secure such Indebtedness or Obligations in respect thereof are satisfied (and the satisfaction of such requirements and the other provisions of this clause (iv) will be conclusively established if the Borrower delivers to the Collateral Trustee an Officers' Certificate stating that such requirements and other provisions have been satisfied and that such Indebtedness is "Priority Lien Debt").

"**Priority Lien Documents**" means, collectively, the Credit Agreement Documents, Hedge Agreements and the credit agreements, indentures or other agreements governing any other Credit Facility pursuant to which Priority Lien Debt is incurred (and not prohibited to be incurred under each applicable Secured Debt Document) and all other agreements governing or securing any Priority Lien Obligations (and not prohibited to be so secured under each applicable Secured Debt Document).

"**Priority Lien Obligations**" means the Priority Lien Debt and all other Obligations in respect thereof.

"**Priority Lien Secured Parties**" means the holders of Priority Lien Obligations and any Priority Debt Representatives.

"**Required Parity Debtholders**" means, at any time in respect of any action or matter, holders of a majority of the aggregate outstanding principal amount of all Parity Lien Debt, voting together as a single class. For this purpose, Parity Lien Debt registered in the name of, or beneficially owned by, the Borrower or any Affiliate of the Borrower will be deemed not to be outstanding and no such Affiliate will be entitled to vote to direct the relevant Parity Debt Representative.

"**Responsible Officer**" means, (a) with respect to the Collateral Trustee or any Secured Debt Representative, any officer within the corporate trust department of the Collateral Trustee or any

officer of any such Party, as the case may be, including, in either case, any managing director, director, vice president, assistant vice president, associate, trust officer or any other officer thereof, as the case may be, who customarily performs functions similar to those performed by the Persons who at the time will be such officers, respectively, or to whom any matter related hereto is referred because of such Person's knowledge of and familiarity with the particular subject and who will have direct responsibility for the administration of this Agreement, and (b) with respect to any Obligor, the chief executive officer, chief financial officer, chief operating officer, managing partner, president, treasurer or secretary of such Obligor.

"**S&P**" means Standard & Poor's Ratings Services and its successors and assigns.

"**Secured Debt**" means Parity Lien Debt and Priority Lien Debt.

"**Secured Debt Default**" means any event or condition which, under the terms of any credit agreement, indenture or other agreement governing any Series of Secured Debt causes, or permits holders of Secured Debt outstanding thereunder (with or without the giving of notice or lapse of time, or both, and whether or not notice has been given or time has lapsed) to cause, the Secured Debt outstanding thereunder to become immediately due and payable.

"**Secured Debt Documents**" means the Parity Lien Documents and the Priority Lien Documents.

"**Secured Debt Representatives**" means each Parity Debt Representative and each Priority Debt Representative.

"**Secured Debtholder**" means, at any time, a Person that is at that time the holder of any Secured Debt or has any commitment with respect to any Secured Debt or the issuance of any letters of credit under any Secured Debt Document or the making of any loans under any Secured Debt Document.

"**Secured Obligations**" means the Parity Lien Obligations and the Priority Lien Obligations.

"**Secured Parties**" means the Parity Lien Secured Parties and the Priority Lien Secured Parties.

"**Security Documents**" means this Agreement and one or more general security agreements, debentures, pledge agreements, collateral assignments, mortgages, collateral agency agreements, control agreements, blocked account agreements, deeds of trust or other grants or transfers for security executed and delivered by the Borrower and each other Obligor creating (or purporting to create) a Lien upon Collateral in favour of the Collateral Trustee, for the benefit of the Secured Parties, in each case, as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, in accordance with its terms.

"**Senior Trust Estate**" has the meaning set forth in Section 2.1.

"**Series of Parity Lien Debt**" means, severally, the Notes, the Guarantees of the Notes and each other issue or series of Parity Lien Debt for which a single transfer register is maintained.

"**Series of Priority Lien Debt**" means, severally, each issue or series of Priority Lien Debt for which a single transfer register is maintained, as well as any other Incurrence of Priority Lien Debt designated by the Borrower by written notice to the Collateral Trustee as a separate Series of Priority Lien Debt and for purposes hereof, Hedge Obligations owed to Lender Hedge Providers will be treated as part of the same Series of Priority Lien Debt as the other Priority Lien Debt owed to such Lender Hedge Provider.

"**Series of Secured Debt**" means, severally, each Series of Priority Lien Debt and each Series of Parity Lien Debt.

"**STA**" means the *Securities Transfer Act* (Alberta).

"**Subsidiary**" means, with respect to any specified Person:

(a) any corporation, association or other business entity of which more than 50% of the total Voting Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or shareholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"**Trust Estates**" has the meaning set forth in Section 2.2.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

1.2 Rules of Interpretation.

(a) Unless otherwise specified, all the terms used in this Agreement without initial capitals, which are defined or the meanings of which are determined in the PPSA or the STA, have the same meanings in this Agreement as defined or determined in the PPSA or the STA, as applicable.

(b) Unless otherwise indicated, any reference to any agreement or instrument will be deemed to include a reference to that agreement or instrument as assigned, amended, supplemented, amended and restated, or otherwise modified and in effect from time to time or replaced in accordance with the terms of this Agreement.

(c) The use in this Agreement or any of the other Security Documents of the word "include" or "including," when following any general statement, term or matter,

will not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but will be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The word "will" shall be construed to have the same meaning and effect as the word "shall". Except as otherwise provided herein, all references herein to "$" are to lawful money of Canada.

(d) References to "Sections", "clauses" and "Recitals" will be to Sections, clauses and Recitals, respectively, of this Agreement unless otherwise specifically provided.

(e) References to "Articles" will be to Articles of this Agreement unless otherwise specifically provided.

(f) References to "Exhibits" will be to Exhibits to this Agreement unless otherwise specifically provided.

(g) This Agreement, the other Security Documents and any documents or instruments delivered pursuant hereto will be construed without regard to the identity of the party who drafted it. Each and every provision of this Agreement, the other Security Documents and any instruments and documents entered into and delivered in connection therewith will be construed as though the parties participated equally in the drafting it. Consequently, each of the parties acknowledges and agrees that any rule of construction that a document is to be construed against the drafting party will not be applicable either to this Agreement or the other Security Documents and any instruments and documents entered into and delivered in connection with this Agreement or any of the other Security Documents.

(h) Time is of the essence in the performance of the parties' respective obligations.

(i) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation or, in each case, any provision thereof.

ARTICLE 2
THE TRUST ESTATES

2.1 **Declaration of Senior Trust**. To secure the payment of the Priority Lien Obligations and in consideration of the premises and the mutual agreements set forth in this Agreement, each of the Obligors hereby grants to the Collateral Trustee, and the Collateral Trustee hereby accepts and agrees to hold, in trust under this Agreement for the benefit of all present and future holders of Priority Lien Obligations, all of such Obligor's right, title and interest in, to and under all Collateral granted to the Collateral Trustee under any Security Document for the benefit of the Priority Lien Secured Parties,

together with all of the Collateral Trustee's right, title and interest in, to and under the Security Documents, and all interests, rights, powers and remedies of the Collateral Trustee thereunder or in respect thereof and all cash and non-cash proceeds thereof (collectively, the "**Senior Trust Estate**").

The Collateral Trustee and its successors and assigns under this Agreement will hold the Senior Trust Estate in trust for the benefit solely and exclusively of all present and future holders of Priority Lien Obligations as security for the payment of all present and future Priority Lien Obligations.

Notwithstanding the foregoing, if at any time:

(a) all Liens securing the Priority Lien Obligations have been released as provided in Section 5.1;

(b) the Collateral Trustee holds no other property in trust as part of the Senior Trust Estate;

(c) no monetary obligation (other than indemnification and other contingent obligations not then due and payable and outstanding letters of credit and bankers' acceptances that have been cash collateralized as provided in clause (c) of the definition of "Discharge of Priority Lien Obligations") is outstanding and payable under this Agreement to the Collateral Trustee or any of its co-trustees, agents or sub-agents (whether in an individual or representative capacity); and

(d) the Borrower delivers to the Collateral Trustee an Officers' Certificate stating that all Liens of the Collateral Trustee have been released in compliance with all applicable provisions of the Priority Lien Documents and that the Obligors are not required by any Priority Lien Document to grant any Lien upon any property to secure the Priority Lien Obligations,

then the senior trust arising hereunder will terminate, until further Priority Lien Debt is incurred at which time the Senior Trust Estate will automatically be reinstated and will exist without further action of the parties hereto. Notwithstanding the aforementioned termination, all provisions set forth in Sections 10.11 and 10.12 enforceable by the Collateral Trustee or any of its co-trustees, agents or sub-agents (whether in an individual or representative capacity) will remain enforceable in accordance with their terms.

For purposes of this Section 2.1, a written notice from the Administrative Agent to the Collateral Trustee that a Discharge of Priority Lien Obligations has occurred with respect to the Obligations under the Credit Agreement will terminate the Senior Trust Estate as it relates to the Credit Agreement only and the Administrative Agent will for all purposes (i) no longer be a party hereto and, (ii) except to the extent later appointed a Priority Debt Representative hereunder, will not have any rights or obligations hereunder.

The Parties further declare and covenant that the Senior Trust Estate will be held and distributed by the Collateral Trustee subject to the further agreements herein.

2.2 **Declaration of Junior Trust**. To secure the payment of the Parity Lien Obligations and in consideration of the premises and the mutual agreements set forth herein, each of the Obligors hereby grants to the Collateral Trustee, and the Collateral Trustee hereby accepts and agrees to hold, in trust under this Agreement for the benefit of all present and future holders of Parity Lien Obligations, all of such Obligor's right, title and interest in, to and under all Collateral granted to the Collateral Trustee under any Security Document for the benefit of the Parity Lien Secured Parties, together with all of the Collateral Trustee's right, title and interest in, to and under the Security Documents, and all interests, rights, powers and remedies of the Collateral Trustee thereunder or in respect thereof and all cash and non-cash proceeds thereof (collectively, the "**Junior Trust Estate**", and together with the Senior Trust Estate, the "**Trust Estates**").

The Collateral Trustee and its successors and assigns under this Agreement will hold the Junior Trust Estate in trust for the benefit solely and exclusively of all present and future holders of Parity Lien Obligations as security for the payment of all present and future Parity Lien Obligations.

Notwithstanding the foregoing, if at any time:

(a) all Liens securing the Parity Lien Obligations have been released as provided in Section 5.1;

(b) the Collateral Trustee holds no other property in trust as part of the Junior Trust Estate;

(c) no monetary obligation (other than indemnification and other contingent obligations not then due and payable and outstanding letters of credit and bankers' acceptances that have been cash collateralized as provided in clause (c) of the definition of Discharge of Priority Lien Obligations) is outstanding and payable under this Agreement to the Collateral Trustee or any of its co-trustees, agents or sub-agents (whether in an individual or representative capacity); and

(d) the Borrower delivers to the Collateral Trustee an Officers' Certificate stating that all Liens of the Collateral Trustee have been released in compliance with all applicable provisions of the Parity Lien Documents and that the Obligors are not required by any Parity Lien Document to grant any Lien upon any property to secure the Parity Lien Obligations,

then the junior trust arising hereunder will terminate, except that, notwithstanding such termination, all provisions set forth in Sections 10.11 and 10.12 enforceable by the Collateral Trustee or any of its co-trustees, agents or sub-agents (whether in an individual or representative capacity) will remain enforceable in accordance with their terms.

The Parties further declare and covenant that the Junior Trust Estate will be held and distributed by the Collateral Trustee subject to the further agreements herein.

2.3 **Priority of Liens**.

(a) Notwithstanding anything else contained herein or in any other Security Document, it is the intent of the Parties that:

(i) this Agreement and the other Security Documents create two separate and distinct Trust Estates and Liens: (A) the Senior Trust Estate and Lien securing the payment and performance of the Priority Lien Obligations and (B) the Junior Trust Estate and Lien securing the payment and performance of the Parity Lien Obligations; and

(ii) the Liens securing the Parity Lien Obligations are subject and subordinate to the Liens securing the Priority Lien Obligations.

(b) The Parties agree that, after the date hereof and prior to the Discharge of Priority Lien Obligations, in no event will the Parity Debt Representatives or any Parity Lien Secured Parties have a Lien on any Collateral that is not subject and subordinate to the senior Lien of the Priority Lien Secured Parties.

(c) Both before and during an Insolvency Proceeding, until the Discharge of Priority Lien Obligations:

(i) the Parity Lien Secured Parties will not:

(A) request judicial relief, in an Insolvency Proceeding or in any other court, that would hinder, delay, limit or prohibit the lawful exercise or enforcement of any right or remedy otherwise available to the holders of Priority Lien Obligations in respect of the Priority Liens or that would limit, invalidate, avoid or set aside any Priority Lien or subordinate the Priority Liens to the Parity Liens or grant the Parity Liens equal ranking to the Priority Liens;

(B) oppose or otherwise contest any motion for relief from the automatic stay or for any injunction against foreclosure or enforcement of Priority Liens made by any holder of Priority Lien Obligations in any Insolvency Proceedings;

(C) oppose or otherwise contest any lawful exercise by any holder of Priority Lien Obligations of the right to credit bid Priority Lien Debt at any sale in foreclosure of Priority Liens; or

(D) oppose or otherwise contest any other request for judicial relief made in any court by any holder of Priority Lien Obligations relating to the lawful enforcement of any Priority Lien;

provided that, notwithstanding the foregoing, the Parity Debt Representative may take or cause to be taken enforcement action and exercise all of its other rights and remedies in respect of the Collateral under the Parity Lien Documents or applicable law after the passage of a period of 180 days (the "**Standstill Period**") from the date of delivery of a notice in writing to the Priority Debt Representative

of its intention to exercise such rights and remedies, which notice may only be delivered following (i) the occurrence of and during the continuation of a "Default" under and as defined in the Priority Lien Documents, (ii) upon the commencement of Insolvency Proceedings against the Borrower or any other Obligor, or (iii) upon the release of the Collateral Trustee's Liens upon the Collateral other than as permitted by Section 5.1 below and the Security Documents; provided, however, that, notwithstanding the foregoing, in no event shall the Parity Debt Representative take any enforcement action or exercise or continue to exercise any such rights or remedies if, notwithstanding the expiration of the Standstill Period, the Priority Debt Representative shall have commenced and be pursuing the commercially reasonable exercise of any of its rights and remedies with respect to all or any material portion of the Collateral (prompt notice of such exercise to be given to the Parity Debt Representative) (such as, by way of example and not in limitation, notification of account debtors, the solicitation of bids from third parties to conduct the liquidation of all or a material portion of the Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, auctioneers or other third parties for the purposes of valuing, marketing, promoting and selling a material portion of the Collateral, commencement of any legal proceeding or actions with respect to all or a material portion of the Collateral or diligently attempting to vacate any stay of enforcement of Liens held by or on behalf of the Priority Debt Representative on all or a material portion of the Collateral);

provided, further, that notwithstanding the foregoing, both before and during an Insolvency Proceeding, the Parity Debt Representative may take any actions and exercise any and all rights that would otherwise be available to a holder of unsecured claims, including the commencement of Insolvency Proceedings against the Borrower or any other Obligor in accordance with applicable law; except, that the Parity Lien Secured Parties may not challenge the validity, enforceability, perfection or priority of the Priority Liens; and

(ii) the Priority Lien Secured Parties will have the exclusive right to enforce rights and exercise remedies with respect to any Collateral that is part of the Senior Trust Estate, regardless of whether such Collateral may also be part of the Junior Trust Estate. Notwithstanding the foregoing, the Parity Debt Representative may enforce rights, exercise remedies and take actions:

(A) without any condition or restriction whatsoever, at any time after the Discharge of Priority Lien Obligations;

(B) as necessary to redeem any Collateral in a creditor's redemption permitted by law or to deliver any notice or demand necessary to enforce (subject to the prior Discharge of Priority Lien Obligations) any right to claim, take or receive proceeds of Collateral remaining after the Discharge of Priority Lien

Obligations in the event of foreclosure or other enforcement of any prior Lien;

(C) as necessary to perfect or establish the priority (subject to Priority Liens) of the Parity Liens upon any Collateral, except through possession or control; or

(D) as necessary to create, prove, preserve or protect (but not enforce) the Parity Liens upon any Collateral.

(d) In exercising rights and remedies with respect to the Collateral, the Priority Debt Representatives may enforce (or refrain from enforcing) the provisions of the Priority Lien Documents and exercise (or refrain from exercising) remedies thereunder or any such rights and remedies, all in such order and in such manner as they may determine in the exercise of their sole and exclusive discretion, including:

(i) the exercise or forbearance from exercise of all rights and remedies in respect of the Collateral and/or the Priority Lien Obligations;

(ii) the enforcement or forbearance from enforcement of any Lien in respect of the Collateral;

(iii) the exercise or forbearance from exercise of rights and powers of a holder of shares of stock included in the Senior Trust Estate to the extent provided in the Security Documents;

(iv) the acceptance of the Collateral in full or partial satisfaction of the Priority Lien Obligations; and

(v) the exercise or forbearance from exercise of all rights and remedies of a secured lender under the PPSA or any similar law of any applicable jurisdiction or in equity.

(e) Without in any way limiting the generality of the foregoing paragraphs, the Priority Lien Secured Parties may, at any time and from time to time, without the consent of or notice to the Parity Lien Secured Parties, without incurring responsibility to the Parity Lien Secured Parties and without impairing or releasing the subordination provided in this Agreement or the obligations hereunder of the Parity Lien Secured Parties, do any one or more of the following:

(i) release any Person liable in any manner for the collection of the Priority Lien Obligations;

(ii) release the Lien on any Collateral securing the Priority Lien Obligations; and

(iii) exercise or refrain from exercising any rights against any Obligor.

(f) Prior to the Discharge of Priority Lien Obligations, the Parity Lien Secured Parties and the Collateral Trustee may not assert or enforce any right of marshalling accorded to a junior lienholder, as against the Priority Lien Secured Parties (in their capacity as priority lienholders), under equitable principles.

2.4 **Special Rights in Insolvency Proceedings.**

(a) If in any Insolvency Proceeding and prior to the Discharge of Priority Lien Obligations, the holders of Priority Lien Obligations by an Act of Instructing Debtholders consent to any order:

(i) for use of cash Collateral;

(ii) approving a debtor-in-possession financing secured by a Lien that is senior to or on a parity with all Priority Liens upon any property of the estate in such Insolvency Proceeding;

(iii) granting any relief on account of Priority Lien Obligations as adequate protection (or its equivalent) for the benefit of the holders of Priority Lien Obligations in the Collateral subject to Priority Liens; or

(iv) relating to a sale of assets of the Borrower or any other Obligor that provides, to the extent the assets sold are to be free and clear of Liens, that all Priority Liens and Parity Liens will attach to the proceeds of the sale;

then, the Parity Lien Secured Parties, in their capacity as holders or representatives of secured claims, will not oppose or otherwise contest the entry of such order, so long as none of the Priority Lien Secured Parties in any respect opposes or otherwise contests any request made by any Parity Lien Secured Party for the grant to the Collateral Trustee, for the benefit of the Parity Lien Secured Parties, of a junior Lien upon any property on which a Lien is (or is to be) granted under such order to secure the Priority Lien Obligations, co-extensive in all respects with, but subordinated (as set forth in Section 2.3) to, such Lien and all Priority Liens on such property.

Notwithstanding the foregoing, both before and during an Insolvency Proceeding, the Parity Lien Secured Parties may take any actions and exercise any and all rights that would otherwise be available to a holder of unsecured claims, including, without limitation, the commencement of Insolvency Proceedings against the Borrower or any other Obligor in accordance with applicable law; provided, however, that, both before and during an Insolvency Proceeding, the Parity Lien Secured Parties may not challenge the validity, enforceability, perfection or priority of the Priority Liens.

(b) The Parity Lien Secured Parties will not file or prosecute in any Insolvency Proceeding any motion for adequate protection (or any comparable request for relief) based upon their interest in the Collateral under the Parity Liens, except that:

(i) they may freely seek and obtain relief: (A) granting a junior Lien co-extensive in all respects with, but subordinated (as set forth in Section 2.3) to, all Liens granted in such Insolvency Proceeding to, or for the benefit of, the holders of Priority Lien Obligations; or (B) in connection with the confirmation of any plan of reorganization or similar dispositive restructuring plan of the Borrower or any other Obligor; and

(ii) they may freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of Priority Lien Obligations.

(c) If in any Insolvency Proceeding of the Borrower or any other Obligor, debt obligations of the reorganized debtor secured by Liens on any property of the reorganized debtor are distributed both on account of Priority Lien Obligations and on account of Parity Lien Obligations, then, to the extent that the debt obligations distributed on account of the Priority Lien Obligations and on account of the Parity Lien Obligations are secured by Liens on the same property, the provisions of Section 2.3 will survive the distribution of those debt obligations pursuant to the plan and will apply with like effect to the Liens securing those debt obligations.

2.5 **Collateral Shared Equally and Ratably within Class**. The Parties agree that the payment and satisfaction of all of the Secured Obligations within each Class will be secured equally and ratably by the Liens established in favour of the Collateral Trustee for the benefit of the Secured Parties belonging to such Class. It is understood and agreed that nothing in this Section 2.5 is intended to alter the priorities among Secured Parties belonging to different Classes as provided in Section 2.3.

2.6 **Purchase Of Priority Lien Obligations By Parity Lien Secured Parties**

(a) Purchase Right

(i) If there is

(A) an acceleration of the Priority Lien Obligations in accordance with the Priority Lien Documents,

(B) a payment default under the Priority Lien Documents that is not cured, or waived by Priority Lien Secured Parties, or

(C) the commencement of an Insolvency Proceeding, (each a "**Purchase Event**");

then Parity Lien Secured Parties may purchase all, but not less than all, of the Priority Lien Obligations (the "**Purchase Obligations**"). Such purchase will

(I) include all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, all Priority Lien Obligations outstanding at the time of purchase,

(II) be made pursuant to an assignment agreement (as applicable for purposes of the Priority Lien Documents), whereby Parity Lien Secured Parties will assume all funding commitments and Obligations of Priority Lien Secured Parties under the Priority Lien Documents, and

(III) otherwise be subject to the terms and conditions of this Section 2.6(a).

(ii) Except to the extent required to preserve, perfect or otherwise maintain the Priority Lien Obligations and the rights and priorities thereof, the Priority Lien Secured Parties will not commence an enforcement action following delivery of a completed Purchase Notice in accordance with Section 2.6(b) until the earlier of (i) any Purchasing Creditor purports to revoke or defaults thereunder and (ii) the Purchase Date; and thereafter in accordance with Section 2.6(e).

(b) Purchase Notice

(i) Parity Lien Secured Parties desiring to purchase all of the Purchase Obligations (the "**Purchasing Creditors**") will deliver a purchase notice (the "**Purchase Notice**") to the Priority Debt Representative that

(A) is signed by the Purchasing Creditors,

(B) states that it is a Purchase Notice under this Section 2.6(b),

(C) states that each Purchasing Creditor is irrevocably electing to purchase, in accordance with this Section 2.6(b), the percentage of all of the Purchase Obligations stated in the Purchase Notice for that Purchasing Creditor, which percentages must aggregate exactly 100% for all Purchasing Creditors,

(D) represents and warrants that the Purchase Notice is in conformity with the Parity Lien Debt Documents and any other binding agreement among Parity Debt Representatives,

(E) designates a purchase date (the "**Purchase Date**") on which the purchase will occur that is at least five but not more than ten Business Days after the Priority Debt Representative's receipt of the Purchase Notice; and

(F) sets forth in reasonable detail calculations demonstrating that such purchase is sufficient to pay, discharge or cash collateralize the Priority Lien Obligations as set out in paragraphs (b), (c) and (d) of the definition of "Discharge of Priority Lien Obligations".

The Purchase Notice must be received by the Priority Debt Representative during the period following the occurrence of, and during the continuance of, a Purchase Event.

(ii) Upon the Priority Debt Representative's receipt of an effective Purchase Notice conforming to Section 2.6(b)(i), the Purchasing Creditors will be irrevocably obligated to purchase, and the Priority Lien Secured Parties will be irrevocably obligated to sell, the Priority Lien Obligations in accordance with and subject to this Section 2.6.

(c) Purchase Price

The purchase price with respect to the Priority Lien Obligations to be purchased will equal:

(i) the principal amount of all loans, advances, or similar extensions of credit included in such Priority Lien Obligations to be purchased (including unreimbursed amounts drawn on letters of credit, but excluding the undrawn amount of outstanding letters of credit), plus

(ii) all accrued and unpaid interest thereon through the date of purchase (excluding any acceleration prepayment penalties or premiums), and all accrued and unpaid fees, expenses, and other amounts owed to the Priority Lien Secured Parties under the Priority Lien Documents on such Purchase Date.

(d) Purchase Closing

On the Purchase Date,

(i) the Purchasing Creditors and Priority Debt Representative will execute and deliver the assignment agreement,

(ii) the Purchasing Creditors will pay the Purchase Price to the Priority Debt Representative by wire transfer of immediately available funds,

(iii) the Purchasing Creditors will deposit with Priority Debt Representative or its designee by wire transfer of immediately available funds, 105% of the

aggregate undrawn amount of all then outstanding Letters of Credit and bankers' acceptances along with the aggregate stamping, facing and similar fees that will accrue thereon through the stated maturity of the Letters of Credit or bankers' acceptances as applicable (assuming no drawings thereon before stated maturity), and

(iv) Parity Debt Representative will execute and deliver to Priority Debt Representative a waiver of all claims arising out of this Agreement and the transactions contemplated hereby as a result of exercising the purchase option contemplated by this Section 2.6.

(e) Actions After Purchase Closing

(i) Promptly after the closing of the purchase of all Purchase Obligations, Priority Debt Representative will distribute the Purchase Price to Priority Lien Secured Parties in accordance with the terms of the Priority Lien Documents.

(ii) After the closing of the purchase of all Purchase Obligations, the Purchasing Creditors may request that Priority Debt Representative immediately resign as administrative agent and, if applicable, collateral agent under the Priority Lien Documents, and Priority Debt Representative will immediately resign if so requested. Upon such resignation, a new administrative agent and, if applicable, a new collateral agent will be elected or appointed in accordance with the Priority Lien Documents.

(iii) Priority Debt Representative will apply cash collateral to reimburse Letter of Credit issuers for drawings under Letters of Credit and to settle bankers' acceptances upon maturity, along with any customary fees charged by the issuer in connection with such draws, and facing or similar fees. After giving effect to each such payment, any remaining cash collateral that exceeds 100% of the sum of the aggregate undrawn amount of all then outstanding Letters of Credit and bankers' acceptances and the aggregate facing and similar fees that will accrue thereon through the stated maturity of such Letters of Credit (assuming no drawings thereon before stated maturity) will be returned to the Purchasing Creditors (as their interests appear). When all Letters of Credit have been cancelled with the consent of the beneficiary thereof, expired, or been fully drawn, all bankers' acceptances have matured and after all payments from the account described above have been made, any remaining cash collateral will be returned to the Purchasing Creditors, as their interests appear.

(iv) If for any reason other than the gross negligence or willful misconduct of Priority Debt Representative, the cash collateral is less than the amount owing with respect to a Letter of Credit or bankers' acceptance described in the preceding subsection (c), then the Purchasing Creditors will, in proportion to their interests, promptly reimburse Priority Debt

Representative (who will then pay the issuing bank) the amount of the deficiency.

(f) No Recourse Or Warranties; Defaulting Creditors

(i) Priority Lien Secured Parties will be entitled to rely on the statements, representations, and warranties in the Purchase Notice without investigation.

(ii) The purchase and sale of the Priority Lien Obligations under this Section 2.6 will be without recourse and without representation or warranty of any kind by Priority Lien Secured Parties, except that Priority Lien Secured Parties represent and warrant that on the Purchase Date, immediately before giving effect to the purchase,

(A) the principal of and accrued and unpaid interest on the First Lien Obligations, and the fees and expenses thereof, are as stated in the Assignment Agreement,

(B) Priority Lien Secured Parties own the Priority Lien Obligations free and clear of any Liens (other than participation interests not prohibited by the Priority Lien Documents, in which case such Priority Lien Secured Party agrees that it will discharge such participation interests without recourse or liability to the Purchasing Creditors), and

(C) each Priority Lien Secured Party has the full right and power to assign its Priority Lien Obligations and such assignment has been duly authorized by all necessary corporate action by such Priority Lien Secured Party.

(iii) The obligations of Priority Lien Secured Parties to sell their respective Purchase Obligations under this Section 2.6 are several and not joint and several. If a Priority Lien Secured Party (a "**Defaulting Creditor**") breaches its obligation to sell its Purchase Obligations under this Section 2.6, no other Priority Lien Secured Party will be obligated to purchase the Defaulting Creditor's Purchase Obligations for resale to the holders of Parity Lien Obligations. A Priority Lien Secured Party that complies with this Section 2.6 will not be in default of this Agreement or otherwise be deemed liable for any action or inaction of any Defaulting Creditor, provided that nothing in this subsection (iii) will require the Purchasing Creditors to purchase less than all of the Purchase Obligations.

The Obligors irrevocably consent, and will use their best efforts to obtain any necessary consent of each other Person that becomes an Obligor from time to time, to any assignment effected to one or more Purchasing Creditors pursuant to this Section 2.6.

ARTICLE 3
OBLIGATIONS AND POWERS OF COLLATERAL TRUSTEE

3.1 Undertaking of the Collateral Trustee.

(a) Subject to, and in accordance with, this Agreement, the Collateral Trustee will, as trustee, for the benefit solely and exclusively of the present and future Secured Parties:

(i) accept, enter into, hold, maintain, administer and enforce all Security Documents, including all Collateral subject thereto, and all Liens created thereunder, perform its obligations under the Security Documents and protect, exercise and enforce the interests, rights, powers and remedies granted or available to it under, pursuant to or in connection with the Security Documents;

(ii) take all lawful and commercially reasonable actions permitted under the Security Documents that it may deem necessary or advisable to protect or preserve its interest in the Collateral subject thereto and such interests, rights, powers and remedies;

(iii) deliver and receive notices pursuant to the Security Documents;

(iv) sell, assign, collect, assemble, foreclose on, institute legal proceedings with respect to, or otherwise exercise or enforce the rights and remedies of a secured party (including a mortgagee, trust deed beneficiary and insurance beneficiary or loss payee) with respect to the Collateral under the Security Documents and its other interests, rights, powers and remedies;

(v) remit as provided in Section 3.4 all cash proceeds received by the Collateral Trustee from the collection, foreclosure or enforcement of its interest in the Collateral under the Security Documents or any of its other interests, rights, powers or remedies;

(vi) execute and deliver amendments to the Security Documents as from time to time authorized by an Act of Instructing Debtholders accompanied by an Officers' Certificate to the effect that the amendment was permitted by each applicable Secured Debt Document; and

(vii) release any Lien granted to it by any Security Document upon any Collateral if and as required by Section 5.1(b) or Section 5.1(c).

(b) Each Party acknowledges and consents to the undertaking of the Collateral Trustee set forth in Section 3.1(a) and agrees to each of the other provisions of this Agreement applicable to it.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Collateral Trustee will not commence any exercise of remedies or any foreclosure actions or otherwise take any action or proceeding against any of the Collateral (other than actions as necessary to prove, protect or preserve the Liens securing the Secured Obligations) unless and until it shall have received a Notice of Actionable Default, and then only in accordance with the provisions of this Agreement.

3.2 **Release or Subordination of Liens.**

The Collateral Trustee will not release or subordinate any Lien of the Collateral Trustee or consent to the release or subordination of any Lien of the Collateral Trustee, except:

(a) as directed by an Act of Instructing Debtholders accompanied by an Officers' Certificate to the effect that the release or subordination was permitted by each applicable Secured Debt Document;

(b) as required by Article 5;

(c) as ordered pursuant to applicable law under a final and non-appealable order or judgment of a court of competent jurisdiction; or

(d) for the subordination of the Junior Trust Estate and the Parity Liens to the Senior Trust Estate and the Priority Liens.

3.3 **Remedies Upon Actionable Default.** If the Collateral Trustee at any time receives a Notice of Actionable Default, the Collateral Trustee will, as soon as reasonably practicable, deliver written notice thereof to each Secured Debt Representative. Thereafter, the Collateral Trustee may await direction by an Act of Instructing Debtholders and will act, or decline to act, as directed by an Act of Instructing Debtholders, in the exercise and enforcement of the Collateral Trustee's interests, rights, powers and remedies in respect of the Collateral or under the Security Documents or applicable law and, following the initiation of such exercise of remedies, the Collateral Trustee will act, or decline to act, with respect to the manner of such exercise of remedies as directed by an Act of Instructing Debtholders. Unless it has been directed to the contrary by an Act of Instructing Debtholders, the Collateral Trustee in any event may (but will not under any circumstances be obligated to) take or refrain from taking such action with respect to any Actionable Default as it may deem advisable and in the best interest of the holders of Secured Obligations.

3.4 **Application of Proceeds.**

(a) The Collateral Trustee will apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral and the proceeds of any insurance policy, including any title insurance policy, in the following order of application and pursuant to wiring instructions as specified in an Act of Instructing Debtholders:

(i) FIRST, to the payment of all amounts payable under this Agreement on account of the Collateral Trustee's direct or indirect fees and any reasonable legal fees, costs and expenses or other liabilities or debts of any kind incurred by the Collateral Trustee or any co-trustee or agent in connection with this Agreement or any other Security Document;

(ii) SECOND, to the repayment of Indebtedness or other Obligations, other than Secured Debt, secured by a Permitted Prior Lien on the Collateral sold or realized upon;

(iii) THIRD, to the respective Priority Debt Representatives for application to the payment of all outstanding Priority Lien Debt and any other Priority Lien Obligations that are then due and payable in such order as may be provided in the Priority Lien Documents in an amount sufficient to pay in full in cash all outstanding Priority Lien Debt and all other Priority Lien Obligations that are then due and payable (including all interest accrued thereon after the commencement of any bankruptcy or other Insolvency Proceeding at the rate, including any applicable post-default rate, specified in the Priority Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding, and including the discharge or cash collateralization (at the lower of (1) 105% of the aggregate undrawn amount and (2) the percentage of the aggregate undrawn amount required for release of Liens under the terms of the applicable Priority Lien Document) of all outstanding letters of credit and bankers' acceptances constituting Priority Lien Debt);

(iv) FOURTH, to the respective Parity Debt Representatives for application to the payment of all outstanding Parity Lien Debt and any other Parity Lien Obligations that are then due and payable in such order as may be provided in the Parity Lien Documents in an amount sufficient to pay in full in cash all outstanding Parity Lien Debt and all other Parity Lien Obligations that are then due and payable (including all interest accrued thereon after the commencement of any bankruptcy or other Insolvency Proceeding at the rate, including any applicable post-default rate, specified in the Parity Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding, and including the discharge or cash collateralization (at 102.5% of the aggregate undrawn amount) of all outstanding letters of credit and bankers' acceptances constituting Parity Lien Debt); and

(v) FIFTH, any surplus remaining after the irrevocable and unconditional payment in full in cash of all of the Secured Obligations entitled to the benefit of such Collateral will be paid to the Borrower or the other applicable Obligors, as the case may be, or its successors or assigns, or as a court of competent jurisdiction may direct.

(b) If any Parity Debt Representative or any holder of a Parity Lien Obligation collects or receives any proceeds in respect of the Parity Lien Obligations that should have been applied to the payment of the Priority Lien Obligations or obligations secured by a Permitted Prior Lien in accordance with clause (a) above and a Responsible Officer of such Parity Debt Representative shall have received written notice, or shall have actual knowledge, of the same prior to such Parity Debt Representative's distribution of such proceeds, whether after the commencement of an Insolvency Proceeding or otherwise, such Parity Debt Representative or such holder of a Parity Lien Obligation, as the case may be, will forthwith deliver the same to the Collateral Trustee, for the account of the holders of the Priority Lien Obligations or obligations secured by a Permitted Prior Lien, in the form received, duly endorsed to the Collateral Trustee, for the account of the holders of the Priority Lien Obligations or obligations secured by a Permitted Prior Lien to be applied in accordance with clause (a) above.

Until so delivered, such proceeds will be held by such Parity Debt Representative or such holder of a Parity Lien Obligation, as the case may be, for the benefit of the holders of the Priority Lien Obligations or obligations secured by a Permitted Prior Lien. This Section 3.4(b) shall not apply to payments received by any holder of Parity Lien Obligations if such payments are not proceeds of any collection, sale, foreclosure or other realization upon any Collateral.

3.5 **Powers of the Collateral Trustee.**

(a) The Collateral Trustee is irrevocably authorized and empowered to enter into and perform its obligations and protect, perfect, exercise and enforce its interest, rights, powers and remedies under the Security Documents and applicable law and in equity and to act as set forth in this Article 3 or as requested in any lawful directions given to it from time to time in respect of any matter by an Act of Instructing Debtholders.

(b) No Secured Debt Representative, Secured Debtholder or other holder of Secured Obligations will have any liability whatsoever for any act or omission of the Collateral Trustee, subject to Section 10.12.

3.6 **Documents and Communications.** The Collateral Trustee will permit each Secured Debt Representative and each Secured Debtholder upon reasonable written notice from time to time to inspect and copy, at the cost and expense of the party requesting such copies, any and all Security Documents and other documents, notices, certificates, instructions or communications received by the Collateral Trustee in its capacity as such.

3.7 **For Sole and Exclusive Benefit of Holders of Secured Obligations.** The Collateral Trustee will accept, hold, administer and enforce all Liens at any time transferred or delivered to it and all other interests, rights, powers and remedies at any time granted to or enforceable by the Collateral Trustee and all other property of the Trust Estates solely and exclusively for the benefit of the present and future holders of present and future Secured Obligations, and will distribute all proceeds received by it in realization thereon

or from enforcement thereof solely and exclusively pursuant to the provisions of Section 3.4.

3.8 Additional Secured Debt.

(a) The Collateral Trustee will, as trustee hereunder, perform its undertakings set forth in Section 3.1(a) with respect to each holder of Secured Obligations of a Series of Secured Debt that is issued or incurred after the date hereof that:

(i) holds Secured Obligations that are identified as Parity Lien Debt or Priority Lien Debt in accordance with the procedures set forth in Section 3.8(b); and

(ii) signs, through its designated Secured Debt Representative identified pursuant to Section 3.8(b), a Collateral Trust Joinder.

(b) The Borrower or any other Obligor will be permitted to designate as additional Secured Debtholders hereunder each Person who is, or who becomes, the registered holder of Parity Lien Debt or the registered holder of Priority Lien Debt incurred by such Borrower or Obligor after the date of this Agreement in accordance with the terms of the Secured Debt Documents. Such Borrower or Obligor may effect such designation by delivering to the Collateral Trustee, with copies to each previously identified Secured Debt Representative, each of the following:

(i) an Officers' Certificate stating that the Borrower or applicable Obligor intends to incur additional Secured Debt ("**New Secured Debt**") which will either be (A) Priority Lien Debt permitted by each applicable Secured Debt Document to be secured by a Priority Lien on a pari passu basis with all previously existing Priority Lien Debt or (B) Parity Lien Debt permitted by each applicable Secured Debt Document to be secured with a Parity Lien on a pari passu basis with all previously existing Parity Lien Debt;

(ii) evidence that the Borrower or applicable Obligor has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant financing statements, filings and recordations, if any, to ensure that the New Secured Debt is secured by the Collateral; and

(iii) a written notice specifying the name and address of the Secured Debt Representative for such series of New Secured Debt for purposes of Section 10.9.

Notwithstanding the foregoing, nothing in this Agreement will be construed to allow the Borrower or any other Obligor to incur additional Indebtedness unless otherwise permitted by the terms of the Secured Debt Documents.

(c) In the case of a Lender Hedge Provider:

(i) the execution of this Agreement by the Secured Debt Representative of such Lender Hedge Provider shall, without further action or confirmation and regardless of whether such Lender Hedge Provider or its Affiliate ceases thereafter to be a lender under such Credit Facility, bind such Lender Hedge Provider (or, if such Lender Hedge Provider is an Affiliate of a lender under a Credit Facility, such execution shall bind such Affiliate, and such lender shall be jointly and severally liable for the obligations of such Affiliate, as a Secured Party hereunder); and

(ii) the Secured Debt Representative of such Lender Hedge Provider shall be the administrative agent under the applicable Credit Facility to which such Lender Hedge Provider (or its Affiliate) is a lender at the time the applicable Hedge Agreement was entered into, notwithstanding whether such Lender Hedge Provider ceases thereafter to be a lender under such Credit Facility for whatever reason; provided that if a Lender Hedge Provider delivers a Collateral Trust Joinder, such Lender Hedge Provider will become its own Secured Debt Representative from and after the later of the date that it ceases to be a lender under such Credit Facility and the date that it delivers a Collateral Trust Joinder.

ARTICLE 4
HEDGING

4.1 **Hedge Obligations Secured by Priority Liens**. Subject to Sections 3.8 and 4.2, all Hedge Obligations, to the extent permitted by each of the applicable Secured Debt Documents, shall form part of the Priority Lien Debt and shall be entitled to be secured by and receive the benefits of the Secured Debt in the manner set forth in this Agreement.

4.2 **Limitation on Rights of Hedge Providers**. No Hedge Provider shall be entitled to vote on, consent to, or provide instructions to the Collateral Trustee on any matter under or in connection with this Agreement related to any Obligor (other than an amendment to this Agreement) unless the only Priority Lien Obligations outstanding are Hedge Obligations; provided that the Hedge Obligations owed to a Lender Hedge Provider (who is, or its Affiliate is, still a lender under a Credit Facility but not otherwise) shall be used in the determination of whether there has been an Act of Instructing Debtholders in accordance with clause (a)(i) of the definition thereof. A Hedge Provider shall be entitled to participate in the proceeds of realization of any enforcement action initiated by the Collateral Trustee in accordance with the terms hereof and deliver a notice to the Collateral Trustee indicating the same but cannot vote on consent to, or provide instructions to the Collateral Trustee on any matter under or in connection with any such enforcement action. Notwithstanding the foregoing, nothing in this Section 4.2 shall limit any other rights or remedies any Hedge Provider may have under the Hedge Agreements to which it is a party or applicable law.

4.3 **Hedge Reporting**. The Borrower shall provide to each Secured Debt Representative, upon reasonable request therefor, a summary of all of its then outstanding Hedge Obligations together with such particulars as will evidence compliance by the Borrower and the other Obligors with the restrictions on hedging imposed in the Secured Debt Documents to which it is a party from time to time.

ARTICLE 5
OBLIGATIONS ENFORCEABLE BY THE BORROWER AND THE OTHER OBLIGORS

5.1 **Release of Liens**.

(a) The Collateral Trustee's Liens upon the Collateral will be released pursuant to Section 5.1(b) below:

(i) in whole, upon (A) payment in full in cash and discharge of all outstanding Secured Debt and all other Secured Obligations that are outstanding, due and payable at the time all of the Secured Debt is paid in full in cash and discharged and (B) termination or expiration of all commitments to extend credit under all Secured Debt Documents and the cancellation or termination or cash collateralization (at the lower of (1) 105% of the aggregate undrawn amount and (2) the percentage of the aggregate undrawn amount required for release of Liens under the terms of the applicable Secured Debt Documents) of all outstanding letters of credit and bankers' acceptances issued pursuant to any Secured Debt Documents;

(ii) as to any Collateral that is sold, transferred or otherwise disposed of by the Borrower or any other Obligor in a transaction or other circumstance that is not prohibited by the Secured Debt Documents, at the time of such sale, transfer or other disposition or to the extent of the interest sold, transferred or otherwise disposed of; and

(iii) as to any Collateral other than Collateral being released pursuant to clauses (i) or (ii) of this paragraph (a), if (A) consent to the release of that Collateral has been given by an Act of Instructing Debtholders; provided, that if such Collateral represents all or substantially all of the Collateral, consent to release of such Collateral has been given by the requisite percentage or number of holders of each Series of Secured Debt at the time outstanding as provided for in the applicable Secured Debt Documents and (B) the Borrower has delivered an Officer's Certificate to the Collateral Trustee certifying that any such necessary consents have been obtained; provided, that the Collateral Trustee receives a copy of the Act of Instructing Debtholders referred to in clause (A) above.

(b) The Collateral Trustee agrees for the benefit of the Borrower and the other Obligors that if the Collateral Trustee at any time receives:

(i) an Officers' Certificate stating that (A) the signing officers have read Article 5 of this Agreement and understand the provisions and the definitions relating hereto, (B) such officers have made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not the conditions precedent in this Agreement and all other Secured Debt Documents, if any, relating to the release of the Collateral have been complied with and (C) in the opinion of such officers, such conditions precedent, if any, have been complied with;

(ii) the proposed instrument or instruments releasing such Lien as to such property in recordable form, if applicable; and

(iii) in the case of Collateral which is being disposed of other than in accordance with Sections 5.1(c)(ii), (iii), (iv), or (v):

(A) prior to the Discharge of Priority Lien Obligations, the written confirmation of each Priority Debt Representative (such confirmation to be given following receipt of, and based solely on, the Officers' Certificate described in clause (i) above) that, in its view, such release is permitted by Section 5.1(a) and the respective Secured Debt Documents governing the Secured Obligations the holders of which such Secured Debt Representative represents; and

(B) prior to the Discharge of Parity Lien Obligations, either:

(I) the written confirmation of each Parity Debt Representative (such confirmation to be given following receipt of, and based solely on, the Officers' Certificate described in clause (i) above) that, in its view, such release is permitted by Section 5.1(a) and the respective Secured Debt Documents governing the Secured Obligations the holders of which such Secured Debt Representative represents; or

(II) the Officers' Certificate described in clause (i) above together with an opinion of legal counsel (who may be counsel to the applicable Obligor), in form and substance satisfactory to the Collateral Trustee, acting reasonably, that such disposition is in compliance with the applicable Secured Debt Documents;

then the Collateral Trustee will execute (with such acknowledgements and/or notarizations as are required) and deliver such release to the Borrower or applicable Obligor on or before the later of (A) the date specified in such request for such release and (B) the fourth Business Day after the date of receipt of the items required by this Section 5.1(b) by the Collateral Trustee, unless the Collateral Trustee receives written notice from a Secured Debt Representative that

it disputes the accuracy of any of the foregoing items prior to the expiry of such four Business Day period.

(c) Notwithstanding Section 5.1(a), upon the occurrence of the following, the Collateral Trustee's Lien in the applicable Collateral specified below shall automatically, without further action, be released:

(i) with respect to any Collateral that shall be sold, transferred or otherwise disposed of in the ordinary course of business, provided, that such sale, transfer or other disposition does not violate the terms of any Secured Debt Document, upon such sale, transfer or other disposition, the Lien of the Security Documents in such Collateral shall automatically, without further action, be released;

(ii) with respect to any Capital Stock issued by any Obligor (other than the Borrower) that is dissolved, provided, that such dissolution does not violate the terms of any Secured Debt Document, upon such dissolution, the Lien of the Security Documents in such capital stock issued by such Obligor shall automatically, without further action, be released;

(iii) unless an Actionable Default shall have occurred and be continuing and the Collateral Trustee shall have received an Act of Instructing Debtholders to the contrary, with respect to amounts withdrawn from any accounts by any Obligor pursuant to, and in accordance with, the applicable Security Documents with respect thereto, and in each case applied to pay third-party liabilities in the ordinary course of business or to make restricted payments and permitted investments but only to the extent in compliance with each other Secured Debt Document, upon such application, the Lien of the Security Documents in such amounts shall automatically, without further action, be released;

(iv) with respect to amounts distributed by the Collateral Trustee pursuant to, and in accordance with the provisions of this Agreement, upon such distribution, the Lien of the Security Documents in such amounts shall automatically, without further action, be released; and

(v) with respect to any Collateral for which the release of the Lien of the Security Documents is provided for pursuant to a provision of any Security Document, the Lien of the Security Documents on such Collateral shall automatically, without further action, hereunder be released as provided for in such provision;

and, in each such case except (i) above, upon request of the Borrower, the Collateral Trustee will execute (with such acknowledgements and/or notarizations as are required) and deliver evidence of such release to the Borrower; provided, however, that within 15 days after the end of the six-month periods ended on June 30 and December 31 in each year or promptly upon the request of the Collateral

Trustee, the Borrower will deliver to the Collateral Trustee an Officers' Certificate to the effect that no release of Collateral pursuant to this Section 5.1(c) during the preceding six-month period has violated the terms of any Secured Debt Document.

(d) The Collateral Trustee hereby agrees that:

(i) in the case of any release pursuant to clause (ii) of Section 5.1(a), if the terms of any such sale, transfer or other disposition require the payment of the purchase price to be contemporaneous with the delivery of the applicable release, then, at the written request of and at the expense of the Borrower or Obligor, the Collateral Trustee will either be present at the closing of such transaction or will deliver the release under customary escrow arrangements that permit such contemporaneous payment and delivery of the release; and

(ii) at any time when a Secured Debt Default under a Series of Secured Debt that constitutes Parity Lien Debt has occurred and is continuing, within one Business Day of the receipt by it of any Act of Instructing Debtholders pursuant to Section 5.1(a)(iii), the Collateral Trustee will deliver a copy of such Act of Instructing Debtholders to each Secured Debt Representative.

(e) Each Secured Debt Representative (in the case of the Parity Debt Representative, only upon the discharge of all of the Priority Lien Obligations) hereby agrees that:

(i) as soon as reasonably practicable after receipt of an Officers' Certificate pursuant to Section 5.1(b)(a)(i) it will, to the extent required by such Section, either provide (A) the written confirmation required by Section 5.1(b)(iii), (B) a written statement that such release is not permitted by Section 5.1(a) or (C) a request for further information from the Borrower reasonably necessary to determine whether the proposed release is permitted by Section 5.1(a) and after receipt of such information such Secured Debt Representative will as soon as reasonably practicable either provide the written confirmation or statement required pursuant to clause (A) or (B), as applicable; and

(ii) within one Business Day of the receipt by it of any notice from the Collateral Trustee pursuant to Section 5.1(d)(ii), such Secured Debt Representative will deliver a copy of such notice to each registered holder of the Series of Priority Lien Debt or Series of Parity Lien Debt for which it acts as Secured Debt Representative.

5.2 **Delivery of Copies to Secured Debt Representatives**. The Borrower will deliver to each Secured Debt Representative a copy of each Officers' Certificate delivered to the Collateral Trustee pursuant to Section 5.1(b), together with copies of all documents delivered to the Collateral Trustee with such Officers' Certificate. The Secured Debt

Representatives will not be obligated to take notice thereof or to act thereon, subject to Section 5.1(e).

5.3 **Collateral Trustee not Required to Serve, File or Record.** The Collateral Trustee is not required to serve, file, register or record any instrument releasing or subordinating its Lien in any Collateral; provided, however, that if the Borrower or any Obligor shall make a written demand for a termination statement in respect of itself under the PPSA, the Collateral Trustee shall comply with the written request of such Borrower or Obligor to comply with the requirements of the PPSA, provided, that the Collateral Trustee must first confirm with the Secured Debt Representatives that the requirements of the PPSA have been satisfied.

5.4 **Land Registry Offices.** Nothing in this Agreement shall obligate any Party to register the Liens in respect of the Collateral at any land registry office until a Priority Debt Representative or, following the Discharge of Priority Lien Obligations, a Parity Debt Representative, requests such registration by notice in writing to the Collateral Trustee but only to the extent permitted by the applicable Secured Debt Documents.

ARTICLE 6
IMMUNITIES OF THE COLLATERAL TRUSTEE

6.1 **No Implied Duty.** The Collateral Trustee will not have any fiduciary duties nor will it have responsibilities or obligations other than those expressly assumed by it in this Agreement and the other Security Documents. The Collateral Trustee will not be required to take any action that is contrary to applicable law or any provision of this Agreement or the other Security Documents. The Collateral Trustee shall have no duty to monitor compliance by the Borrower or the other Obligors with its duties and obligations under this Agreement or the other Security Documents, except to the extent expressly provided herein or therein.

6.2 **Appointment of Agents and Advisors.** The Collateral Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, legal counsel, accountants, appraisers or other experts or advisors selected by it in good faith as it may reasonably require for the purpose of discharging its duties hereunder and will not be responsible for any misconduct or negligence on the part of any of them. The Collateral Trustee may pay remuneration for all services performed for it in the discharge of its duties hereunder without taxation for costs or fees of any counsel, solicitor or attorney. The Collateral Trustee may act and rely and shall be protected in acting in good faith on the opinion or advice of or information obtained from any agent, counsel, accountant, engineer, appraiser or other expert or advisor, whether retained or employed by the Collateral Trustee or any other Party, in relation to any matter arising in the performance of its duties under this Agreement.

6.3 **Co-Collateral Trustees.**

(a) At any time or times, for the purposes of meeting the legal requirements of any jurisdiction in which any of the Collateral may at the time be located, the

Borrower and the Collateral Trustee shall have power to appoint and, upon written request of the Collateral Trustee upon the written instructions of a Secured Debt Representative or otherwise, the Obligors shall for such purpose join with the Collateral Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more Persons approved by the Collateral Trustee to act as co-trustee, jointly with the Collateral Trustee, of all or any part of the Collateral, with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 6.3; provided that any person appointed as a co-trustee hereunder must meet the requirements of Section 7.2. If the Borrower does not join in such appointment within 15 days after the receipt by it of a request to do so, or in case it has received a Notice of Actionable Default, the Collateral Trustee alone shall have power to make such appointment.

(b) Should any written instrument from the Borrower be required by any co-trustee so appointed for more fully confirming to such co-trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Borrower.

(c) Every co-trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms:

(i) All rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Collateral Trustee hereunder, shall be exercised solely by the Collateral Trustee.

(ii) The rights, powers, duties and obligations hereby conferred or imposed upon the Collateral Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Collateral Trustee or by the Collateral Trustee and such co-trustee jointly, as shall be provided in the instrument appointing such co-trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Collateral Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee.

(iii) The Collateral Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Borrower evidenced by an Officers' Certificate, may accept the resignation of or remove any co-trustee appointed under this Section 6.3, and, in case it has received a Notice of Actionable Default, the Collateral Trustee shall have power to accept the resignation of, or remove, any such co-trustee without the concurrence of the Borrower. Upon the written request of the Collateral Trustee, the Borrower shall join with the Collateral Trustee in the execution, delivery

and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee so resigned or removed may be appointed in the manner provided in this Section 6.3.

(iv) No co-trustee hereunder shall be personally liable by reason of any act or omission of the Collateral Trustee, or any such other trustee hereunder.

(v) Any notice, direction or instruction delivered to the Collateral Trustee shall be deemed to have been delivered to each such co-trustee.

6.4 **Other Agreements**. The Collateral Trustee has accepted and is bound by the Security Documents executed by the Collateral Trustee as of the date of this Agreement and, as directed by an Act of Instructing Debtholders, the Collateral Trustee may execute additional Security Documents delivered to it after the date of this Agreement, provided, however, that such additional Security Documents do not adversely affect the rights, privileges, benefits and immunities of the Collateral Trustee. The Collateral Trustee will not otherwise be bound by, or be held obligated by, the provisions of any credit agreement, indenture or other agreement governing Secured Debt (other than this Agreement and the other Security Documents).

6.5 **Solicitation of Instructions**.

(a) The Collateral Trustee may at any time solicit written confirmatory instructions, in the form of an Act of Instructing Debtholders, an Officers' Certificate or an order of a court of competent jurisdiction, as to any action that it may be requested or required to take, or that it may propose to take, in the performance of any of its obligations under this Agreement and the other Security Documents.

(b) Any written direction given to the Collateral Trustee by an Act of Instructing Debtholders that in the sole judgment of the Collateral Trustee imposes, purports to impose or might reasonably be expected to impose upon the Collateral Trustee any obligation or liability not set forth in or arising under this Agreement and the other Security Documents will not be binding upon the Collateral Trustee unless the Collateral Trustee elects, at its sole option, to accept such direction.

6.6 **Limitation of Liability**. The Collateral Trustee will not be responsible or liable for any action taken or omitted to be taken by it hereunder or under any other Security Documents except for its own gross negligence, bad faith or wilful misconduct as determined by a court of competent jurisdiction.

6.7 **Documents in Satisfactory Form**. The Collateral Trustee will be entitled to require that all agreements, certificates, opinions, instruments and other documents at any time submitted to it, including those expressly provided for in this Agreement, be delivered to it in a form and with substantive provisions reasonably satisfactory to it.

6.8 **Entitled to Rely**. The Collateral Trustee may conclusively rely upon, and shall be fully protected in relying upon, any writing, certificate, notice, statement, order or other

document (including any facsimile) reasonably believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons and need not investigate any fact or matter stated in any such document. The Collateral Trustee may seek and rely upon, and shall be fully protected in relying upon, any judicial order or judgment, upon any advice, opinion or statement of legal counsel, independent consultants and other experts selected by it in good faith and upon any certification, instruction, notice or other writing delivered to it by the Borrower or any other Obligor in compliance with the provisions of this Agreement or delivered to it by any Secured Debt Representative as to the Secured Debtholders for whom it acts, without being required to determine the authenticity thereof or the correctness of any fact stated therein or the propriety or validity of service thereof. The Collateral Trustee may act in reliance upon any instrument comporting with the provisions of this Agreement or any signature reasonably believed by it to be genuine and may assume that any Person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions hereof or the other Security Documents has been duly authorized to do so. To the extent a certificate, Officers' Certificate or opinion of counsel is required or permitted under this Agreement to be delivered to the Collateral Trustee in respect of any matter, the Collateral Trustee may rely conclusively on such certificate, Officers' Certificate or opinion of counsel as to such matter and such certificate, Officer's Certificate or opinion of counsel shall be full warranty and protection to the Collateral Trustee for any action taken, suffered or omitted by it under the provisions of this Agreement and the other Security Documents.

6.9 **Secured Debt Default**. The Collateral Trustee will not be required to inquire as to the occurrence or absence of any Secured Debt Default and will not be affected by or required to act upon any notice or knowledge as to the occurrence of any Secured Debt Default unless and until it receives a Notice of Actionable Default.

6.10 **Actions by Collateral Trustee**. As to any matter not expressly provided for by this Agreement or the other Security Documents, the Collateral Trustee will act or refrain from acting as directed by an Act of Instructing Debtholders and will be fully protected if it does so, and any action taken, suffered or omitted pursuant to hereto or thereto shall be binding on the Secured Debtholders.

6.11 **Security or Indemnity in Favour of the Collateral Trustee**. The Collateral Trustee will not be required to advance or expend any funds or otherwise incur any financial liability in the performance of its duties or the exercise of its powers or rights hereunder unless it has been provided with security or indemnity reasonably satisfactory to it against any and all liability or expense which may be incurred by it by reason of taking or continuing to take such action.

6.12 **Rights of the Collateral Trustee**. In the event of any conflict between any terms and provisions set forth in this Agreement and those set forth in any other Security Document, the terms and provisions of this Agreement shall supersede and control the terms and provisions of such other Security Document. In the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Security Documents resulting in adverse claims being made in connection with

Collateral held by the Collateral Trustee and the terms of this Agreement or any of the other Security Documents do not unambiguously mandate the action the Collateral Trustee is to take or not to take in connection therewith under the circumstances then existing, or the Collateral Trustee is in doubt as to what action it is required to take or not to take hereunder, it will be entitled to refrain from taking any action (and will incur no liability for doing so) until directed otherwise in writing by a request signed jointly by the Parties entitled to give such direction or by order of a court of competent jurisdiction.

6.13 Limitations on Duty of Collateral Trustee in Respect of Collateral.

(a) Beyond the exercise of reasonable care in the custody of Collateral in its possession, the Collateral Trustee will have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Collateral Trustee will 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 in the Collateral. The Collateral Trustee will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property, and the Collateral Trustee will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Trustee in good faith.

(b) The Collateral Trustee will not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence, bad faith or wilful misconduct on the part of the Collateral Trustee, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of any Obligor to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Collateral Trustee hereby disclaims any representation or warranty to the present and future holders of the Secured Obligations concerning the perfection of the Liens granted hereunder or in the value of any of the Collateral.

6.14 Assumption of Rights, Not Assumption of Duties. Notwithstanding anything to the contrary contained herein:

(a) each of the parties thereto will remain liable under each of the Security Documents (other than this Agreement) to the extent set forth therein to perform all of their respective duties and obligations thereunder to the same extent as if this Agreement had not be executed;

(b) the exercise by the Collateral Trustee of any of its rights, remedies or powers hereunder will not release such parties from any of their respective duties or obligations under the other Security Documents; and

(c) the Collateral Trustee will not be obligated to perform any of the obligations or duties of any of the parties thereunder other than the Collateral Trustee.

6.15 **No Liability for Clean Up of Hazardous Materials**. In the event that the Collateral Trustee is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Collateral Trustee's sole discretion may cause the Collateral Trustee to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Trustee to incur, or be exposed to, any environmental liability or any liability under any other federal, provincial or local law, the Collateral Trustee reserves the right, instead of taking such action, either to resign as Collateral Trustee or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Collateral Trustee will not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any federal, provincial or local law, rule or regulation by reason of the Collateral Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

ARTICLE 7
RESIGNATION AND REMOVAL OF THE COLLATERAL TRUSTEE

7.1 **Resignation or Removal of Collateral Trustee**. Subject to the appointment of a successor Collateral Trustee as provided in Section 7.2 and the acceptance of such appointment by the successor Collateral Trustee:

(a) the Collateral Trustee may resign at any time by giving not less than 45 days' notice of resignation to each Secured Debt Representative and the Borrower, provided that such notice period may be waived by each Secured Debt Representative and the Borrower; and

(b) the Collateral Trustee may be removed at any time, with or without cause, by an Act of Instructing Debtholders.

7.2 **Appointment of Successor Collateral Trustee**. Upon any such resignation or removal, a successor Collateral Trustee may be appointed by an Act of Instructing Debtholders. If no successor Collateral Trustee has been so appointed and accepted such appointment within 30 days after the predecessor Collateral Trustee gave notice of resignation or was removed, the retiring Collateral Trustee may (at the expense of the Borrower), at its option, appoint a successor Collateral Trustee, or petition a court of competent jurisdiction for appointment of a successor Collateral Trustee, which must be a chartered bank or trust company:

(a) authorized to exercise corporate trust powers;

(b) having regulatory capital of at least $100,000,000;

(c) maintaining an office in Edmonton, Alberta or Toronto, Ontario;

(d) authorized to carry on business in each jurisdiction where the Collateral is located; and

(e) that is not a Secured Debt Representative.

The Collateral Trustee will fulfill its obligations hereunder until a successor Collateral Trustee meeting the requirements of this Section 7.2 has accepted its appointment as Collateral Trustee and the provisions of Section 7.3 have been satisfied.

7.3 **Succession**. When the Person so appointed as successor Collateral Trustee accepts such appointment:

(a) such Person will succeed to and become vested with all the rights, powers, privileges and duties of the predecessor Collateral Trustee, and the predecessor Collateral Trustee will be discharged from its duties and obligations hereunder; and

(b) the predecessor Collateral Trustee will (at the expense of the Borrower) promptly transfer all Liens and collateral security and other property of the Trust Estates within its possession or control to the possession or control of the successor Collateral Trustee and will execute instruments and assignments as may be necessary or desirable or reasonably requested by the successor Collateral Trustee to transfer to the successor Collateral Trustee all Liens, interests, rights, powers and remedies of the predecessor Collateral Trustee in respect of the Security Documents or the Trust Estates.

Thereafter the predecessor Collateral Trustee will remain entitled to enforce the immunities granted to it in Article 6 and the provisions of Sections 10.11 and 10.12.

7.4 **Merger, Conversion or Consolidation of Collateral Trustee**. Any Person into which the Collateral Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Trustee shall be a party, or any Person succeeding to the corporate trust business of the Collateral Trustee (by acquisition or otherwise) shall be the successor of the Collateral Trustee pursuant to Section 7.3, provided that (a) without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding, such Person satisfies the eligibility requirements specified in clauses (a) through (e) of Section 7.2 and (b) prior to any such merger, conversion or consolidation, the Collateral Trustee shall have notified the Borrower and each Secured Debt Representative thereof in writing.

ARTICLE 8
REPRESENTATIONS AND WARRANTIES

8.1 **Representations and Warranties of the Obligors**. Each Obligor hereby represents and warrants for the benefit of each Secured Debt Representative, the Collateral Trustee and each Secured Party on the date hereof, as follows:

(a) each of the Borrower and the other Obligors has been duly formed, validly exists, and has all requisite organizational power and authority to conduct its business as intended and own its assets;

(b) each of the Borrower and the other Obligors has taken all necessary organizational action to authorize the execution, delivery and performance of this Agreement and the other Security Documents to which it is a party;

(c) each of the Borrower and the other Obligors has duly authorized, executed and delivered this Agreement and the other Security Documents to which it is a party, and the execution and delivery of this Agreement and such other Security Documents by it will not violate any applicable law binding upon it or conflict in any material respect with any agreement to which it is a party;

(d) this Agreement constitutes valid and legally binding obligations of each of the Borrower and the other Obligors, enforceable against each of them in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights and to general principles of equity, including the principle that specific performance is an equitable remedy, available only in the discretion of the court;

(e) the only jurisdictions in which each Obligor carries on business, and the chief executive office of each of the Obligors are as set out in Exhibit B hereto; and

(f) no Obligor has trade names or has been known by any legal name different from the ones set forth in Exhibit B hereto, nor has any Obligor been the subject of any merger or other corporate reorganization.

8.2 **Survival of Representations and Warranties**. All of the representations and warranties set forth in Section 8.1 shall survive the execution and delivery of this Agreement.

8.3 **Concerning the Secured Debt Representatives and Collateral Trustee**.

(a) The Administrative Agent represents and warrants to the other Secured Debt Representatives that, for all purposes of this Agreement, it is the authorized agent of the Lenders under the Credit Agreement, and that all of the covenants, agreements and obligations under this Agreement of the Administrative Agent, including any action taken or to be taken in furtherance thereof, are binding on the Lenders as though they were parties hereto.

(b) The Indenture Trustee represents and warrants to the other Secured Debt Representatives that it is duly authorized to enter into this Agreement and to undertake the obligations expressed herein to be undertaken by it.

(c) The Collateral Trustee represents and warrants to the Secured Debt Representatives that it is duly authorized to enter into this Agreement and to undertake the obligations expressed herein to be undertaken by it.

ARTICLE 9
COVENANTS

9.1 **Affirmative Covenants of the Borrower**. Without limitation of any obligations of the Borrower or any other Obligor under any of the Secured Debt Documents, the Borrower shall:

(a) notify the Collateral Trustee at least 30 days prior to (i) any change of name of the Borrower or any Obligor, or (ii) any relocation (of which it has actual knowledge of the respective officers of the Borrower or any Obligor having direct responsibility in the area in question after having made reasonable inquiry of their relevant officers and employers) of (A) any Collateral into a jurisdiction where the Liens in respect of such Collateral are not then registered or filed, (B) the place of organization, registered office, principal place of business or chief executive office of the Borrower or any Obligor or (C) its corporate offices or locations at which any Collateral is originated or located or the location of its Collateral Records or books and records; and

(b) at its own expense hold and preserve records, in accordance with prudent records maintenance policies, concerning the Collateral and permit representatives of the Collateral Trustee at any time during normal business hours to inspect and make copies of and abstracts from such records.

ARTICLE 10
MISCELLANEOUS PROVISIONS

10.1 **Amendment**.

(a) The Collateral Trustee, acting as directed by an Act of Instructing Debtholders, and the Obligors may, at any time and from time to time, enter into written amendments or agreements supplemental hereto or to any other Security Document for the purpose of adding to or waiving any provision of this Agreement or such Security Document, granting any consent required under any other Security Document or changing any of the terms thereof; provided that:

(i) any amendment or supplement that has the effect solely of adding or maintaining Collateral, securing additional Secured Debt that was otherwise permitted by the terms of the Secured Debt Documents to be secured by the Collateral or preserving or perfecting the Liens thereon or the rights of the Collateral Trustee therein will become effective when

executed and delivered by the Borrower or any other applicable Obligor party thereto and the Collateral Trustee;

(ii) no amendment or supplement that reduces, impairs or adversely affects the right of any Secured Debtholder

(A) to vote its outstanding Secured Debt as to any matter described as subject to an Act of Instructing Debtholders (or amends the provisions of this clause (ii) or the definitions of "Act of Instructing Debtholders", "Required Parity Debtholders" or "Actionable Default"),

(B) to share in the order of application described in Section 3.4 in the proceeds of enforcement of or realization on any Collateral that has not been released in accordance with the provisions described in Section 5.1, or

(C) to require that Liens securing Secured Obligations be released only as set forth in the provisions described in Section 5.1,

will become effective without the consent of the requisite percentage or number of holders of each Series of Secured Debt so affected under the applicable Secured Debt Document; and

(iii) no amendment or supplement that imposes any obligation upon the Collateral Trustee or any Secured Debt Representative or adversely affects the rights of the Collateral Trustee or any Secured Debt Representative, respectively, in its capacity as such will become effective without the consent of the Collateral Trustee or such Secured Debt Representative, respectively.

The Collateral Trustee or any Secured Debt Representative will not enter into any such amendment or supplement unless it has received an Officers' Certificate to the effect that such amendment or supplement will not result in a breach of any provision or covenant contained in any of the Secured Debt Documents. Prior to executing any amendment or supplement pursuant to this Section 10.1, the Collateral Trustee and the Secured Debt Representatives will be entitled to receive an opinion of Canadian or U.S. counsel of the Borrower, as applicable, to the effect that the execution of such document is authorized or permitted hereunder, and with respect to amendments adding Collateral, the Collateral Trustee will be entitled to an opinion of Canadian or U.S. counsel of the Borrower, as applicable, addressing customary perfection, and if such additional Collateral consists of equity interests of any Person, priority matters with respect to such additional Collateral.

Notwithstanding the foregoing, any amendment, supplement or other agreement with the purpose of releasing Collateral will only become effective with the consent of the Persons, if any, required to effect a release of such Collateral in accordance with the requirements set forth in Section 5.1.

(b) Notwithstanding Section 10.1(a) but subject to Sections 10.1(a)(ii) and 10.1(a)(iii):

(i) the Collateral Trustee, acting as directed by an Act of Instructing Debtholders, and the Obligors may, at any time and from time to time, without the consent of any Parity Lien Secured Parties, amend or supplement any Security Document that secures Priority Lien Obligations (but does not secure Parity Lien Obligations); and

(ii) any amendment or waiver of, or any consent under, any provision of this Agreement or any Security Document that secures Priority Lien Obligations will apply automatically to any comparable provision of any comparable Parity Lien Document without the consent of or notice to any Parity Lien Secured Party and without any action by any Obligor or any Parity Lien Secured Party; and

provided, however, that if the jurisdiction in which any such Parity Lien Document will be filed prohibits the inclusion of the language above or would prevent a document containing such language from being recorded, the Parity Debt Representatives and the Priority Debt Representatives agree, prior to such Parity Lien Document being entered into, to negotiate in good faith replacement language stating that the Lien granted under such Parity Lien Document is subject to the provisions of this Agreement.

10.2 **Voting**. In connection with any matter under this Agreement requiring a vote of holders of the Secured Debt and subject to Section 4.2, each Series of Secured Debt will cast its votes as a block in accordance with the Secured Debt Documents governing such Series of Secured Debt. The amount of Secured Debt to be voted by a Series of Secured Debt will equal (a) the aggregate principal amount of Secured Debt held by such Series of Secured Debt (including outstanding letters of credit whether or not then available to be drawn and Hedge Obligations owed to Lender Hedge Providers), plus (b) other than in connection with an exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute Indebtedness of such Series of Secured Debt. Following and in accordance with the outcome of the applicable vote under its Secured Debt Documents, the Secured Debt Representative of each Series of Secured Debt will cast at the written direction of the holders that it represents all of its votes as a block in respect of any vote under this Agreement. If a consent, approval, waiver, determination, vote or other direction is required under any Security Document, then upon the request of the Collateral Trustee or any other Secured Debt Representative, each Secured Debt Representative shall promptly notify the Collateral Trustee and each other Secured Debt Representative in writing, as of any time that the requesting Person may specify in such request (but in no event less than 3 Business Days from the date of such request), of (i) for the purpose of determining if there has been an Act of Instructing Debtholders or otherwise, the aggregate amount of the Secured Debt owing under the Secured Debt Documents (including, if applicable, any unfunded commitments) in respect of which such Secured Debt Representative serves as agent or representative as of such date, and (ii) such other information as the requesting Person may reasonably

request concerning the amounts owing to the Secured Parties that such Secured Debt Representative represents.

10.3 Provision of Information: Meetings.

(a) Subject to (i) any Person's obligations pursuant to confidentiality agreements with parties other than an Obligor, and (ii) any confidentiality obligations owed by an Obligor to a Person which is not a Party, each Secured Party may (as it deems necessary or appropriate in its sole judgment but without any obligation to do so) freely discuss with each other, and freely disclose to each other, any information pertaining to the business and affairs of the Obligors, the Collateral, the Secured Debt and whether or not any Obligor is in compliance with or in default or in breach of any of the Secured Debt Documents and the Security Documents. The Obligors irrevocably consent to the discussions and disclosures between and among the Secured Parties as contemplated by this Agreement.

(b) Any Secured Debt Representative may, at any time following the occurrence and during the continuation of an Actionable Default, request that a meeting of Secured Parties be convened, at times and locations specified in the notice, and upon such request having been given in accordance herewith, such meeting shall be convened as provided herein. A request for a meeting shall be made in a written notice given by any Secured Debt Representative to the other Secured Debt Representatives and the Collateral Trustee in accordance herewith. Each such notice shall state the date of such meeting (which shall be not less than 10 nor more than 30 days after the date of such notice, unless otherwise agreed by each Secured Debt Representative and the Collateral Trustee) and a general outline of the issues to be discussed at such meeting. Any Secured Party shall have the right to appoint any Person (including another Secured Party) to act as its representative at any such meeting of Secured Parties. No Secured Party shall be obligated to attend any such meetings, and no votes shall be taken at such meeting unless consented to by each Secured Debt Representative.

(c) The Collateral Trustee shall promptly and simultaneously distribute to each Secured Debt Representative any written notice it receives in its role as Collateral Trustee, including any written notice received through the operation of the Secured Debt Documents or the Security Documents.

(d) Except as otherwise provided herein, the Collateral Trustee may, but shall not have any obligation nor duty to, participate in any meeting or consultation held pursuant to this Section 10.3.

(e) Each Obligor shall promptly notify the Collateral Trustee and each Secured Debt Representative of any confidentiality obligations it undertakes, after the date hereof, which would preclude or limit in any way disclosure of information among the Secured Parties.

(f) The Collateral Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Collateral Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Collateral Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred or in any way relating to such disclosure.

10.4 Further Assurances.

(a) Each of the Borrower and the other Obligors will do or cause to be done all acts and things that may be required, or that the Collateral Trustee from time to time may reasonably request, to assure and confirm that the Collateral Trustee holds, for the benefit of the holders of Secured Obligations, duly created and enforceable and perfected Liens upon the Collateral, including after-acquired Collateral and any property or assets that become Collateral pursuant to the definition thereof after the date hereof, subject only to such exceptions as may be contemplated by the Secured Debt Documents.

(b) Subject to the obligations of each of the Borrower and the other Obligors pursuant to Section 10.4(a), upon the reasonable request of the Collateral Trustee or any Secured Debt Representative at any time and from time to time, the Borrower and each of the other Obligors will promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions as may be reasonably required, or that the Collateral Trustee may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by the Secured Debt Documents.

(c) The Obligors will keep their properties adequately insured at all times by:

(i) financially sound and reputable insurance companies (which in the case of any insurance on any mortgaged property, are licensed to do business in the jurisdictions where the applicable Collateral is located), in such amounts, with such deductibles, and covering such risks as are carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses in the same or similar locations;

(ii) maintaining such other insurance, to such extent and against such risks (and with such deductibles, retentions and exclusions), including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by them;

(iii) maintaining such other insurance as may be required by law; and

(iv) maintaining such other insurance as may be required by the Secured Debt Documents.

(d) Upon the request of the Collateral Trustee, the Borrower and the Obligors will furnish to the Collateral Trustee full information as to their property and liability insurance carriers. The Collateral Trustee will be named as additional insureds on all liability insurance policies of the Borrower and the other Obligors.

(e) All insurance policies required by Section 10.4(c) will:

(i) name Collateral Trustee, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and (ii) in the case of each property damage insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to Collateral Trustee, that names Collateral Trustee, on behalf of the Secured Parties, as the loss payee thereunder;

(ii) provide that the insurers will endeavour to deliver 30 days prior written notice to the Collateral Trustee of (A) any cancellation or termination of such insurance or (B) any reduction in the limits of liability of such insurance;

(iii) waive all claims for insurance premiums or commissions or additional premiums or assessments against the Secured Parties; and

(iv) waive any right of the insurers to setoff or counterclaim or to make any other deductions, whether by way of attachment or otherwise, as against the Secured Parties.

(f) Upon the request of the Collateral Trustee, the Borrower and the other Obligors will permit the Collateral Trustee or any of its agents or representatives, at reasonable times and intervals upon reasonable prior notice, to visit its offices and sites and inspect any of the Collateral and to discuss matters relating to the Collateral with their respective officers and independent chartered accountants. The Borrower and the other Obligors shall, at any reasonable time and from time to time upon reasonable prior notice, permit the Collateral Trustee or any of its agents or representatives to examine and make copies of and abstracts from the records and books of account of the Borrower and the other Obligors and their Subsidiaries; provided that by virtue of this Section 10.4 the Borrower and the other Obligors shall not be deemed to have waived any right to confidential treatment of the information obtained, subject to the provisions of applicable law or court order.

10.5 **Perfection of Junior Trust Estate**. Solely for purposes of perfecting the Lien of the Collateral Trustee in its capacity as agent of the Parity Lien Secured Parties in any portion of the Junior Trust Estate consisting of any instruments, goods, negotiable documents, tangible chattel paper or certificated securities in the possession of the Collateral Trustee as part of the Senior Trust Estate, the Priority Lien Secured Parties

hereby acknowledge that the Collateral Trustee also holds such instruments, goods, negotiable documents, tangible chattel paper and certificated securities as bailee for the benefit of the Collateral Trustee for the benefit of the Parity Lien Secured Parties.

10.6 **Successors and Assigns.**

(a) Except as provided in Articles 6 and 7, the Collateral Trustee may not, in its capacity as such, delegate any of its duties or assign any of its rights hereunder, and any attempted delegation or assignment of any such duties or rights will be null and void. All obligations of the Collateral Trustee hereunder will inure to the sole and exclusive benefit of, and be enforceable by, each Secured Debt Representative and each present and future holder of Secured Obligations, each of whom will be entitled to enforce this Agreement as a third-party beneficiary hereof, and all of their respective successors and assigns.

(b) Neither the Borrower nor any other Obligor may delegate any of its duties or assign any of its rights hereunder, and any attempted delegation or assignment of any such duties or rights will be null and void. All obligations of the Borrower and the other Obligors hereunder will enure to the sole and exclusive benefit of, and be enforceable by, the Collateral Trustee, each Secured Debt Representative and each present and future holder of Secured Obligations, each of whom will be entitled to enforce this Agreement as a third-party beneficiary hereof, and all of their respective successors and assigns.

10.7 **Secured Parties in their Individual Capacities**. Each Secured Party and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Obligors and any other parties to the Security Documents and the Secured Debt Documents as though it were not a Secured Party hereunder or a party to the other Secured Debt Documents. With respect to the extensions of credit made by it under a Secured Debt Document, each Secured Debt Representative shall have the same rights and powers under this Agreement and the other Secured Debt Documents as any other Secured Party making a comparable, extension of credit to the Obligors and may exercise the same as though it were not a Secured Debt Representative

10.8 **Delay and Waiver**. No failure to exercise, no course of dealing with respect to the exercise of, and no delay in exercising, any right, power or remedy arising under this Agreement or any of the other Security Documents will impair any such right, power or remedy or operate as a waiver thereof. No single or partial exercise of any such right, power or remedy will preclude any other or future exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

10.9 **Notices**. Any communications, including notices and instructions, between the parties hereto or notices provided herein to be given shall be in writing and shall be given to the following addresses:

If to the Collateral Trustee:

Attention:
Fax:

If to the Borrower or any other Obligor:

Attention:
Fax:

If to the Administrative Agent:

Attention:
Fax:

If to the Indenture Trustee:

Attention:
Fax:

and if to any other Secured Debt Representative, to such address as it may specify by written notice to the parties named above.

Each notice hereunder will be in writing and may be personally served or sent by facsimile or courier service and will be deemed to have been given when delivered in Person or by courier service and signed for against receipt thereof, upon receipt of facsimile. Each Party may change its address for notice hereunder by giving written notice thereof to the other Parties as set forth in this Section 10.9.

Promptly following any Discharge of Priority Lien Obligation each Priority Debt Representative with respect to each applicable Series of Priority Lien Debt that is so discharged will provide written notice of such discharge to the Collateral Trustee and to each other Secured Debt Representative.

10.10 **Entire Agreement**. This Agreement states the complete agreement of the parties relating to the undertaking of the Collateral Trustee set forth herein and supersedes all oral negotiations and prior writings in respect of such undertaking and no implied duties or obligations shall be read into the Agreement against the Collateral Trustee.

10.11 **Compensation; Expenses**. The Obligors jointly and severally agree to pay, promptly upon demand:

(a) such compensation to the Collateral Trustee and its agents, co-agents and sub-agents as the Borrower and the Collateral Trustee may agree in writing from time to time;

(b) all reasonable costs and expenses incurred in the preparation, execution, delivery, filing, recordation, administration or enforcement of this Agreement or any other Security Document or any consent, amendment, waiver or other modification relating thereto;

(c) all reasonable fees, expenses and disbursements of legal counsel (on a solicitor and his own client full indemnity basis) and any auditors, accountants, consultants or appraisers or other professional advisors, experts and agents engaged by the Collateral Trustee or any Secured Debt Representative incurred in connection with the negotiation, preparation, closing, administration, performance or enforcement of this Agreement and the other Security Documents or any consent, amendment, waiver or other modification relating thereto and any other document or matter requested by the Borrower;

(d) all reasonable costs and expenses of creating, perfecting, releasing or enforcing the Collateral Trustee's security interests in the Collateral, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, and title insurance premiums;

(e) all other reasonable costs and expenses incurred by the Collateral Trustee or any Secured Debt Representative in connection with the negotiation, preparation and execution of the Security Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby or the exercise of rights or performance of obligations by the Collateral Trustee thereunder; and

(f) after the occurrence of any Secured Debt Default, all costs and expenses incurred by the Collateral Trustee or any Secured Debt Representative in connection with the preservation, collection, foreclosure or enforcement of the Collateral subject to the Security Documents or any interest, right, power or remedy of the Collateral Trustee or in connection with the collection or enforcement of any of the Secured Obligations or the proof, protection, administration or resolution of any claim based upon the Secured Obligations in any Insolvency Proceeding, including all fees and disbursements of legal counsel (on a solicitor and his own client full indemnity basis), accountants, auditors, consultants, appraisers and other professionals engaged by the Collateral Trustee or the Secured Debt Representatives.

None of the provisions contained in this Agreement or any supplement shall require the Collateral Trustee to expend or risk its own funds or otherwise incur financial liability in performing its duties or in the exercise of any of its rights or powers.

The agreements in this Section 10.11 will survive repayment of all other Secured Obligations, the termination of this Agreement and the removal or resignation of the Collateral Trustee.

10.12 Indemnity.

(a) In addition to and without limiting any other protection of the Collateral Trustee hereunder or otherwise by law, the Obligors jointly and severally agree to defend, indemnify, pay and hold harmless the Collateral Trustee, each Secured Debt Representative, each Secured Debtholder and each of their respective Affiliates and each and all of the directors, officers, partners, trustees, employees, attorneys and agents, and (in each case) their respective heirs, representatives, successors and assigns (each of the foregoing, an "**Indemnitee**") from and against any and all Indemnified Liabilities whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Collateral Trustee in connection with its acting as Collateral Trustee hereunder; provided, no Indemnitee will be entitled to indemnification hereunder with respect to any Indemnified Liability to the extent such Indemnified Liability is found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(b) All amounts due under this Section 10.12 will be payable upon demand.

(c) To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in Section 10.12(a) may be unenforceable in whole or in part because they are violative of any law or public policy, each of the Obligors will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(d) No Obligor will ever assert any claim against any Indemnitee, on any theory of liability, for any lost profits or special, indirect or consequential damages or (to the fullest extent a claim for punitive damages may lawfully be waived) any punitive damages arising out of, in connection with, or as a result of, this Agreement or any other Secured Debt Document or any agreement or instrument or transaction contemplated hereby or relating in any respect to any Indemnified Liability, and each of the Obligors hereby forever waives, releases and agrees not to sue upon any claim for any such lost profits or special, indirect, consequential or (to the fullest extent lawful) punitive damages, whether or not accrued and whether or not known or suspected to exist in its favour.

(e) The agreements in this Section 10.12 will survive repayment of all other Secured Obligations, the termination of this Agreement and the removal or resignation of the Collateral Trustee or the Secured Debt Representatives.

(f) To the extent the Collateral Trustee is not fully indemnified pursuant to Section 10.12(a), each Secured Debtholder shall, severally but not jointly based on its percentage share of the aggregate Secured Obligations at the applicable time,

indemnify the Collateral Trustee from and against any Indemnified Liabilities against them whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Collateral Trustee in connection with its acting as Collateral Trustee hereunder; provided that each Secured Debtholder shall not be required to indemnify the Collateral Trustee to the extent that such Indemnified Liability results from the gross negligence or wilful misconduct of the Collateral Trustee. Notwithstanding anything herein to the contrary, except as set forth in the preceding sentence, any indemnity contained in this Agreement shall apply regardless of the negligence (whether such negligence is sole, joint, concurrent, active or passive) other than gross negligence of any of the Collateral Trustee, and regardless of any pre-existing condition or defect or any form of strict liability. If and to the extent that the foregoing undertaking may be unenforceable for any reason, subject to the same limitations as set forth above, each Secured Debtholder hereby agrees to make the maximum contribution to the payment and satisfaction of each of the such Indemnified Liabilities which is permissible under applicable law.

10.13 **Severability**. If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

10.14 **Headings**. Section headings herein have been inserted for convenience of reference only, are not to be considered a part of this Agreement and will in no way modify or restrict any of the terms or provisions hereof.

10.15 **Obligations Secured**. All obligations of the Obligors set forth in or arising under this Agreement will be Secured Obligations and are secured by all Liens granted by the Security Documents.

10.16 **Governing Law**. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein; provided, however, that the rights, duties and obligations of the Indenture Trustee related to, or in respect of, the Notes and the holders thereof shall be governed by the Indenture.

10.17 **Consent to Jurisdiction**. All judicial proceedings brought against any Party arising out of or relating to this Agreement or any of the other Security Documents (or for recognition or enforcement of any judgment) may be brought in any court of competent jurisdiction in the Province of Alberta (or if such proceeding relates to a specific Security Document, such other jurisdiction as may be specifically set forth therein). By executing and delivering this Agreement, each Obligor, for itself and in connection with its properties, irrevocably:

(a) accepts generally and unconditionally the non-exclusive jurisdiction and venue of such courts;

(b) waives any defense of forum non conveniens;

(c) agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to such party at its address provided in accordance with Section 10.9;

(d) agrees that service as provided in clause (c) above is sufficient to confer personal jurisdiction over such party in any such proceeding in any such court and otherwise constitutes effective and binding service in every respect; and

(e) agrees each party hereto retains the right to serve process in any other manner permitted by law or to bring proceedings against any party in the courts of any other jurisdiction.

Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Collateral Trustee may otherwise have to bring any action or proceeding relating to this Agreement against any Obligor or its properties in the courts of any jurisdiction.

10.18 **Waiver of Jury Trial**. Each Party waives its rights to a jury trial of any claim or cause of action based upon or arising under this Agreement or any of the other Security Documents or any dealings between them relating to the subject matter of this Agreement or the intents and purposes of the other Security Documents. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement and the other Security Documents, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each Party acknowledges that this waiver is a material inducement to enter into a business relationship, that each Party has already relied on this waiver in entering into this Agreement, and that each Party will continue to rely on this waiver in its related future dealings. Each Party further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. This waiver is irrevocable, meaning that it may not be modified either orally or in writing (other than by a mutual written waiver specifically referring to this Section 10.18 and executed by each of the Parties), and this waiver will apply to any subsequent amendments, renewals, supplements or modifications of or to this Agreement or any of the other Security Documents or to any other documents or agreements relating thereto. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

10.19 **Counterparts**. This Agreement may be executed in any number of counterparts (including by facsimile or electronic transmission), each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument.

10.20 **Effectiveness**. This Agreement will become effective upon the execution of a counterpart hereof by each of the Parties and receipt by each Party of written notification of such execution and written or telephonic authorization of delivery thereof.

10.21 **Additional Obligors**. The Borrower will cause each of their Subsidiaries that becomes an Obligor or is required by any Secured Debt Document to become a party to this Agreement to become a party to this Agreement, for all purposes of this Agreement, by causing such Subsidiary to execute and deliver to the Parties a Collateral Trust Joinder, whereupon such Subsidiary will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof. The Borrower agrees to provide each Secured Debt Representative with a copy of each Collateral Trust Joinder executed and delivered pursuant to this Section.

10.22 **Continuing Nature of this Agreement**. This Agreement, including the subordination provisions hereof, will be reinstated if at any time any payment or distribution in respect of any of the Priority Lien Obligations is rescinded or must otherwise be returned in an Insolvency Proceeding or otherwise by any of the Priority Lien Secured Parties or any representative of any such Party (whether by demand, settlement, litigation or otherwise). In the event that all or any part of a payment or distribution made with respect to the Priority Lien Obligations is recovered from any of the Priority Lien Secured Parties in an Insolvency Proceeding or otherwise (and whether by demand, settlement, litigation or otherwise), any payment or distribution received by any of the Parity Lien Secured Parties with respect to the Parity Lien Obligations from the proceeds of any Collateral at any time after the date of the payment or distribution that is so recovered, whether pursuant to a right of subrogation or otherwise, will be deemed to have been received by the Parity Lien Secured Parties in trust as property for the Priority Lien Secured Parties and the Parity Lien Secured Parties will forthwith deliver such payment or distribution to the Collateral Trustee, for the benefit of the Priority Lien Secured Parties, for application to the Priority Lien Obligations until such Priority Lien Obligations have been paid in full in cash and all commitments in respect of Priority Lien Obligations have been terminated.

10.23 **Insolvency**. This Agreement will be applicable both before and after the commencement of any Insolvency Proceeding by or against any Obligor. The relative rights, as provided for in this Agreement, will continue after the commencement of any such Insolvency Proceeding on the same basis as prior to the date of the commencement of any such case, as provided in this Agreement.

10.24 **Rights and Immunities of Secured Debt Representatives**. The Administrative Agent will be entitled to all of the rights, protections, immunities and indemnities set forth in the Credit Agreement, the Indenture Trustee will be entitled to all of the rights, protections, immunities and indemnities set forth in the Indenture and any future Secured Debt Representative will be entitled to all of the rights, protections, immunities and indemnities set forth in the credit agreement, indenture or other agreement governing the applicable Secured Debt with respect to which such Person will act as representative, in each case as if specifically set forth herein. In no event will any Secured Debt Representative be liable for any act or omission on the part of the Obligors or the Collateral Trustee hereunder.

[The remainder of this page has intentionally been left blank]

IN WITNESS WHEREOF, the Parties have caused this Collateral Trust and Intercreditor Agreement to be executed by their respective officers or representatives as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA,
as Collateral Trustee

By: _____
Name: Kemi Atawo
Title: Corporate Trust Officer

By: _____
Name: Mohanie Shivprasad
Title: Associate Trust Officer

CANADIAN IMPERIAL BANK OF COMMERCE,
as Administrative Agent

Per: _____
Name: Lon Sokalski
Title: AUTHORIZED SIGNATORY
Canadian Imperial Bank of Commerce

Per: _____
Name: Joan MacGillivray
Title: AUTHORIZED SIGNATORY
Canadian Imperial Bank of Commerce

COMPUTERSHARE TRUST COMPANY OF CANADA
AND COMPUTERSHARE TRUST COMPANY, NA,
collectively, as Indenture Trustee

Per: _____
Name: Kemi Atawo
Title: Corporate Trust Officer

Per: _____
Name: Mohanie Shivprasad
Title: Associate Trust Officer

THE CASH STORE FINANCIAL SERVICES INC., as Borrower and Issuer

By: _____
Name:
Title:

By: _____
Name:
Title:

7252331 CANADA INC., as Initial Guarantor

By: _____
Name:
Title:

By: _____
Name:
Title:

THE CASH STORE INC., as Initial Guarantor

By: _____
Name:
Title:

By: _____
Name:
Title:

TCS CASH STORE INC., as Initial Guarantor

By: _____
Name:
Title:

By: _____
Name:
Title:

INSTALOANS INC., as Initial Guarantor

By: _____
Name:
Title:

By: _____
Name:
Title:

5515433 MANITOBA INC., as Initial Guarantor

By: _____
Name:
Title:

By: _____
Name:
Title:

THE CASH STORE FINANCIAL LIMITED, as Initial Guarantor

By: _____
Gordon J. Reykdal
Director

In the presence of:

_____
Name of Witness: Nancy Bland
Address: 17, 26323 TWP Rd 532A
Spruce Grove, AB
T7X 4M1

THE CASH STORE LIMITED, as Initial Guarantor

By: _____
Gordon J. Reykdal
Director

In the presence of:

_____
Name of Witness: Nancy Bland
Address: 17, 26323 TWP RD 532A
Spruce Grove, AB
T7X 4M1

CSF INSURANCE SERVICES LIMITED, as Initial Guarantor

By: _____
Gordon J. Reykdal
Director

In the presence of:

_____
Name of Witness: Nancy Bland
Address: 17, 26323 TWP RD 532A
Spruce Grove, AB
T7X 4M1

EXHIBIT A

TO THE COLLATERAL TRUST AND INTERCREDITOR AGREEMENT

FORM OF COLLATERAL TRUST JOINDER

The undersigned, [•], a [•], hereby agrees to become party as **[an Obligor] [a Parity Debt Representative] [a Priority Debt Representative] [a Lender Hedge Provider] [a Non-Lender Hedge Provider]** under the Collateral Trust and Intercreditor Agreement dated as of January [•], 2012 among The Cash Store Financial Services Inc., the Initial Guarantors party thereto, Canadian Imperial Bank of Commerce, as Administrative Agent, Computershare Trust Company of Canada and Computershare Trust Company, NA, collectively as Indenture Trustee, and Computershare Trust Company of Canada, as Collateral Trustee, as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, for all purposes thereof on the terms set forth therein, and to be bound by the terms of said Collateral Trust and Intercreditor Agreement as fully as if the undersigned had executed and delivered said Collateral Trust and Intercreditor Agreement as of the date thereof.

The provisions of Article 10 of said Collateral Trust and Intercreditor Agreement will apply with like effect to this Joinder.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Joinder as of [•], 20[•].

[•]

By:
Name:
Title:

EXHIBIT B

TO THE COLLATERAL TRUST AND INTERCREDITOR AGREEMENT

JURISDICTIONS, CHIEF EXECUTIVE OFFICE AND TRADE NAMES OF OBLIGORS

Name of Obligor	Jurisdictions where business is carried on	Location of Chief Executive Office	Trade Names

This is Exhibit "C" referred to in the Affidavit of **PATRICIA WAKELIN** sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

DICKINSON WRIGHT LLP

199 BAY STREET, SUITE 2200
P.O. BOX 447, COMMERCE COURT POSTAL STATION
TORONTO, ON CANADA M5L 1G4
TELEPHONE: (416) 777-0101
FACSIMILE: (416) 865-1398
http://www.dickinsonwright.com

MICHAEL A. WEINCZOK
MWeinczok@dickinsonwright.com
(416) 777-4026

April 25, 2014

FTI CONSULTING CANADA INC.
in its capacity as CCAA Monitor of
The Cash Store Financial Services Inc.
and each of the CCAA Applicants
79 Wellington Street West
Suite 2012, P.O. Box 104
Toronto, ON M4K 1G8
Attention: Greg Watson

Re: In the Matter of The Cash Store Financial Services Inc., et al.; Court File No. CV-14-10518-00CL

Dear Sir:

As you are aware, we represent Computershare Trust Company of Canada ("**CS Canada**") and Computershare Trust Company, N.A. ("**CS US**", and collectively the "**Indenture Trustee**") in their capacities as Indenture Trustee under the January 31, 2012 $132.5 million Senior Secured Note Indenture (the "**Note Indenture**"), and CS Canada in its capacity as Collateral Trustee under the January 31, 2012 Collateral Trust and Intercreditor Agreement (the "**CTIA**") in the above-referenced CCAA proceedings.

Given our clients' status as trustee with respect to of virtually all of the pre-filing secured debt in these proceedings under a rather complex credit structure, including the Note Indenture which contains a "no action clause" (in section 6.06), our clients are critical players in this process. As such, we confirm our clients' request to be included in the protective provisions for professional fees in paragraphs 42 and 44 of the Amended and Restated Initial Order of April 15, 2014 (the "**Initial Order**"). We further confirm that over the past several days we have discussed our clients' interest in obtaining such fee protection with you and your counsel, as well as counsel for the Debtors, for Coliseum and for the Ad Hoc Committee of Noteholders.

For the purpose of considering our clients' request, your counsel has asked us to describe the role which our clients intend to play. The short answer is that our clients are intent on providing effective participation in a non-duplicative and cost-effective manner on behalf of all stakeholders by and for whom they are appointed as trustee, including, *inter alia*, those Noteholders who are unrepresented.

With respect to the Note Indenture, we would note that while the holders of a majority of Notes may direct the Indenture Trustee's exercise of powers (section 6.05), no such direction has been received. Even if a direction were received, it would be subject to the terms of the Collateral Documents, including the CTIA, and the Indenture Trustee would retain the right to refuse to follow such direction should it conflict with law or the Note Indenture or be unduly prejudicial to the rights of any other Noteholder or where it could involve personal liability on the part of the Indenture Trustee.

The Note Indenture is governed by New York law (section 13.06). The US Federal *Trust Indenture Act of 1939*, as amended, and New York common law further govern the Indenture Trustee's obligations under the Note Indenture by imposing a "prudent man" standard of care in assessing post-insolvency Indenture Trustee conduct. Although an Indenture Trustee is not charged with guaranteeing any particular result in a post-default scenario, these obligations include representation of the interests of the entire noteholder class. This obligation is also reflected in section 7.01 of the Note Indenture which provides that where an Event of Default is continuing "the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs".

On the issue of reimbursement of the Indenture Trustee's fees and expenses, the Note Indenture provides, *inter alia*, for a joint and several indemnity by the Debtors, a Lien senior to the Notes on all money or property held or collected by the Indenture Trustee or Collateral Trustee (other than money or property held in trust), and provides that post-Event of Default compensation and expenses are "intended to constitute expenses of administration under any Bankruptcy Law" (section 7.06). Given these provisions, paragraphs 42 and 44 of the Initial Order, to the extent they do not afford professional fee protection to our clients, but afford professional fee protection to certain participants in the CCAA proceedings who rank below our clients in the waterfall, are discriminatory and deprive the Indenture Trustee of its contractual right to adequate compensation and indemnity.

With respect to CTIA, the Collateral Trustee is the registered holder of all Security held by the Secured Parties, both senior and junior, and has ongoing responsibilities in regard to the Collateral which it owes to all such parties (section 3.1). Under the intercreditor provisions, certain rights are preserved for the junior Noteholders including certain participation, adequate protection, plan confirmation and voting rights (sections 2.4 and 10.2) and purchase rights regarding the Senior Liens (section 2.6).

In regard to the Collateral Trustee's Indemnified Liabilities (which include "costs...expenses or disbursements of any kind..."), the CTIA provides for a joint and several indemnity by the Debtors (section 10.12(a)). To the extent that the Collateral Trustee is not fully indemnified by section 10.12(a), section 10.12(f) provides that "each Secured Debtholder [senior and junior]

shall, severally but not jointly based on its percentage share of the aggregate Secured Obligations at the applicable time, indemnify the Collateral Trustee...". Protection for the Collateral Trustee in paragraphs 42 and 44 of the Initial Order would provide a mechanism for implementation of such right.

We are prepared to review with you, at your earliest convenience, the rules that would be applicable to our clients' effective participation, the whole, of course, being subject to Court approval.

Yours very truly,

Dickinson Wright LLP

Mike A. Weinczok

MAW/cfw
Enclosure .
cc: James Gage, McCarthy Tétrault
cc: Heather Meredith, McCarthy Tétrault
cc: David Preger
cc: Tina N. Moss

TORONTO 33542-4 938717

This is Exhibit "D" referred to in the Affidavit of PATRICIA WAKELIN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

Luisa A. Salerno

From:	Luisa A. Salerno on behalf of Lisa S. Corne
Sent:	Friday, May 09, 2014 3:10 PM
To:	boneill@goodmans.ca
Cc:	Lisa S. Corne; Moss, Tina N. (Perkins Coie); Michael A. Weinczok; David P. Preger; rchadwick@goodmans.ca; mwasserman@osler.com; JGAGE@MCCARTHY.CA; hmeredith@mccarthy.ca; Virginie.Gauthier@nortonrosefulbright.com
Subject:	TCS

Dear Mr. O'Neill,

WITH PREJUDICE

Thank you for the information provided regarding the members of the ad hoc committee. As we previously explained, Computershare also requires the percentage holdings of each Holder, and with respect to any Holder whose position is held through a participant, the name of that participant. It will be necessary for Computershare to reconcile this information and satisfy itself that any Direction is properly executed by the requisite percentage of Holders prior to accepting a Direction from the majority Holders.

Thank you as well for offering Computershare a role as Agent of the new DIP Lender. In view of the potential for conflicts, and other circumstances surrounding this case, Computershare declines to act as Agent for the DIP Lender.

In terms of Computershare's participation in the CCAA proceedings, Computershare is prepared to proceed on the following terms:

1. The reasonable fees of Computershare, its Canadian and US legal counsel (together, "Counsel"), and, if necessary, financial advisor, will be paid by the Applicants, on a monthly basis, and secured by the Administrative Charge.
2. The fees of Computershare's Counsel and financial advisor to be paid by the Applicants and secured by the Administrative Charge will not exceed $300,000.00, without the consent of the ad hoc committee, CRO, and Monitor, or further order of the Court. Computershare's hope is that it will not need to retain a financial advisor and instead will be able to rely upon information and analyses provided by Houlihan.
3. Computershare reserves the unilateral right to take any and all steps it deems necessary under the Trust Indenture and the Collateral Trust Agreement ("CTA").

4. In addition to including language in the Initial Order providing that Computershare will have no liability for following a Direction provided by the majority Holders, Computershare requires an indemnity from the majority Holders, in accordance with section 7.01 (e) of the Trust Indenture, indemnifying it against any and all liability it may incur as a result of taking or not taking any action in compliance with any Direction provided by the majority Holders. Any Direction provided by the majority Holders is subject to review and acceptance by Computershare.

5. Computershare and its Counsel will have reasonable access to Houlihan and Goodmans for information they may require.

6. Computershare reserves all of its rights and remedies under the Indenture and CTA to recover its reasonable compensation, fees and disbursements, including those of its Counsel, advisors and agents.

Lisa S. Corne Partner
199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4
Phone 416-646-4608
Fax 416-865-1398
Email LCorne@dickinsonwright.com
Profile | V-Card

DICKINSON WRIGHT LLP
MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

This is Exhibit "E" referred to in the Affidavit of **PATRICIA WAKELIN** sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

Luisa A. Salerno

From: Lisa S. Corne
Sent: Thursday, May 15, 2014 6:14 PM
To: Lisa S. Corne; boneill@goodmans.ca
Cc: Chadwick, Robert (rchadwick@goodmans.ca)
Subject: RE: TCS
Attachments: TORONTO-#943423-v1-Form_of_Direction_to_Trustee_-_May_15__2014_doc.DOC

Brendan,

We have set out below, in bold, the information requested in your email of May 13, 2014:

1. Please provide the rationale for the $300K number below? This seems well in excess of what is needed to protect an Indenture Trustee that will have received a direction advising it not to take any action and protections in the form of court and/or note holder indemnity. **The amount is based on work already undertaken by the trustee and its Canadian and US counsel (which is well in excess of the $50,000 cap you suggested), plus an estimate of work going forward. In this regard, it should be noted that the CCAA case has been ongoing for close to 1 month and has involved numerous motions with extensive material, multiple court appearances, the trustee has not received any form of direction or sufficient details regarding the specific holdings represented by the ad hoc committee, and the trustee has no substantive information regarding the unrepresented note holders.**

2. Please explain the need for a financial advisor? This seems unnecessary for a trustee who will have received a direction advising it not to take any action and protections in the form of court and/or bondholder indemnity. As mentioned, contact between Computershare and Houlihan would be acceptable (as neither bill on an hourly basis). **As noted previously, appropriate access to Houlihan by Computershare and its advisors will obviate the need for an independent financial advisor.**

3. How does the reservation in #3 relate to the direction to be received to take no action? Per the provisions of the Indenture, our clients expect that the Trustee will follow the no action direction to be provided. **The trustee must abide by the terms of the trust indenture, including reviewing and assessing the appropriateness of a note holder direction , and satisfactory indemnity, once received. In this regard, please see s. 6.05 of the trust indenture.**

4. Please provide Computershare's preferred form of Direction. We would like to deliver ASAP and assume that you have a preferred form. **As you are aware, the substantive form of a direction is determined by the specific facts at hand and the note holders' specific instructions. To assist, attached please find the general format of a direction.**

5. How does #6 relate to the cap? **The cap relates solely to fees paid by Cash Store and secured by the Administrative Charge under the CCAA Order. It does not impact in any way Computershare's rights under the indenture and CTA to recover its reasonable compensation, fees and disbursements, including those of its counsel, advisors and agents.**

6. As requested in our email dated May 7th, please also provide the names of any other bondholders that have contacted the Indenture Trustee as requested, and if none have, please advise. **The indenture trustee has not been contacted by any other note holders.**

Computershare repeats its request that you identify the principal amount of the notes held by each holder for whom you act, and with respect to any holder whose position is held by a participant, the name of that

participant. Computershare is entitled to and requires such information. As well, with respect to your assertion that the Notes not represented by ad hoc committee are held by Cash Store "insiders", please provide us with evidence to support that claim.

INSTRUCTION TO TRUSTEE FROM HOLDERS OF NOTES

TO: **COMPUTESHARE TRUST COMPANY, N.A. AND COMPUTERSHARE TRUST COMPANY OF CANADA (THE "TRUSTEE")**

RE:

DATE:

Reference is made to

The undersigned beneficial holders of Notes hereby instruct the Trustee to consent to the:

and to take any and all such further actions, and execute and deliver all agreements, instruments and documents relating to, contemplated by, necessary and/or desirable in connection with the foregoing as requested by Goodmans in writing (the "**Instruction**").

The undersigned hereby indemnify the Trustee against any loss, liability, cost or expense in relation to the exercise or failure to exercise any of its rights or powers under the Indenture..... [NOTE TO DRAFT: track language in the Indenture]

This Instruction may be signed in one or more counterparts, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. This Instruction may be delivered by facsimile or scanned electronic copy and such facsimiles or scanned electronic copies shall be treated as originals for all purposes. Notwithstanding the date of execution or transmission of any counterpart, each counterpart and this Instruction shall be deemed to be effective as of the date first written above.

Rest of page left intentionally blank

SIGNED this _____ day of May, 2014.

Principal Amount of 11 1/2% Notes held as of May 12, 2014: $_____(1)

Beneficial Noteholder's Name: _____(2)

_____ _____(3)

(Authorized Signature(s) for Beneficial Noteholder) (Authorized Signature(s) for Beneficial Noteholder)

Authorized Signatory's Name(s) & Phone No.: _____(4)

Beneficial Noteholder's Address: _____(5)

[NOTE TO DRAFT: Each beneficial holder signs this Instruction as well as a form of Statutory Declaration as set out below – see Section 1.04 of the Indenture]

STATUTORY DECLARATION

11 ½% Senior Secured Notes Due 2017

I, •, of • (the "**Noteholder**") do solemnly declare as follows:

(1) that, as of May 12, 2014 (and as at the date hereof), the Noteholder has beneficial ownership in respect of $• principal amount of 11 ½% Senior Secured Notes Due 2017 (the "**Notes**");

(2) that this Statutory Declaration may be relied upon by Computershare Trust Company, N.A. and Computershare Trust Company of Canada in its capacity as trustee (the "**Trustee**") under that certain trust indenture dated as of January 31, 2012 (the "**Indenture**"), in respect of the Notes for purposes of taking instructions from the Noteholders; and

(3) that the Trustee may rely on this Statutory Declaration for the purposes specified in the foregoing (2) until such time as the Noteholder shall advise the Trustee in writing that they may no longer rely on this Statutory Declaration.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if it was made under oath.

DECLARED BEFORE ME at)
_____, this)
(City, Province/State))
_____ day of _____, 2014)
)
)
_____)
Commissioner of Oaths/Notary Public)

_____
Signature

_____
Address of Noteholder

_____
Telephone Number

_____
Fax Number:

TAB 3

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c, C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

AFFIDAVIT OF EVAN D. FLASCHEN

I, EVAN D. FLASCHEN, of the State of Connecticut, United States of America, SWEAR OATH AND SAY THAT:

1. I am a partner of the law firm of Bracewell & Giuliani LLP with offices at 225 Asylum Street Suite 2600, Hartford, Connecticut 06103, as well as New York, Washington DC, Houston, Dallas, Austin, San Antonio, Seattle, London and Dubai. I am the chair of the firm's Financial Restructuring Group.

2. I received my Bachelor of Arts from Wesleyan University in 1979 and my Juris Doctor from the University of Connecticut School of Law in 1982, where I have also been an Adjunct Professor of Law for almost 20 years.

3. I am an attorney licensed to practice law in the States of New York and Connecticut and am a Registered Foreign Lawyer of The Law Society of England and Wales. I am admitted to the U.S. Courts of Appeals for the 1st, 2nd, 3rd, 5th and 11th Circuits and the U.S. District Courts for the Southern District of New York and the District of Connecticut.

4. I am an elected fellow of the American Law Institute, the American College of Bankruptcy, the American College of Investment Counsel, the International Insolvency Institute (Founding Member) and the James W. Cooper Fellowship. I am also a member of various national and international bar and professional associations.

5. Annexed hereto as Exhibit A is a copy of my curriculum vitae.

6. By way of summary, my practice includes representation of many of the world's largest institutional investors, private investment funds, indenture trustees, borrowers and financial services companies in out-of-court restructurings and in-court proceedings, both domestically and internationally. I have represented noteholder and bondholder groups, first and second lien lender groups, official creditors' committees, indenture trustees, DIP lenders or bank agents and syndicates in numerous high profile U.S., Canadian and international restructurings, including Centro Properties (Australia), Washington Mutual Bank, Abitibi (Canada), LSP Energy, TOUSA, Cemex S.A.B. (Mexico and Spain), Plum Point Energy, Tembec Industries (Canada), Australian Educational Trust, Parmalat (Italy), DURA Automotive, AT&T Canada, Scotia Pacific, Elders Limited (Australia), Pliant, Teleglobe (Canada), Remy International, Sons of Gwalia (Australia), NRG Energy, Liberty Electric, Griffin Coal (Australia), Heckler & Koch (Germany), Asia Global Crossing (Bermuda), Loewen Group (Canada and U.S.), Telex Chile, Pasminco (Australia), Metromedia Fiber, Chilesat, Henry Walker Eltin (Australia), and Western Metals (Australia).

7. I have extensive experience in bankruptcy litigation, including fraudulent transfer litigation, make-whole premium disputes, indenture interpretation litigation, international challenges and Chapter 15 disputes. I have also served as lead counsel, special international counsel or "foreign representative" for a number of multinational Chapter 11 debtors, including

Owens Corning, Polaroid, Nextel International, Comdisco, Montgomery Ward, Singer Sewing and Exodus Communications.

8. I have published over 100 articles and book chapters in several different countries on workout, restructuring and international insolvency topics. I have also been a lecturer or panelist at more than 150 restructuring, insolvency and distressed debt programs around the world, and my legal writings have been cited by courts around the country and in more than 100 scholarly journals and treatises globally, including Australia, Brazil, Canada, Cayman Islands, China, England, Germany, Israel, Japan, Malaysia, The Netherlands, New Zealand, Norway, Peru, Slovenia, South Africa, Spain and Sweden.

9. I have reviewed the indenture (the "CSFS Indenture") dated as of January 31, 2012 by and among The Cash Store Financial Services Inc. (the "Company"), as Issuer, Computershare Trust Company, N.A., as U.S. Trustee, and Computershare Trust Company of Canada, as Canadian Trustee and Collateral Agent, and the Guarantors as defined therein, pursuant to which the Company issued $132,500,000 of its 11½% Senior Secured Notes Due 2017 (the "Notes"). I have also reviewed the Collateral Trust and Intercreditor Agreement dated January 31, 2012, pursuant to which Computershare Trust Company of Canada acts as Collateral Trustee.

10. The purpose of this Affidavit is to provide expert testimony to this Court regarding a U.S. indenture trustee's post-default standard of care.

The U.S. federal Trust Indenture Act of 1939 (the "TIA") (*see* 15 U.S.C. § 77aaa, *et seq.*), as amended, governs public note issuances in the United States. Under the TIA, an indenture trustee must be appointed for each public note issuance that exceeds $10 million. 15 U.S.C. § 77ddd(a)(9). A true copy of the TIA is attached hereto as Exhibit B.

11. In the absence of a default, the indenture trustee's duties to noteholders (public noteholders are also often colloquially referred to as "bondholders") are essentially ministerial. Once a default has occurred and is continuing, however, an indenture trustee's standard of care rises to that of a "prudent person". The TIA specifically provides, in pertinent part, as follows:

> The indenture trustee shall exercise in case of default (as such term is defined in such indenture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

15 U.S.C. § 77ooo(d).

12. The CSFS Indenture expressly incorporates the TIA by reference (see Ex. B, Section 1.05), and specifically sets out the prudent person standard as well (*see id.*, Section 7.01(a)).

13. This standard calls for increased responsibilities and the exercise of discretion on the part of the indenture trustee, taking into account the facts and circumstances of the situation at hand. In the context of a liquidation or restructuring scenario, where an issuer may be unable to pay principal and interest in full, the role of the indenture trustee is to protect the rights of all of the noteholders, including to maximize their recoveries. Indeed, an indenture trustee's standing to participate in every aspect of a U.S. chapter 11 bankruptcy proceeding is codified, without qualification as to whether one or more noteholders is also represented by separate counsel:

> A party in interest, including...***any indenture trustee***, may raise and may appear and be heard on any issue in a case under this chapter.

11 U.S.C. § 1109(b) (emphasis added), a true copy of which is attached hereto as Exhibit C. An indenture trustee also has the right to receive notice by mail of all significant matters during the

course of a pending bankruptcy proceeding. *See* Fed. Rule Bankr. Proc. 2002(f), a true copy of which is attached hereto as Exhibit D.

14. These provisions (and others) highlight the importance of an indenture trustee's role as a representative of the entire class of noteholders during such proceedings. Just earlier this week, for example, the United States Trustee for the District of Delaware appointed three indenture trustees to serve on the seven-member official committee of unsecured creditors in the Chapter 11 proceedings involving Energy Future Holdings, which is one of the largest Chapter 11 cases in history (the other four members were three trade creditors and the Pension Benefit Guaranty Corporation, *see,* Exhibit E, *In re Energy Future Holdings Corp.*, Case No. 14-10979, Dkt. No. 420 (Notice of Appointment of Committee of Unsecured Creditors) (Bankr. D. Del. May 13, 2014)).

15. The role of the indenture trustee is particularly critical in insolvency proceedings, for a number of reasons, the most significant of which is that it is cost-prohibitive and impractical for individual noteholders to engage their own counsel, so they look to the indenture trustee to protect their interests and maximize their recoveries. This is true even when there is an ad hoc group of noteholders that has engaged separate counsel ("Ad Hoc Group"), because such group only represents the interests of the individual members of the group, whereas the indenture trustee's role is to protect and maximize the interests of *all* noteholders.

16. An indenture trustee's role in insolvency proceedings can take many forms, depending upon the unique circumstances of the case. For example, an indenture trustee may need to consider whether it is in the best interests of noteholders to (i) seek appointment to a creditors' committee, (ii) serve on the official committee of unsecured creditors (as in the *Energy Future Holdings* case cited above), (iii) participate in Ad Hoc Groups, (iv) object to the terms of

debtor-in-possession financing, (v) object to any asset sale or plan of reorganization or liquidation, or the procedures and disclosures proposed in connection therewith, (vi) seek the segregation of asset sale proceeds, subject to any applicable liens and priorities held under the indenture and any related security agreement, (vii) seek to lift the automatic stay for the purpose of pursuing remedies under the indenture, (viii) seek adequate protection of the indenture trustee's and noteholders' interest in any property of the debtor, and/or (ix) challenge the claims of other creditors. An indenture trustee must also determine how frequently and to what extent to provide public information to the noteholder class regarding the status of the proceedings and any material developments. An indenture trustee is also generally charged with the preparation and filing of a proof of claim for amounts due and owing under the indenture.

17. To properly carry out its duties under an indenture post-default, an indenture trustee requires, at a minimum, access to timely and accurate information regarding the company's capital structure, current financial situation, and its go forward business plan, where appropriate. The indenture trustee also requires and is generally permitted to retain its own professionals and is protected from liability when it relies in good faith upon any advice given by such professionals. *See, e.g., CSFS Indenture*, Section 7.02(b). To secure the issuer's obligation to indemnify the indenture trustee and to pay its fees and expenses, the indenture trustee is generally granted a charging lien under the indenture against all money or property held or collected by the indenture trustee. *See, e.g., id.*, Section 7.06.

18. In situations as here where there is also an Ad Hoc Group represented by separate counsel, if such group represents a majority in amount of the notes outstanding, such noteholders can (but are not required to) provide certain types of directions to the indenture trustee, subject to certain requirements such as indemnity satisfactory to the indenture trustee. The indemnification

requirement is particularly important in order to help insulate the indenture trustee from claims that might be asserted against the indenture trustee by noteholders who are not participating in the Ad Hoc Group. However, even when a direction with satisfactory indemnification has been provided, the indenture trustee is still entitled to refuse any direction that conflicts with law or the indenture, may result in undue prejudice to minority noteholders, or involve the indenture trustee in personal liability. *See, e.g., id.*, Section 6.05. When considering whether to accept a direction from majority holders in a post-default scenario, an indenture trustee should also consider whether the directing holders are free of any potential conflicts of interest as a result of their cross-holdings of other levels of debt issued by the now insolvent issuer of the notes represented by the indenture trustee.

19. In any event, it is my understanding that no directions have been given to the indenture trustee here, whether by the members of the Ad Hoc Group or otherwise, therefore emphasizing the need for the indenture trustee here to take into account the interests of all noteholders.

20. Finally, based on my professional experience in many situations where I have represented an Ad Hoc Group, I have found most indenture trustees to be constructive participants in the process at modest cost, and willing to work together with our group to achieve the best results not only for our group but also for all noteholders while minimizing duplication of efforts. Indeed, the active participation of an indenture trustee can be very helpful in reminding the members of the group that, because other noteholders are not individually represented by counsel, their interests should also be taken into consideration. Therefore, particularly in situations where my Ad Hoc Group either does not represent a majority in amount

of the noteholders and/or is unwilling to provide a direction and indemnification, I very much prefer the participation of the indenture trustee as a critical member of the noteholder team.

21. I swear this affidavit in support of the within motion for the relief set out therein and for no other or improper purpose.

SWORN BEFORE ME at the City of Glastonbury, State of CT, in the CT on May 16, 2014

A Commissioner for Taking Oaths.

EVAN D. FLASCHEN

JORGE TERRONT
NOTARY PUBLIC
CONNECTICUT
COMMISSION EXPIRES DECEMBER 31, 2018

Resources:

Trust Indenture Act of 1939, as amended (codified at 15 U.S.C. §§ 77aaa-77bbbb)

United States Bankruptcy Code, 11 U.S.C. §§ 101-1532

Federal Rules of Bankruptcy Procedure (cited as "Fed. Rule. Bankr. Proc.")

Landau and Peluso, Corporate Trust Administration and Management (Sixth Edition) (2008)

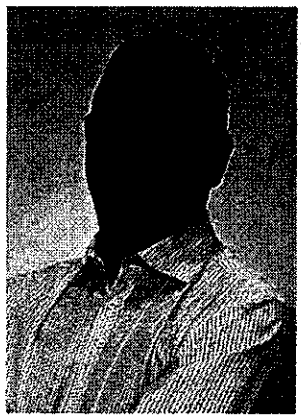
Schwarcz and Sergi, *"Bond Defaults and the Dilemma of the Indenture Trustee"*, 59 Ala L. Rev. 1037 (2007-2008)

This is Exhibit "A" referred to in the Affidavit of EVAN FLASCHEN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

JORGE TERRONT
NOTARY PUBLIC
COMMISSION EXPIRES DECEMBER 31, 2018
CONNECTICUT

BRACEWELL & GIULIANI



EVAN D. FLASCHEN
Partner
Connecticut
T: +1.860.256.8537
F: +1.860.760.6310
E: evan.flaschen@bgllp.com

EXPERIENCE

Evan Flaschen is the chair of the Financial Restructuring Group at Bracewell & Giuliani LLP, described by Legal 500 2012 as a "*phenomenally committed team*" that practices as a "*seamless national firm*" with "*vast international experience*." His practice includes representation of many of the world's largest institutional investors, private investment funds, indenture trustees, borrowers and financial services companies in out-of-court restructurings and in-court proceedings, both domestically and internationally. Evan is described by the International Who's Who of Insolvency & Restructuring Lawyers 2013 as "*an absolute star*" who is one of the 10 "*Most Highly Regarded*" insolvency lawyers in the world; by Legal 500 2013 as an "*undoubted star in the area*"; by Chambers Global 2013 as a practitioner "*who serves clients extraordinarily well*"; and in Global Turnaround July 2012 as being *"for the last fifteen years the 'go-to' guy for American distressed investors interested in Australia."* Various other international surveys have described Evan as "*one of the globe's leading practitioners*," "*articulate, focused, commercial, affable and highly respected*," "*feared and revered*," and "*singled out for 'his 'superb knowledge, fine commercial sense, unending energy and sharp focus.'*" A nationwide survey of industry participants and peers recently honored Evan as one of the ten "*Most Admired Bankruptcy Attorneys in the United States*."

Evan has represented noteholder and bondholder groups, first and second lien lender groups, official creditors' committees, indenture trustees, DIP lenders or bank agents and syndicates in numerous other high profile U.S. and international restructurings, including Centro Properties (Australia), Washington Mutual Bank, LSP Energy, TOUSA, Cemex S.A.B. (Mexico and Spain), Plum Point Energy, Australian Educational Trust, Parmalat (Italy), Abitibi (Canada), DURA Automotive, Tembec Industries (Canada), Scotia Pacific, Elders Limited (Australia), Pliant, Remy International, Sons of Gwalia (Australia), NRG Energy, Liberty Electric, Griffin Coal (Australia), AT&T Canada, Heckler & Koch (Germany), Asia Global Crossing (Bermuda), Loewen Group (US and Canada), Telex Chile, Pasminco (Australia), Metromedia Fiber, Teleglobe (Canada), Chilesat, Henry Walker Eltin (Australia), and Western Metals (Australia).

Evan has particular experience in bankruptcy litigation, including fraudulent transfer litigation, make-whole premium disputes, indenture interpretation litigation, international jurisdictional

challenges and Chapter 15 disputes. Evan has also served as lead counsel, special international counsel or "foreign representative" (a role he pioneered) for a number of multinational Chapter 11 debtors, including Owens Corning, Polaroid, Nextel International, Comdisco, Montgomery Ward, Singer Sewing and Exodus Communications. Evan has appeared in courts in four continents and, in his spare time, he serves as blogger-in-chief and poet laureate for Bracewell's restructuring blog, http://basis-points.com.

PUBLICATIONS AND SPEECHES

Evan has published over 100 articles and book chapters in several different countries on workout, restructuring and international insolvency topics. He has also been a lecturer or panelist at more than 150 restructuring, insolvency and distressed debt programs around the world and his legal writings have been cited by courts around the country and in more than 100 scholarly journals and treatises globally, including Australia, Brazil, Canada, Cayman Islands, China, England, Germany, Israel, Japan, Malaysia, The Netherlands, New Zealand, Norway, Peru, Slovenia, South Africa, Spain and Sweden. They have also been required reading in a number of graduate school courses.

EDUCATION

J.D., University of Connecticut School of Law, 1982
B.A., Wesleyan University, 1979

NOTEWORTHY

Chambers Global: The World's Leading Lawyers for Business, Bankruptcy/Restructuring, 2011-2014
Chambers USA: America's Leading Lawyers for Business, Bankruptcy/Restructuring, 2007-2013
US Legal 500, Corporate Restructuring, Leading Lawyer, 2008-2013
Named three times on *Euromoney's* list of the Top 25 "Best of the Best" insolvency lawyers in the world
Selected six times as one of 20 lawyers on the *Who's Who Legal* list of the "Most Highly Regarded" insolvency lawyers in the world
Named to Legal 500's list of the top 10 "Leading Lawyers" in the US for corporate restructurings
Selected in a survey by *Law360* of restructuring industry participants and practice group heads at the 100 largest law firms as one of the ten "Most Admired Bankruptcy Attorneys" in the US
Named three times as the only US restructuring lawyer on Asialaw Legal's list of "Leading Lawyers"
Chair or member of advisory groups concerning the creation or updating of insolvency legislation for Canada, Estonia, Latvia, Lithuania and Russia
University of Connecticut School of Law Distinguished Alumni Award, 2012
Adjunct Professor, University of Connecticut School of Law, teaching an annual seminar entitled "International and Comparative Corporate Insolvency Law," since 1994 (http://evanflaschen.net)
Lecturer, INSOL International Global Insolvency Practice Course

Former President of the University of Connecticut School of Law Foundation Board of Trustees
Trustee of the Greater Hartford Legal Aid Foundation
Delegate, United Nations Commission on International Trade Law (UNCITRAL)
Numerous awards and citations for pro bono work
"Turnaround of the Year (Large Market)," "Distressed M&A Deal of the Year (Upper Middle Market)" and "Real Estate Deal of the Year ($500 Million and Over)" for work with international investors and lenders on Centro Properties restructuring (M&A Advisor 2012)
"Global Restructuring of the Year" and "European Restructuring Deal of the Year" awards for work with bondholders on Parmalat restructuring (International Financing Review 2005)

AFFILIATIONS

Elected fellow of American College of Bankruptcy, American College of Investment Counsel, American Law Institute, International Insolvency Institute (Founding Member) and James W. Cooper Fellowship

BAR ADMISSIONS

New York
Connecticut
Registered Foreign Lawyer, The Law Society of England and Wales

COURT ADMISSIONS

U.S. Courts of Appeals for the 1st, 2nd, 3rd, 5th and 11th Circuits
U.S. District Court for the Southern District of New York
U.S. District Court Connecticut

This is Exhibit "B" referred to in the Affidavit of EVAN FLASCHEN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

JOSÉE TERRONT
NOTARY PUBLIC
MY COMMISSION EXPIRES DECEMBER 31, 2015
CONNECTICUT

15 USC CHAPTER 2A, SUBCHAPTER III: TRUST INDENTURES

From Title 15—COMMERCE AND TRADE
CHAPTER 2A—SECURITIES AND TRUST INDENTURES

SUBCHAPTER III—TRUST INDENTURES

§77aaa. Short title

This subchapter may be cited as the "Trust Indenture Act of 1939."

(May 27, 1933, ch. 38, title III, §301, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149.)

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–550, title IV, §401, Nov. 15, 1990, 104 Stat. 2721, provided that: "This title [amending sections 77ccc to 77eee, 77iii to 77rrr, and 77vvv of this title] may be cited as the 'Trust Indenture Reform Act of 1990'."

§77bbb. Necessity for regulation

(a) Practices adversely affecting public

Upon the basis of facts disclosed by the reports of the Securities and Exchange Commission made to the Congress pursuant to section 78jj of this title and otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public, are adversely affected—

(1) when the obligor fails to provide a trustee to protect and enforce the rights and to represent the interests of such investors, notwithstanding the fact that (A) individual action by such investors for the purpose of protecting and enforcing their rights is rendered impracticable by reason of the disproportionate expense of taking such action, and (B) concerted action by such investors in their common interest through representatives of their own selection is impeded by reason of the wide dispersion of such investors through many States, and by reason of the fact that information as to the names and addresses of such investors generally is not available to such investors;

(2) when the trustee does not have adequate rights and powers, or adequate duties and responsibilities, in connection with matters relating to the protection and enforcement of the rights of such investors; when, notwithstanding the obstacles to concerted action by such investors, and the general and reasonable assumption by such investors that the trustee is under an affirmative duty to take action for the protection and enforcement of their rights, trust indentures (A) generally provide that the trustee shall be under no duty to take any such action, even in the event of default, unless it receives notice of default, demand for action, and indemnity, from the holders of substantial percentages of the securities outstanding thereunder, and (B) generally relieve the trustee from liability even for its own negligent action or failure to act;

(3) when the trustee does not have resources commensurate with its responsibilities, or has any relationship to or connection with the obligor or any underwriter of any securities of the obligor, or holds, beneficially or otherwise, any interest in the obligor or any such underwriter, which relationship, connection, or interest involves a material conflict with the interests of such investors;

(4) when the obligor is not obligated to furnish to the trustee under the indenture and to such investors adequate current information as to its financial condition, and as to the performance of its obligations with respect to the securities outstanding under such indenture; or when the communication of such information to such investors is impeded by the fact that information as to the names and addresses of such investors generally is not available to the trustee and to such investors;

(5) when the indenture contains provisions which are misleading or deceptive, or when full and fair disclosure is not made to prospective investors of the effect of important indenture provisions; or

(6) when, by reason of the fact that trust indentures are commonly prepared by the obligor or underwriter in advance of the public offering of the securities to be issued thereunder, such investors are unable to participate in the preparation thereof, and, by reason of their lack of understanding of the situation, such investors would in

any event be unable to procure the correction of the defects enumerated in this subsection.

(b) Declaration of policy

Practices of the character above enumerated have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is hereby declared to be the policy of this subchapter, in accordance with which policy all the provisions of this subchapter shall be interpreted, to meet the problems and eliminate the practices, enumerated in this section, connected with such public offerings.

(May 27, 1933, ch. 38, title III, §302, as added Aug. 3, 1939, ch. 411, 53 Stat. 1150.)

REFERENCES IN TEXT

Section 78jj of this title, referred to in subsec. (a), was omitted from the Code.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ccc. Definitions

When used in this subchapter, unless the context otherwise requires—

(1) Any term defined in section 2 of the Securities Act of 1933 [15 U.S.C. 77b], and not otherwise defined in this section shall have the meaning assigned to such term in such section 2 [15 U.S.C. 77b].

(2) The terms "sale", "sell", "offer to sell", "offer for sale", and "offer" shall include all transactions included in such terms as provided in paragraph (3) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that an offer or sale of a certificate of interest or participation shall be deemed an offer or sale of the security or securities in which such certificate evidences an interest or participation if and only if such certificate gives the holder thereof the right to convert the same into such security or securities.

(3) The term "prospectus" shall have the meaning assigned to such term in paragraph (10) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that in the case of securities which are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], such term shall not include any communication (A) if it is proved that prior to or at the same time with such communication a written statement if any required by section 77fff of this title was sent or given to the persons to whom the communication was made, or (B) if such communication states from whom such statement may be obtained (if such statement is required by rules or regulations under paragraphs (1) or (2) of subsection (b) of section 77fff of this title) and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(4) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(5) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(7) The term "indenture" means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which securities are outstanding or are to be issued, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder.

(8) The term "application" or "application for qualification" means the application provided for in section 77eee of this title or section 77ggg of this title, and includes any amendment thereto and any report, document, or memorandum accompanying such application or incorporated therein by reference.

(9) The term "indenture to be qualified" means (A) the indenture under which there has been or is to be issued a security in respect of which a particular registration statement has been filed, or (B) the indenture in respect of which a particular application has been filed.

(10) The term "indenture trustee" means each trustee under the indenture to be qualified, and each successor trustee.

(11) The term "indenture security" means any security issued or issuable under the indenture to be qualified.

(12) The term "obligor", when used with respect to any such indenture security, means every person (including a guarantor) who is liable thereon, and, if such security is a certificate of interest or participation, such term means also every person (including a guarantor) who is liable upon the security or securities in which such certificate evidences an interest or participation; but such term shall not include the trustee under an indenture under which certificates of interest or participation, equipment trust certificates, or like securities are outstanding.

(13) The term "paying agent", when used with respect to any such indenture security, means any person authorized by an obligor thereon (A) to pay the principal of or interest on such security on behalf of such obligor, or (B) if such security is a certificate of interest or participation, equipment trust certificate, or like security, to make such payment on behalf of the trustee.

(14) The term "State" means any State of the United States.

(15) The term "Commission" means the Securities and Exchange Commission.

(16) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person; and a specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(17) The terms "Securities Act of 1933" [15 U.S.C. 77a et seq.] and "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.] shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter.

(18) The term "Bankruptcy Act" means the Bankruptcy Act or title 11.

(May 27, 1933, ch. 38, title III, §303, as added Aug. 3, 1939, ch. 411, 53 Stat. 1151; amended Aug. 10, 1954, ch. 667, title III, §301, 68 Stat. 686; Pub. L. 95–598, title III, §307, Nov. 6, 1978, 92 Stat. 2674; Pub. L. 100–181, title V, §§501, 502, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 101–550, title IV, §402, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 105–353, title III, §301(e)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §986(b)(1), July 21, 2010, 124 Stat. 1935.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in pars. (3) and (17), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in par. (17), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Bankruptcy Act, referred to in par. (18), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

AMENDMENTS

2010—Par. (17). Pub. L. 111–203 added par. (17) and struck out former par. (17) which read as follows: "The terms 'Securities Act of 1933,' 'Securities Exchange Act of 1934,' and 'Public Utility Holding Company Act of 1935' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter."

1998—Pars. (2), (3). Pub. L. 105–353 substituted "section 2(a)" for "section 2".

1990—Par. (8). Pub. L. 101–550 inserted "section 77eee of this title or" after "provided for in".

1987—Par. (4). Pub. L. 100–181, §501, substituted "undertaking" for "undertakng".

Par. (12). Pub. L. 100–181, §502, inserted "(including a guarantor)" after "person" in two places.

1978—Par. (18). Pub. L. 95–598 substituted "Bankruptcy Act or title 11" for "Act entitled 'An Act to

establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended, whether amended prior to or after August 3, 1939".

1954—Pars. (1) to (4). Act Aug. 10, 1954, made formal changes in order to conform to amendments made by act Aug. 10, 1954, to sections 77b, 77e, and 77j of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ddd. Exempted securities and transactions

(a) Specific securities exempted

The provisions of this subchapter shall not apply to any of the following securities:

(1) any security other than (A) a note, bond, debenture, or evidence of indebtedness, whether or not secured, or (B) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (C) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate;

(2) any certificate of interest or participation in two or more securities having substantially different rights and privileges, or a temporary certificate for any such certificate;

(3) Repealed. Pub. L. 101–550, title IV, §403(1)(A), Nov. 15, 1990, 104 Stat. 2722.

(4)(A) any security exempted from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] by paragraphs (2) to (8), (11), or (13) of section 3(a) thereof [15 U.S.C. 77c(a)];

(B) any security exempted from the provisions of the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], by paragraph (2) of subsection 3(a) thereof, as amended by section 401 of the Employment Security Amendments of 1970 [15 U.S.C. 77c(a)(2)];

(5) any security issued under a mortgage indenture as to which a contract of insurance under the National Housing Act [12 U.S.C. 1701 et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2) of such Act [15 U.S.C. §77c(a)(2)];

(6) any note, bond, debenture, or evidence of indebtedness issued or guaranteed by a foreign government or by a subdivision, department, municipality, agency, or instrumentality thereof;

(7) any guarantee of any security which is exempted by this subsection;

(8) any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 [15 U.S.C. 77c(b)] limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations;

(9) any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $10,000,000, or such lesser amount as the Commission may establish by its rules and regulations, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $10,000,000 aggregate principal amount of securities of the same issuer, or such lesser amount as the Commission may establish by its rules and regulations; or

(10) any security issued under a mortgage or trust deed indenture as to which a contract of insurance under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] is in effect; and any such security shall be

deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2), as amended, of the Securities Act of 1933 [15 U.S.C. 77c(a)(2)].

In computing the aggregate principal amount of securities to which the exemptions provided by paragraphs (8) and (9) of this subsection may be applied, securities to which the provisions of sections 77eee and 77fff of this title would not have applied, irrespective of the provisions of those paragraphs, shall be disregarded.

(b) Application of sections 77eee and 77fff

The provisions of sections 77eee and 77fff of this title shall not apply (1) to any of the transactions exempted from the provisions of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] by section 4 thereof [15 U.S.C. 77d] or (2) to any transaction which would be so exempted but for the last sentence of paragraph (11) of section 2(a) of such Act [15 U.S.C. 77b(a)].

(c) Securities issued or proposed to be issued under indenture

The Commission shall, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more provisions of this subchapter any security issued or proposed to be issued under any indenture under which, at the time such application is filed, securities referred to in paragraph (3) of subsection (a) of this section are outstanding or on January 1, 1959, such securities were outstanding, if and to the extent that the Commission finds that compliance with such provision or provisions, through the execution of a supplemental indenture or otherwise—

(1) would require, by reason of the provisions of such indenture, or the provisions of any other indenture or agreement made prior to August 3, 1939, or the provisions of any applicable law, the consent of the holders of securities outstanding under any such indenture or agreement; or

(2) would impose an undue burden on this issuer, having due regard to the public interest and the interests of investors.

(d) Exemptions in public interest

The Commission may, by rules or regulations upon its own motion, or by order on application by an interested person, exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions, from any one or more of the provisions of this subchapter, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by this subchapter. The Commission shall by rules and regulations determine the procedures under which an exemption under this subsection shall be granted, and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.

(e) Securities issued by small investment company

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title III, §304, as added Aug. 3, 1939, ch. 411, 53 Stat. 1153; amended Aug. 10, 1954, ch. 667, title III, §302, 68 Stat. 687; Pub. L. 85–699, title III, §307(b), Aug. 21, 1958, 72 Stat. 694; Pub. L. 86–760, Sept. 13, 1960, 74 Stat. 902; Pub. L. 89–754, title V, §504(b), Nov. 3, 1966, 80 Stat. 1278; Pub. L. 91–567, §6(c), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 96–477, title III, §302, Oct. 21, 1980, 94 Stat. 2291; Pub. L. 101–550, title IV, §403, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 104–290, title V, §508(e), Oct. 11, 1996, 110 Stat. 3448; Pub. L. 105–353, title III, §301(e)(2), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111–203, title IX, §985(c)(1), July 21, 2010, 124 Stat. 1934.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(4), (5), and (10), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The National Housing Act, referred to in subsec. (a)(5), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified generally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Provisions of that act relating to insurance of mortgages are contained in section 1707 et seq. of Title 12. Title XI of the National Housing Act, is classified to subchapter IX–B (§1749aaa et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see References in Text note set out under section 1701

of Title 12 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (e), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "section 2(a) of such Act" for "section 2 of such Act".

1998—Subsec. (a)(4)(A). Pub. L. 105–353 substituted "(13) of section" for "(14) of subsection".

1996—Subsec. (a)(4)(A). Pub. L. 104–290 substituted "(11), or (14)" for "or (11)".

1990—Subsec. (a)(3). Pub. L. 101–550, §403(1)(A), struck out par. (3) which read as follows: "any security which, prior to or within six months after August 3, 1939, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer subsequent to such six months;".

Subsec. (a)(4)(A). Pub. L. 101–550, §403(1)(B), struck out ", as heretofore amended," after "1933".

Subsec. (d). Pub. L. 101–550, §403(2), added subsec. (d) and struck out former subsec. (d) which read as follows: "The Commission may, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more of the provisions of this subchapter any security issued or proposed to be issued by a person organized and existing under the laws of a foreign government or a political subdivision thereof, if and to the extent that the Commission finds that compliance with such provision or provisions is not necessary in the public interest and for the protection of investors."

1980—Subsec. (a)(8). Pub. L. 96–477, §302(a), substituted "an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations" for "more than $250,000 aggregate principal amount of any securities of the same issuer".

Subsec. (a)(9). Pub. L. 96–477, §302(b), substituted "$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations" for "$1,000,000 or less", "more than $10,000,000" for "more than $1,000,000", and inserted ", or such lesser amount as the Commission may establish by its rules and regulations" after "same issuer".

1970—Subsec. (a)(4). Pub. L. 91–567 designated existing provisions as cl. (A) and added cl. (B).

1966—Subsec. (a)(10). Pub. L. 89–754 added par. (10).

1960—Subsec. (c). Pub. L. 86–760 inserted "or on January 1, 1959, such securities were outstanding".

1958—Subsec. (e). Pub. L. 85–699 added subsec. (e).

1954—Subsec. (b). Act Aug. 10, 1954, struck out "as heretofore amended,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–567 applicable with respect to securities sold after Jan. 1, 1970, see section 6(d) of Pub. L. 91–567, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77eee. Securities required to be registered under Securities Act

(a) Information required

Subject to the provisions of section 77ddd of this title, a registration statement relating to a security shall include the following information and documents, as though such inclusion were required by the provisions of section 7 of the Securities Act of 1933 [15 U.S.C. 77g]—

(1) such information and documents as the Commission may by rules and regulations prescribe in order to enable the Commission to determine whether any person designated to act as trustee under the indenture under which such security has been or is to be issued is eligible to act as such under subsection (a) of section 77jjj of this title; and

(2) an analysis of any provisions of such indenture with respect to (A) the definition of what shall constitute a default under such indenture, and the withholding of notice to the indenture security holders of any such default, (B) the authentication and delivery of the indenture securities and the application of the proceeds thereof, (C) the release or the release and substitution of any property subject to the lien of the indenture, (D) the satisfaction and discharge of the indenture, and (E) the evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture.

The information and documents required by paragraph (1) of this subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such registration statement, which part shall be signed by such person. Such part of the registration statement shall be deemed to be a document filed pursuant to this subchapter, and the provisions of sections 11, 12, 17, and 24 of the Securities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x] shall not apply to statements therein or omissions therefrom.

(b) Refusal of registration statement

(1) Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue an order prior to the effective date of registration refusing to permit such a registration statement to become effective, if it finds that—

(A) the security to which such registration statement relates has not been or is not to be issued under an indenture; or

(B) any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title;

but no such order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If and when the Commission deems that the objections on which such order was based have been met, the Commission shall enter an order rescinding such refusal order, and the registration shall become effective at the time provided in section 8(a) of the Securities Act of 1933 [15 U.S.C. 77h(a)], or upon the date of such rescission, whichever shall be the later.

(2) In the case of securities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], which securities are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, the Commission shall not be required to issue an order pursuant to paragraph (1) of subsection (b) of this section for failure to designate a trustee eligible to act under subsection (a) of section 77jjj of this title if, in accordance with such rules and regulations as may be prescribed by the Commission, the issuer of such securities files an application for the purpose of determining such trustee's eligibility under subsection (a) of section 77jjj of this title. The Commission shall issue an order prior to the effective date of such application refusing to permit the application to become effective, if it finds that any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title, but no order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If after notice and opportunity for hearing the Commission issues an order under this provision, the obligor shall within 5 calendar days appoint a trustee meeting the requirements of subsection (a) of section 77jjj of this title. No such appointment shall be effective and such refusal order shall not be rescinded by the Commission until a person eligible to act as trustee under subsection (a) of section 77jjj of this title has been appointed. If no order is issued, an application filed pursuant to this paragraph shall be effective the tenth day after filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of information provided therein, the public interest, and the protection of investors.

(c) Information required in prospectus

A prospectus relating to any such security shall include to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, as though such

inclusion were required by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], a written statement containing the analysis set forth in the registration statement, of any indenture provisions with respect to the matters specified in paragraph (2) of subsection (a) of this section, together with a supplementary analysis, prepared by the Commission, of such provisions and of the effect thereof, if, in the opinion of the Commission, the inclusion of such supplementary analysis is necessary or appropriate in the public interest or for the protection of investors, and the Commission so declares by order after notice and, if demanded by the issuer, opportunity for hearing thereon. Such order shall be entered prior to the effective date of registration, except that if opportunity for hearing thereon is demanded by the issuer such order shall be entered within a reasonable time after such opportunity for hearing.

(d) Applicability of other statutory provisions

The provisions of sections 11, 12, 17, and 24 of the Securities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x], and the provisions of sections 77www and 77yyy of this title, shall not apply to statements in or omissions from any analysis required under the provisions of this section or section 77fff or 77ggg of this title.

(May 27, 1933, ch. 38, title III, §305, as added Aug. 3, 1939, ch. 411, 53 Stat. 1154; amended Aug. 10, 1954, ch. 667, title III, §303, 68 Stat. 687; Pub. L. 101–550, title IV, §404, Nov. 15, 1990, 104 Stat. 2722.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b)(2), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–550, §404(1), struck out "or has a conflicting interest as defined in subsection (b) of section 77jjj of this title" after "section 77jjj of this title".

Subsec. (b). Pub. L. 101–550, §404(2), designated existing provisions as par. (1), substituted "Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue" for "The Commission shall issue", redesignated former par. (1) as subpar. (a) and inserted "or" at end, struck out former par. (2) which authorized Commission to prohibit a registration statement from taking effect if it finds that such indenture does not conform to requirements of sections 77jjj to 77rrr of this title, redesignated former par. (3) as subpar. (B) and struck out "or has any conflicting interest as defined in subsection (b) of section 77jjj of this title" after "section 77jjj of this title", and added par. (2).

1954—Subsec. (c). Act Aug. 10, 1954, authorized the Commission to prescribe by rule and regulation the extent to which summaries of indenture provisions must be contained in prospectuses.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77fff. Securities not registered under Securities Act

(a) Prohibitions affecting unregistered securities not issued under indenture

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification is effective as to such indenture, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) Prohibitions affecting unregistered securities issued under indenture

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], but

which has been or is to be issued under an indenture as to which an application for qualification is effective, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any such security, unless such prospectus, to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, includes or is accompanied by a written statement that contains the information specified in subsection (c) of section 77eee of this title; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless, to the extent the Commission may prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors, accompanied or preceded by a written statement that contains the information specified in subsection (c) of section 77eee of this title.

(c) Necessity of issuance under indenture; application for qualification

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification has been filed as to such indenture, or while the application is the subject of a refusal order or stop order or (prior to qualification) any public proceeding or examination under section 77ggg(c) of this title.

(May 27, 1933, ch. 38, title III, §306, as added Aug. 3, 1939, ch. 411, 53 Stat. 1155; amended Aug. 10, 1954, ch. 667, title III, §304, 68 Stat. 687.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) to (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1954—Subsec. (b). Act Aug. 10, 1954, authorized the Commission to prescribe the extent to which summaries of indenture provisions must be used in the sale of specified types of securities.

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ggg. Qualification of indentures covering securities not required to be registered

(a) Application; information required; availability of information to public

In the case of any security which is not required to be registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which subsection (a) of section 77fff of this title is applicable notwithstanding the provisions of section 77ddd of this title, an application for qualification of the indenture under which such security has been or is to be issued shall be filed with the Commission by the issuer of such security. Each such application shall be in such form, and shall be signed in such manner, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. Each such application shall include the information and documents required by subsection (a) of section 77eee of this title. The information and documents required by paragraph (1) of such subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such application, which part shall be signed by such person. Each such application shall also include such of the other information and documents which would be required to be filed

in order to register such indenture security under the Securities Act of 1933 as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An application may be withdrawn by the applicant at any time prior to the effective date thereof. Subject to the provisions of section 77uuu of this title, the information and documents contained in or filed with any application shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant therefor at such reasonable charge as the Commission may prescribe.

(b) Filing of application

The filing with the Commission of an application, or of an amendment to an application, shall be deemed to have taken place upon the receipt thereof by the Commission.

(c) Applicability of other statutory provisions

The provisions of section 77h of this title and the provisions of subsection (b) of section 77eee of this title shall apply with respect to every such application, as though such application were a registration statement filed pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(May 27, 1933, ch. 38, title III, §307, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156; amended Pub. L. 107–123, §7, Jan. 16, 2002, 115 Stat. 2397.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) and (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–123 substituted "Commission" for "Commission, but, in the case of an application, only if it is accompanied or preceded by payment to the Commission of a filing fee in the amount of $100, such payment to be made in cash or by United States postal money order or certified or bank check, or in such other medium of payment as the Commission may authorize by rule and regulation".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77hhh. Integration of procedure with Securities Act and other Acts

(a) Incorporation by reference

The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall authorize the filing of any information or documents required to be filed with the Commission under this subchapter, or under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by incorporating by reference any information or documents on file with the Commission under this subchapter or under any such Act.

(b) Consolidation of applications, reports, etc.

The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall provide for the consolidation of applications, reports, and proceedings under this subchapter with registration statements, applications, reports, and proceedings under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(May 27, 1933, ch. 38, title III, §308, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156; amended Pub. L. 111–203, title IX, §986(b)(2), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) and (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (a) and (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" in subsecs. (a) and (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77iii. Effective time of qualification

(a) Effective time of registration or application for qualification of indenture

The indenture under which a security has been or is to be issued shall be deemed to have been qualified under this subchapter—

(1) when registration becomes effective as to such security; or

(2) when an application for the qualification of such indenture becomes effective, pursuant to section 77ggg of this title.

(b) Stop orders after effective time of qualification

After qualification has become effective as to the indenture under which a security has been or is to be issued, no stop order shall be issued pursuant to section 77h(d) of this title, suspending the effectiveness of the registration statement relating to such security or of the application for qualification of such indenture, except on one or more of the grounds specified in section 77h of this title, or the failure of the issuer to file an application as provided for by section 77eee(b)(2) of this title.

(c) Effect of subsequent rule or regulation on qualification

The making, amendment, or rescission of a rule, regulation, or order under the provisions of this subchapter (except to the extent authorized by subsection (a) of section 77nnn of this title with respect to rules and regulations prescribed pursuant to such subsection) shall not affect the qualification, form, or interpretation of any indenture as to which qualification became effective prior to the making, amendment, or rescission of such rule, regulation, or order.

(d) Liability of trustee under qualified indenture

No trustee under an indenture which has been qualified under this subchapter shall be subject to any liability because of any failure of such indenture to comply with any of the provisions of this subchapter, or any rule, regulation, or order thereunder.

(e) Power of Commission to conduct investigation

Nothing in this subchapter shall be construed as empowering the Commission to conduct an investigation or other proceeding for the purpose of determining whether the provisions of an indenture which has been qualified under this subchapter are being complied with, or to enforce such provisions.

(May 27, 1933, ch. 38, title III, §309, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157; amended Pub. L. 101–550, title IV, §405, Nov. 15, 1990, 104 Stat. 2723.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–550 inserted before period at end ", or the failure of the issuer to file an application as provided for by section 77eee(b)(2) of this title".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77jjj. Eligibility and disqualification of trustee

(a) Persons eligible for appointment as trustee

(1) There shall at all times be one or more trustees under every indenture qualified or to be qualified pursuant to this subchapter, at least one of whom shall at all times be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia or a corporation or other person permitted to act as trustee by the Commission (referred to in this subchapter as the institutional trustee), which (A) is authorized under such laws to exercise corporate trust powers, and (B) is subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority. The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this subchapter, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government.

(2) Such institution [1] trustee shall have at all times a combined capital and surplus of a specified minimum amount, which shall not be less than $150,000. If such institutional trustee publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, the indenture may provide that, for the purposes of this paragraph, the combined capital and surplus of such trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(3) If the indenture to be qualified requires or permits the appointment of one or more co-trustees in addition to such institutional trustee, the rights, powers, duties, and obligations conferred or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by such institutional trustee, or such institutional trustee and such co-trustees jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, such institutional trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties, and obligations shall be exercised and performed by such co-trustees.

(4) In the case of certificates of interest or participation, the indenture trustee or trustees shall have the legal power to exercise all of the rights, powers, and privileges of a holder of the security or securities in which such certificates evidence an interest or participation.

(5) No obligor upon the indenture securities or person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as trustee upon such indenture securities.

(b) Disqualification of trustee

If any indenture trustee has or shall acquire any conflicting interest as hereinafter defined—

(i) then, within 90 days after ascertaining that it has such conflicting interest, and if the default (as defined in the next sentence) to which such conflicting interest relates has not been cured or duly waived or otherwise eliminated before the end of such 90-day period, such trustee shall either eliminate such conflicting interest or, except as otherwise provided below in this subsection, resign, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture;

(ii) in the event that such trustee shall fail to comply with the provisions of clause (i) of this subsection, such trustee shall, within 10 days after the expiration of such 90-day period, transmit notice of such failure to the indenture security holders in the manner and to the extent provided in subsection (c) of section 77mmm of this title; and

(iii) subject to the provisions of subsection (e) of section 77ooo of this title, unless such trustee's duty to resign is stayed as provided below in this subsection, any security holder who has been a bona fide holder of indenture

securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such trustee, and the appointment of a successor, if such trustee fails, after written request thereof by such holder to comply with the provisions of clause (i) of this subsection.

For the purposes of this subsection, an indenture trustee shall be deemed to have a conflicting interest if the indenture securities are in default (as such term is defined in such indenture, but exclusive of any period of grace or requirement of notice) and—

(1) such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of an obligor upon the indenture securities are outstanding or is trustee for more than one outstanding series of securities, as hereafter defined, under a single indenture of an obligor, unless—

(A) the indenture securities are collateral trust notes under which the only collateral consists of securities issued under such other indenture,

(B) such other indenture is a collateral trust indenture under which the only collateral consists of indenture securities, or

(C) such obligor has no substantial unmortgaged assets and is engaged primarily in the business of owning, or of owning and developing and/or operating, real estate, and the indenture to be qualified and such other indenture are secured by wholly separate and distinct parcels of real estate:

Provided, That the indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to contain a provision excluding from the operation of this paragraph other series under such indenture, and any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such an obligor are outstanding, if—

(i) the indenture to be qualified and any such other indenture or indentures (and all series of securities issuable thereunder) are wholly unsecured and rank equally, and such other indenture or indentures (and such series) are specifically described in the indenture to be qualified or are thereafter qualified under this subchapter, unless the Commission shall have found and declared by order pursuant to subsection (b) of section 77eee of this title or subsection (c) of section 77ggg of this title that differences exist between the provisions of the indenture (or such series) to be qualified and the provisions of such other indenture or indentures (or such series) which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures, or

(ii) the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture to be qualified and such other indenture or under more than one outstanding series under a single indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures or with respect to such series;

(2) such trustee or any of its directors or executive officers is an underwriter for an obligor upon the indenture securities;

(3) such trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with an underwriter for an obligor upon the indenture securities;

(4) such trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of an obligor upon the indenture securities, or of an underwriter (other than the trustee itself) for such an obligor who is currently engaged in the business of underwriting, except that—

(A) one individual may be a director and/or an executive officer of the trustee and a director and/or an executive officer of such obligor, but may not be at the same time an executive officer of both the trustee and of such obligor,

(B) if and so long as the number of directors of the trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the trustee and a director of such obligor, and

(C) such trustee may be designated by any such obligor or by any underwriter for any such obligor, to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10 per centum or more of the voting securities of such trustee is beneficially owned either by an obligor upon the indenture securities or by any director, partner or executive officer thereof, or 20 per centum or more of such voting securities is beneficially owned, collectively by any two or more of such persons; or 10 per centum or more of the voting securities of such trustee is beneficially owned either by an underwriter for any such obligor or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more

such persons;

(6) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined—

(A) 5 per centum or more of the voting securities, or 10 per centum or more of any other class of security, of an obligor upon the indenture securities, not including indentures [2] securities and securities issued under any other indenture under which such trustee is also trustee, or

(B) 10 per centum or more of any class of security of an underwriter for any such obligor;

(7) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 5 per centum or more of the voting securities of any person who, to the knowledge of the trustee, owns 10 per centum or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, an obligor upon the indenture securities;

(8) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 10 per centum or more of any class of security of any person who, to the knowledge of the trustee, owns 50 per centum or more of the voting securities of an obligor upon the indenture securities;

(9) such trustee owns, on the date of default upon the indenture securities (as such term is defined in such indenture but exclusive of any period of grace or requirement of notice) or any anniversary of such default while such default upon the indenture securities remains outstanding, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25 per centum or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under paragraph (6), (7), or (8) of this subsection. As to any such securities of which the indenture trustee acquired ownership through becoming executor, administrator or testamentary trustee of an estate which include them, the provisions of the preceding sentence shall not apply for a period of not more than 2 years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25 per centum of such voting securities or 25 per centum of any such class of security. Promptly after the dates of any such default upon the indenture securities and annually in each succeeding year that the indenture securities remain in default the trustee shall make a check of its holding of such securities in any of the above-mentioned capacities as of such dates. If the obligor upon the indenture securities fails to make payment in full of principal or interest under such indenture when and as the same becomes due and payable, and such failure continues for 30 days thereafter, the trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such 30-day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of paragraphs (6), (7), and (8) of this subsection; or

(10) except under the circumstances described in paragraphs [3] (1), (3), (4), (5) or (6) of section 77kkk(b) of this title, the trustee shall be or shall become a creditor of the obligor.

For purposes of paragraph (1) of this subsection, and of section 77ppp(a) of this title, the term "series of securities" or "series" means a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the indenture trustee, or otherwise take action pursuant to a vote of such holders, separately from holders of another such series: *Provided*, That "series of securities" or "series" shall not include any series of securities issuable under an indenture if all such series rank equally and are wholly unsecured.

The specification of percentages in paragraphs (5) to (9), inclusive, of this subsection shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subsection.

For the purposes of paragraphs (6), (7), (8), and (9) of this subsection—

(A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness;

(B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty days or more, and shall not have been cured; and

(C) the indenture trustee shall not be deemed the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for any obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent or depositary, or in any similar representative capacity.

For the purposes of this subsection, the term "underwriter" when used with reference to an obligor upon the indenture securities means every person who, within one year prior to the time as of which the determination is made, was an underwriter of any security of such obligor outstanding at the time of the determination.

Except in the case of a default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the indenture trustee shall not be required to resign as provided by this subsection if such trustee shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that—

(i) the default under the indenture may be cured or waived during a reasonable period and under the procedures described in such application, and

(ii) a stay of the trustee's duty to resign will not be inconsistent with the interests of holders of the indenture securities. The filing of such an application shall automatically stay the performance of the duty to resign until the Commission orders otherwise.

Any resignation of an indenture trustee shall become effective only upon the appointment of a successor trustee and such successor's acceptance of such an appointment.

(May 27, 1933, ch. 38, title III, §310, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157; amended Pub. L. 101–550, title IV, §§406–408, Nov. 15, 1990, 104 Stat. 2723, 2724; Pub. L. 111–203, title IX, §986(b)(3), July 21, 2010, 124 Stat. 1936.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 struck out subsec. (c). Text read as follows: "The Public Utility Holding Company Act of 1935 shall not be held to establish or authorize the establishment of any standards regarding the eligibility and qualifications of any trustee or prospective trustee under an indenture to be qualified under this subchapter, or regarding the provisions to be included in any such indenture with respect to the eligibility and qualifications of the trustee thereunder, other than those established by the provisions of this section."

1990—Subsec. (a)(1). Pub. L. 101–550, §406(1)–(4), substituted "There shall" for "The indenture to be qualified shall require that there shall", and "under every indenture qualified or to be qualified pursuant to this subchapter" for "thereunder", inserted "or a corporation or other person permitted to act as trustee by the Commission" before "(referred to", and inserted at end "The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this subchapter, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government."

Subsec. (a)(2). Pub. L. 101–550, §406(5), which directed the substitution of "Such institution" for "The indenture to be qualified shall require that such institution", was executed by making the substitution for "The indenture to be qualified shall require that such institutional", as the probable intent of Congress.

Subsec. (a)(3). Pub. L. 101–550, §406(6), struck out "such indenture shall provide that" before "the rights".

Subsec. (a)(4). Pub. L. 101–550, §406(7), (8), struck out "the indenture to be qualified shall require that" before "the indenture" and inserted "shall" after "trustee or trustees".

Subsec. (a)(5). Pub. L. 101–550, §407, added par. (5).

Subsec. (b). Pub. L. 101–550, §408, amended subsec. (b) generally.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original. Probably should be "institutional".*

[2] *So in original. Probably should be "indenture".*

[3] *So in original. Probably should be "paragraph".*

§77kkk. Preferential collection of claims against obligor

(a) Trustee as creditor of obligor

Subject to the provisions of subsection (b) of this section, if the indenture trustee shall be, or shall become, a creditor, directly or indirectly, secured or unsecured, of an obligor upon the indenture securities, within three months prior to a default as defined in the last paragraph of this subsection, or subsequent to such a default, then, unless and until such default shall be cured, such trustee shall set apart and hold in a special account for the benefit of the trustee individually and the indenture security holders—

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such three months' period and valid as against such obligor and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this subsection, or from the exercise of any right of setoff which the trustee could have exercised if a petition in bankruptcy had been filed by or against such obligor upon the date of such default; and

(2) all property received in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such three months' period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of such obligor and its other creditors in such property or such proceeds.

Nothing herein contained shall affect the right of the indenture trustee—

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than such obligor) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such three months' period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such three months' period and such property was received as security therefor simultaneously with the creation thereof, and if the trustee shall sustain the burden of proving that at the time such property was so received the trustee had no reasonable cause to believe that a default as defined in the last paragraph of this subsection would occur within three months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C) of this subsection, against the release of any property held as security for such claim as provided in said paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C), and (D) of this subsection, property substituted after the beginning of such three months' period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any preexisting claim of the indenture trustee as such creditor, such claim shall have the same status as such preexisting claim.

If the trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the trustee and the indenture security holders in such manner that the trustee and the indenture security holders realize, as a result of payments from such special account and payments of

dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the trustee and the indenture security holders dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership, or proceeding for reorganization is pending shall have jurisdiction (i) to apportion between the indenture trustee and the indenture security holders, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the indenture trustee and the indenture security holders with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any indenture trustee who has resigned or been removed after the beginning of such three months' period shall be subject to the provisions of this subsection as though such resignation or removal had not occurred. Any indenture trustee who has resigned or been removed prior to the beginning of such three months' period shall be subject to the provisions of this subsection if and only if the following conditions exist—

(i) the receipt of property or reduction of claim which would have given rise to the obligation to account, if such indenture trustee had continued as trustee, occurred after the beginning of such three months' period; and

(ii) such receipt of property or reduction of claim occurred within three months after such resignation or removal.

As used in this subsection, the term "default" means any failure to make payment in full of principal or interest, when and as the same becomes due and payable, under any indenture which has been qualified under this subchapter, and under which the indenture trustee is trustee and the person of whom the indenture trustee is directly or indirectly a creditor is an obligor; and the term "indenture security holder" means all holders of securities outstanding under any such indenture under which any such default exists. In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months.

(b) Exclusion of creditor relationship arising from specified classes

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions excluding from the operation of subsection (a) of this section a creditor relationship arising from—

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the indenture trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by the indenture, for the purpose of preserving the property subject to the lien of the indenture or of discharging tax liens or other prior liens or encumbrances on the trust estate, if notice of such advance and of the circumstances surrounding the making thereof is given to the indenture security holders, at the time and in the manner provided in the indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in the indenture;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of section 25(a) [1] of the Federal Reserve Act, as amended [12 U.S.C. 611 et seq.], which is directly or indirectly a creditor of an obligor upon the indenture securities; or

(6) the acquisition, ownership, acceptance, or negotiation of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper as defined in the indenture.

(May 27, 1933, ch. 38, title III, §311, as added Aug. 3, 1939, ch. 411, 53 Stat. 1161; amended Pub. L. 101–550, title IV, §409, Nov. 15, 1990, 104 Stat. 2728; Pub. L. 111–203, title IX, §986(b)(4), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, as amended, referred to in subsec. (b)(5), which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 struck out subsec. (c) which related to issue or sale of securities by a registered holding company.

1990—Subsec. (a). Pub. L. 101–550, §409(1)–(4), struck out "the indenture to be qualified shall provide that" before "if" in first par., substituted "If" for "The indenture to be qualified shall provide that, if" in third par., substituted "three months" for "four months" and "three months' " for "four months' " wherever appearing, and inserted at end "In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months."

Subsec. (b). Pub. L. 101–550, §409(5), substituted "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "may".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *See References in Text note below.*

§77*lll*. Bondholders' lists

(a) Periodic filing of information by obligor with trustee

Each obligor upon the indenture securities shall furnish or cause to be furnished to the institutional trustee thereunder at stated intervals of not more than six months, and at such other times as such trustee may request in writing, all information in the possession or control of such obligor, or of any of its paying agents, as to the names and addresses of the indenture security holders, and requiring such trustee to preserve, in as current a form as is reasonably practicable, all such information so furnished to it or received by it in the capacity of paying agent.

(b) Access of information to security holders

Within five business days after the receipt by the institutional trustee of a written application by any three or more indenture security holders stating that the applicants desire to communicate with other indenture security holders with respect to their rights under such indenture or under the indenture securities, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned an indenture security for a period of at least six months preceding the date of such application, such institutional trustee shall, at its election, either—

(1) afford to such applicants access to all information so furnished to or received by such trustee; or

(2) inform such applicants as to the approximate number of indenture security holders according to the most recent information so furnished to or received by such trustee, and as to the approximate cost of mailing to such indenture security holders the form of proxy or other communication, if any, specified in such application.

If such trustee shall elect not to afford to such applicants access to such information, such trustee shall, upon the written request of such applicants, mail to all such indenture security holders copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to such trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five days after such tender, such trustee shall mail to such applicants, and file with the Commission together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of such

trustee, such mailing would be contrary to the best interests of the indenture security holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by such trustee or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, such trustee shall mail copies of such material to all such indenture security holders with reasonable promptness after the entry of such order and the renewal of such tender.

(c) Disclosure of information deemed not violative of any law

The disclosure of any such information as to the names and addresses of the indenture security holders in accordance with the provisions of this section, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or of any law hereafter enacted which does not specifically refer to this section, nor shall such trustee be held accountable by reason of mailing any material pursuant to a request made under subsection (b) of this section.

(May 27, 1933, ch. 38, title III, §312, as added Aug. 3, 1939, ch. 411, 53 Stat. 1164; amended Pub. L. 101–550, title IV, §410, Nov. 15, 1990, 104 Stat. 2728.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §410(1), (2), substituted "Each obligor" for "The indenture to be qualified shall contain provisions requiring each obligor" and "indenture securities shall" for "indenture securities to".

Subsec. (b). Pub. L. 101–550, §410(3), substituted "Within" for "The indenture to be qualified shall also contain provisions requiring that, within".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1; 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77mmm. Reports by indenture trustee

(a) Report to security holders; time; contents

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):—[1]

(1) any change to its eligibility and its qualifications under section 77jjj of this title;

(2) the creation of or any material change to a relationship specified in paragraph [2] (1) through (10) of section 77jjj(b) of this title;

(3) the character and amount of any advances made by it, as indenture trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, if such advances so remaining unpaid aggregate more than one-half of 1 per centum of the principal amount of the indenture securities outstanding on such date;

(4) any change to the amount, interest rate, and maturity date of all other indebtedness owning to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4), or (6) of subsection (b) of section 77kkk of this title;

(5) any change to the property and funds physically in its possession as indenture trustee on the date of such report;

(6) any release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) which it has not previously reported;

(7) any additional issue of indenture securities which it has not previously reported; and

(8) any action taken by it in the performance of its duties under the indenture which it has not previously

reported and which in its opinion materially affects the indenture securities or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with an indenture provision authorized by subsection (b) of section 77ooo of this title.

(b) Additional reports to security holders

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, within the times hereinafter specified, a brief report with respect to—

(1) the release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by paragraph (1) of subsection (d) of section 77nnn of this title, is less than 10 per centum of the principal amount of indenture securities outstanding at the time of such release, or such release and substitution, such report to be so transmitted within 90 days after such time; and

(2) the character and amount of any advances made by it as such since the date of the last report transmitted pursuant to the provisions of subsection (a) of this section (or if no such report has yet been so transmitted, since the date of execution of the indenture), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, and which it has not previously reported pursuant to this paragraph, if such advances remaining unpaid at any time aggregate more than 10 per centum of the principal amount of indenture securities outstanding at such time, such report to be so transmitted within 90 days after such time.

(c) Additional parties to whom reports to be transmitted

Reports pursuant to this section shall be transmitted by mail—

(1) to all registered holders of indenture securities, as the names and addresses of such holders appear upon the registration books of the obligor upon the indenture securities;

(2) to such holders of indenture securities as have, within the two years preceding such transmission, filed their names and addresses with the indenture trustee for that purpose; and

(3) except in the case of reports pursuant to subsection (b) of this section, to all holders of indenture securities whose names and addresses have been furnished to or received by the indenture trustee pursuant to section 77lll of this title.

(d) Filing of report with stock exchanges

A copy of each such report shall, at the time of such transmission to indenture security holders, be filed with each stock exchange upon which the indenture securities are listed, and also with the Commission.

(May 27, 1933, ch. 38, title III, §313, as added Aug. 3, 1939, ch. 411, 53 Stat. 1165; amended Pub. L. 101–550, title IV, §§411, 412, Nov. 15, 1990, 104 Stat. 2729; Pub. L. 105–353, title III, §301(e)(3), Nov. 3, 1998, 112 Stat. 3237.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105–353, §301(e)(3)(A), inserted "any change to" before "the amount".

Subsec. (a)(6). Pub. L. 105–353, §301(e)(3)(B), struck out "any change to" before "any release".

1990—Subsec. (a). Pub. L. 101–550, §411(1), (2), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and inserted "any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):" after "a brief report with respect to".

Subsec. (a)(1). Pub. L. 101–550, §411(3), (4), inserted "any change to" before "its eligibility" and struck out ", or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under such section, a written statement to such effect" after "of this title".

Subsec. (a)(2). Pub. L. 101–550, §411(5), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3), (4). Pub. L. 101–550, §411(5)(A), redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 101–550, §411(5)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 101–550, §411(3), inserted "any change to" after the paragraph designation.

Subsec. (a)(6). Pub. L. 101–550, §411(5)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 101–550, §411(3), inserted "any change to" after the paragraph designation.

Subsec. (a)(7), (8). Pub. L. 101–550, §411(5)(A), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (b). Pub. L. 101–550, §412(1), substituted "The indenture trustee shall" for "The indenture to

be qualified shall also contain provisions requiring the indenture trustee to".

Subsec. (c). Pub. L. 101–550, §412(2), substituted "Reports" for "The indenture to be qualified shall also provide that reports".

Subsec. (d). Pub. L. 101–550, §412(3), substituted "A copy" for "The indenture to be qualified shall also provide that a copy".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

[1] *So in original. The colon probably should not appear.*

[2] *So in original. Probably should be "paragraphs".*

§77nnn. Reports by obligor; evidence of compliance with indenture provisions

(a) Periodic reports

Each person who, as set forth in the registration statement or application, is or is to be an obligor upon the indenture securities covered thereby shall—

(1) file with the indenture trustee copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which such obligor is required to file with the Commission pursuant to section 78m or 78o(d) of this title; or, if the obligor is not required to file information, documents, or reports pursuant to either of such sections, then to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such of the supplementary and periodic information, documents, and reports which may be required pursuant to section 78m of this title, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(2) file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents, and reports with respect to compliance by such obligor with the conditions and covenants provided for in the indenture, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of subsection (e) of this section, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to any matter specified in clauses (A), (B), or (C) of paragraph (3) of subsection (c) of this section;

(3) transmit to the holders of the indenture securities upon which such person is an obligor, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, such summaries of any information, documents, and reports required to be filed by such obligor pursuant to the provisions of paragraph (1) or (2) of this subsection as may be required by rules and regulations prescribed by the Commission; and

(4) furnish to the indenture trustee, not less often than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of such obligor's compliance with all conditions and covenants under the indenture. For purposes of this paragraph, such compliance shall be determined without regard to any period of grace or requirement of notice provided under the indenture.

The rules and regulations prescribed under this subsection shall be such as are necessary or appropriate in the public interest or for the protection of investors, having due regard to the types of indentures, and the nature of the business of the class of obligors affected thereby, and the amount of indenture securities outstanding under such indentures, and, in the case of any such rules and regulations prescribed after the indentures to which they apply have been qualified under this subchapter, the additional expense, if any, of complying with such rules and regulations. Such rules and regulations may be prescribed either before or after qualification becomes effective as to any such indenture.

(b) Evidence of recording of indenture

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, the obligor upon the indenture securities shall furnish to the indenture trustee—

(1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and

(2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and refiling of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.

(c) Evidence of compliance with conditions precedent

The obligor upon the indenture securities shall furnish to the indenture trustee evidence of compliance with the conditions precedent, if any, provided for in the indenture (including any covenants compliance with which constitutes a condition precedent) which relate to the authentication and delivery of the indenture securities, to the release or the release and substitution of property subject to the lien of the indenture, to the satisfaction and discharge of the indenture, or to any other action to be taken by the indenture trustee at the request or upon the application of such obligor. Such evidence shall consist of the following:

(1) certificates or opinions made by officers of such obligor who are specified in the indenture, stating that such conditions precedent have been complied with;

(2) an opinion of counsel (who may be of counsel for such obligor) stating that in his opinion such conditions precedent have been complied with; and

(3) in the case of conditions precedent compliance with which is subject to verification by accountants (such as conditions with respect to the preservation of specified ratios, the amount of net quick assets, negative-pledge clauses, and other similar specific conditions), a certificate or opinion of an accountant, who, in the case of any such conditions precedent to the authentication and delivery of indenture securities, and not otherwise, shall be an independent public accountant selected or approved by the indenture trustee in the exercise of reasonable care, if the aggregate principal amount of such indenture securities and of other indenture securities authenticated and delivered since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required, or with respect to which a certificate or opinion of an independent public accountant has previously been furnished) is 10 per centum or more of the aggregate amount of the indenture securities at the time outstanding; but no certificate or opinion need be made by any person other than an officer or employee of such obligor who is specified in the indenture, as to (A) dates or periods not covered by annual reports required to be filed by the obligor, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (B) the amount and value of property additions, except as provided in paragraph (3) of subsection (d) of this section, or (C) the adequacy of depreciation, maintenance, or repairs.

(d) Certificates of fair value

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property or securities, the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value—

(1) of any property or securities to be released from the lien of the indenture, which certificate or opinion shall state that in the opinion of the person making the same the proposed release will not impair the security under such indenture in contravention of the provisions thereof, and requiring further that such certificate or opinion shall be made by an independent engineer, appraiser, or other expert, if the fair value of such property or securities and of all other property or securities released since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding; but such a certificate or opinion of an independent engineer, appraiser, or other expert shall not be required in the case of any release of property or securities, if the fair value thereof as set forth in the certificate or opinion required by this paragraph is less than $25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding;

(2) to such obligor of any securities (other than indenture securities and securities secured by a lien prior to the lien of the indenture upon property subject to the lien of the indenture), the deposit of which with the trustee is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate or the release of property or securities subject to the lien of the indenture, and requiring further that if the fair value to such obligor of such securities and of all other such securities made the basis of any such authentication and delivery, withdrawal, or release since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding, such certificate or opinion

shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to such obligor of all other such securities so deposited since the commencement of the current calendar year as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished; but such a certificate of an independent engineer, appraiser, or other expert shall not be required with respect to any securities so deposited, if the fair value thereof to such obligor as set forth in the certificate or opinion required by this paragraph is less than $25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding; and

(3) to such obligor of any property the subjection of which to the lien of the indenture is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of the indenture, and requiring further that if

(A) within six months prior to the d'te of acquisition thereof by such obligor, such property has been used or operated, by a person or persons other than such obligor, in a business similar to that in which it has been or is to be used or operated by such obligor, and

(B) the fair value to such obligor of such property as set forth in such certificate or opinion is not less than $25,000 and not less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding,

such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to the obligor of any property so used or operated which has been so subjected to the lien of the indenture since the commencement of the then current calendar year, and as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished.

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that any such certificate or opinion may be made by an officer or employee of the obligor upon the indenture securities who is duly authorized to make such certificate or opinion by the obligor from time to time, except in cases in which this subsection requires that such certificate or opinion be made by an independent person. In such cases, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert selected or approved by the indenture trustee in the exercise of reasonable care.

(e) Recitals as to basis of certificate or opinion

Each certificate or opinion with respect to compliance with a condition or covenant provided for in the indenture (other than certificates provided pursuant to subsection (a)(4) of this section) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

(f) Parties may provide for additional evidence

Nothing in this section shall be construed either as requiring the inclusion in the indenture to be qualified of provisions that the obligor upon the indenture securities shall furnish to the indenture trustee any other evidence of compliance with the conditions and covenants provided for in the indenture than the evidence specified in this section, or as preventing the inclusion of such provisions in such indenture, if the parties so agree.

(May 27, 1933, ch. 38, title III, §314, as added Aug. 3, 1939, ch. 411, 53 Stat. 1167; amended Pub. L. 101–550, title IV, §413, Nov. 15, 1990, 104 Stat. 2729.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §413(1)–(6), in introductory provision substituted "Each" for "The indenture to be qualified shall contain provisions requiring each" and inserted "shall" after "thereby" and in pars. (1) to (3) struck out "to" after the paragraph designation, and directed the addition of par. (4) at the end which was executed by inserting par. (4) after par. (3) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101–550, §413(7), (8), struck out "such indenture shall contain provisions requiring" before "the obligor" and substituted "securities shall furnish" for "securities to furnish".

Subsec. (c). Pub. L. 101–550, §413(9), (10), substituted "The obligor" for "The indenture to be qualified shall contain provisions requiring the obligor" and "securities shall furnish" for "securities to

furnish".

Subsec. (d). Pub. L. 101–550, §413(11), (13), (14), substituted "the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value" for "such indenture shall contain provisions" in introductory provisions and "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that" for "If the indenture to be qualified so provides," and "duly authorized to make such certificate or opinion by the obligor from time to time" for "specified in the indenture" in penultimate sentence.

Subsec. (d)(1) to (3). Pub. L. 101–550, §413(12), which directed that "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser or other expert as to the fair value" be struck out after the paragraph designations in pars. (1) to (3), was executed by striking out "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value", as the probable intent of Congress.

Subsec. (e). Pub. L. 101–550, §413(15), inserted "(other than certificates provided pursuant to subsection (a)(4) of this section)" after "indenture".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77*ooo*. Duties and responsibility of the trustee

(a) Duties prior to default

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to provide that, prior to default (as such term is defined in such indenture)—

(1) the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture; and

(2) the indenture trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture;

but the indenture trustee shall examine the evidence furnished to it pursuant to section 77nnn of this title to determine whether or not such evidence conforms to the requirements of the indenture.

(b) Notice of defaults

The indenture trustee shall give to the indenture security holders, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, notice of all defaults known to the trustee, within ninety days after the occurrence thereof: *Provided*, That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that, except in the case of default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the trustee in good faith determine that the withholding of such notice is in the interests of the indenture security holders.

(c) Duties of the trustee in case of default

The indenture trustee shall exercise in case of default (as such term is defined in such indenture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(d) Responsibility of the trustee

The indenture to be qualified shall not contain any provisions relieving the indenture trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that—

(1) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain the provisions authorized by paragraphs (1) and (2) of subsection (a) of this section;

(2) such indenture shall automatically be deemed (unless it is expressly provided therein that any such

provision is excluded) to contain provisions protecting the indenture trustee from liability for any error of judgment made in good faith by a responsible officer or officers of such trustee, unless it shall be proved that such trustee was negligent in ascertaining the pertinent facts; and

(3) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (determined as provided in subsection (a) of section 77ppp of this title) relating to the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture.

(e) Undertaking for costs

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions to the effect that all parties thereto, including the indenture security holders, agree that the court may in its discretion require, in any suit for the enforcement of any right or remedy under such indenture, or in any suit against the trustee for any action taken or omitted by it as trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: *Provided*, That the provisions of this subsection shall not apply to any suit instituted by such trustee, to any suit instituted by any indenture security holder, or group of indenture security holders, holding in the aggregate more than 10 per centum in principal amount of the indenture securities outstanding, or to any suit instituted by any indenture security holder for the enforcement of the payment of the principal of or interest on any indenture security, on or after the respective due dates expressed in such indenture security.

(May 27, 1933, ch. 38, title III, §315, as added Aug. 3, 1939, ch. 411, 53 Stat. 1171; amended Pub. L. 101–550, title IV, §414, Nov. 15, 1990, 104 Stat. 2730.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §414(1), (2), substituted "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "The indenture to be qualified may" and "the indenture trustee shall examine" for "such indenture shall contain provisions requiring the indenture trustee to examine".

Subsec. (b). Pub. L. 101–550, §414(3), (4), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and "That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to" for "That such indenture may".

Subsec. (c). Pub. L. 101–550, §414(3), substituted "The indenture trustee shall" for "The indenture to be qualified shall contain provisions requiring the indenture trustee to".

Subsec. (d)(1) to (3). Pub. L. 101–550, §414(5), substituted "such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "such indenture may".

Subsec. (e). Pub. L. 101–550, §414(1), substituted "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to" for "The indenture to be qualified may".

§77ppp. Directions and waivers by bondholders; prohibition of impairment of holder's right to payment; record date

(a) Directions and waivers by bondholders

The indenture to be qualified—

(1) shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions authorizing the holders of not less than a majority in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) may contain provisions authorizing the holders of not less than 75 per centum in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding

to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77ooo of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any such obligor, shall be disregarded, except that for the purposes of determining whether the indenture trustee shall be protected in relying on any such direction or consent, only indenture securities which such trustee knows are so owned shall be so disregarded.

(b) Prohibition of impairment of holder's right to payment

Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except as to a postponement of an interest payment consented to as provided in paragraph (2) of subsection (a) of this section, and except that such indenture may contain provisions limiting or denying the right of any such holder to institute any such suit, if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver, or loss of the lien of such indenture upon any property subject to such lien.

(c) Record date

The obligor upon any indenture qualified under this subchapter may set a record date for purposes of determining the identity of indenture security holders entitled to vote or consent to any action by vote or consent authorized or permitted by subsection (a) of this section. Unless the indenture provides otherwise, such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders furnished to the trustee pursuant to section 77lll of this title prior to such solicitation.

(May 27, 1933, ch. 38, title III, §316, as added Aug. 3, 1939, ch. 411, 53 Stat. 1172; amended Pub. L. 101–550, title IV, §415, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §415(1)–(3), in introductory provisions struck out "may contain provisions" after "qualified", in par. (1) inserted "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions" before "authorizing the holders" and "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities", and in par. (2) inserted "may contain provisions" before "authorizing the holders" and "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities".

Subsec. (b). Pub. L. 101–550, §415(5), which directed the substitution of "of the indenture to be qualified" for "thereof", was executed by making the substitution for "thereof" the first time appearing, as the probable intent of Congress.

Subsec. (c). Pub. L. 101–550, §415(6), added subsec. (c).

§77qqq. Special powers of trustee; duties of paying agents

(a) The indenture trustee shall be authorized—

(1) in the case of a default in payment of the principal of any indenture security, when and as the same shall become due and payable, or in the case of a default in payment of the interest on any such security, when and as the same shall become due and payable and the continuance of such default for such period as may be prescribed in such indenture, to recover judgment, in its own name and as trustee of an express trust, against the obligor upon the indenture securities for the whole amount of such principal and interest remaining unpaid; and

(2) to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of such trustee and of the indenture security holders allowed in any judicial proceedings relative to the obligor upon the indenture securities, its creditors, or its property.

(b) Each paying agent shall hold in trust for the benefit of the indenture security holders or the indenture trustee all sums held by such paying agent for the payment of the principal of or interest on the indenture securities, and

shall give to such trustee notice of any default by any obligor upon the indenture securities in the making of any such payment.

(May 27, 1933, ch. 38, title III, §317, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101–550, title IV, §416, Nov. 15, 1990, 104 Stat. 2731; Pub. L. 111–203, title IX, §985(c)(2), July 21, 2010, 124 Stat. 1934.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203 substituted "(1) in the" for "(1) , in the".

1990—Subsec. (a). Pub. L. 101–550, §416(1)–(3), in introductory provisions, substituted "trustee shall be authorized" for "to be qualified shall contain provisions", in par. (1) struck out "authorizing the indenture trustee" after the paragraph designation, and in par. (2) struck out "authorizing such trustee" after the paragraph designation.

Subsec. (b). Pub. L. 101–550, §416(4), substituted "Each" for "The indenture to be qualified shall provide that each".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§77rrr. Effect of prescribed indenture provisions

(a) Imposed duties to control

If any provision of the indenture to be qualified limits, qualifies, or conflicts with the duties imposed by operation of subsection (c) of this section, the imposed duties shall control.

(b) Additional provisions

The indenture to be qualified may contain, in addition to provisions specifically authorized under this subchapter to be included therein, any other provisions the inclusion of which is not in contravention of any provision of this subchapter.

(c) Provisions governing qualified indentures

The provisions of sections 77jjj to and including 77qqq of this title that impose duties on any person (including provisions automatically deemed included in an indenture unless the indenture provides that such provisions are excluded) are a part of and govern every qualified indenture, whether or not physically contained therein, shall be deemed retroactively to govern each indenture heretofore qualified, and prospectively to govern each indenture hereafter qualified under this subchapter and shall be deemed retroactively to amend and supersede inconsistent provisions in each such indenture heretofore qualified. The foregoing provisions of this subsection shall not be deemed to effect the inclusion (by retroactive amendment or otherwise) in the text of any indenture heretofore qualified of any of the optional provisions contemplated by section 77jjj(b)(1), 77kkk(b), 77nnn(d), 77ooo(a), 77ooo(b), 77ooo(d), 77ooo(e), or 77ppp(a)(1) of this title.

(May 27, 1933, ch. 38, title III, §318, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101–550, title IV, §417, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–550, §417(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "The indenture to be qualified shall provide that if any provision thereof limits, qualifies, or conflicts with another provision which is required to be included in such indenture by any of sections 77jjj to 77qqq of this title, inclusive, such required provision shall control."

Subsec. (c). Pub. L. 101–550, §417(2), added subsec. (c).

§77sss. Rules, regulations, and orders

(a) Authority of Commission; subject matter of rules, etc.

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate in the public interest or for the protection of investors to carry out the provisions of this subchapter, including rules and regulations defining accounting,

technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, (1) by rules and regulations, to prescribe for the purposes of section 77jjj(b) of this title the method (to be fixed in indentures to be qualified under this subchapter) of calculating percentages of voting securities and other securities; (2) by rules and regulations, to prescribe the definitions of the terms "cash transaction" and "self-liquidating paper" which shall be included in indentures to be qualified under this subchapter, which definitions shall include such of the creditor relationships referred to in paragraphs (4) and (6) of subsection (b) of section 77kkk of this title as to which the Commission determines that the application of subsection (a) of section 77kkk of this title is not necessary in the public interest or for the protection of investors, having due regard for the purposes of such subsection; and (3) for the purposes of this subchapter, to prescribe the form or forms in which information required in any statement, application, report, or other document filed with the Commission shall be set forth. For the purpose of its rules or regulations the Commission may classify persons, securities, indentures, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, indentures, or matters.

(b) Rules and regulations effective upon publication

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Exemption from liability for any acts taken in good faith in conformity with rules, etc.

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(May 27, 1933, ch. 38, title III, §319, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; Pub. L. 105–353, title III, §301(e)(4), Nov. 3, 1998, 112 Stat. 3237.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–353 substituted "chapter 15 of title 44" for "the Federal Register Act".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77ttt. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title III, §320, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77uuu. Special powers of the Commission

(a) Investigatory powers

For the purpose of any investigation or any other proceeding which, in the opinion of the Commission, is necessary and proper for the enforcement of this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such books, papers, correspondence, memoranda, contracts, agreements, or other records may be required from any place in the United States or in any Territory at any designated place of investigation or hearing. In addition, the Commission shall have the powers with respect to

investigations and hearings, and with respect to the enforcement of, and offenses and violations under, this subchapter and rules and regulations and orders prescribed under the authority thereof, provided in sections 77t and 77v(b), (c) of this title.

(b) Availability of reports from other offices; restrictions

The Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, and the Federal Deposit Insurance Corporation are authorized, under such conditions as they may prescribe, to make available to the Commission such reports, records, or other information as they may have available with respect to trustees or prospective trustees under indentures qualified or to be qualified under this subchapter, and to make through their examiners or other employees for the use of the Commission, examinations of such trustees or prospective trustees. Every such trustee or prospective trustee shall, as a condition precedent to qualification of such indenture, consent that reports of examinations by Federal, State, Territorial, or District authorities may be furnished by such authorities to the Commission upon request therefor.

Notwithstanding any provision of this subchapter, no report, record, or other information made available to the Commission under this subsection, no report of an examination made under this subsection for the use of the Commission, no report of an examination made of any trustee or prospective trustee by any Federal, State, Territorial, or District authority having jurisdiction to examine or supervise such trustee, no report made by any such trustee or prospective trustee to any such authority, and no correspondence between any such authority and any such trustee or prospective trustee, shall be divulged or made known or available by the Commission or any member, officer, agent, or employee thereof, to any person other than a member, officer, agent, or employee of the Commission: *Provided*, That the Commission may make available to the Attorney General of the United States, in confidence, any information obtained from such records, reports of examination, other reports, or correspondence, and deemed necessary by the Commission, or requested by him, for the purpose of enabling him to perform his duties under this subchapter.

(c) Investigation of prospective trustees

Any investigation of a prospective trustee, or any proceeding or requirement for the purpose of obtaining information regarding a prospective trustee, under any provision of this subchapter, shall be limited—

(1) to determining whether such prospective trustee is qualified to act as trustee under the provisions of subsection (b) of section 77jjj of this title;

(2) to requiring the inclusion in the registration statement or application of information with respect to the eligibility of such prospective trustee under paragraph (1) of subsection (a) of section 77jjj of this title; and

(3) to requiring the inclusion in the registration statement or application of the most recent published report of condition of such prospective trustee, as described in paragraph (2) of subsection (a) of section 77jjj of this title, or, if the indenture does not contain the provision with respect to combined capital and surplus authorized by the last sentence of paragraph (2) of subsection (a) of section 77jjj of this title, to determining whether such prospective trustee is eligible to act as such under paragraph (2) of subsection (a) of section 77jjj of this title.

(d) Appointment and compensation of employees; lease and allocation of real property

The provisions section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this subchapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.

(May 27, 1933, ch. 38, title III, §321, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174; amended Pub. L. 101–550, title I, §104(b), Nov. 15, 1990, 104 Stat. 2714.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–550 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this subchapter."

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions of officers, agencies and employees of Department of the Treasury to Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

§77vvv. Judicial review

(a) Review of orders

Orders of the Commission under this subchapter (including orders pursuant to the provisions of sections 77eee(b) and 77ggg(c) of this title) shall be subject to review in the same manner, upon the same conditions, and to the same extent, as provided in section 9 of the Securities Act of 1933 [15 U.S.C. 77i], with respect to orders of the Commission under such Act.

(b) Jurisdiction of offenses and suits

Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability or duty created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 22(a) of the Securities Act of 1933 [15 U.S.C. 77v(a)].

(May 27, 1933, ch. 38, title III, §322, as added Aug. 3, 1939, ch. 411, 53 Stat. 1175; amended Pub. L. 101–550, title IV, §418, Nov. 15, 1990, 104 Stat. 2732.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a), means the Securities Act of 1933, approved May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–550 inserted "or duty" after "any liability".

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77www. Liability for misleading statements

(a) Any person who shall make or cause to be made any statement in any application, report, or document filed with the Commission pursuant to any provisions of this subchapter, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or who shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall be liable to any person (not knowing that such statement was false or misleading or of such omission) who, in reliance upon such statement or omission, shall have purchased or sold a security issued under the indenture to which such application, report, or document relates, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading or of such omission. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit and assess reasonable costs, including reasonable attorneys' fees, against either party litigant, having due regard to the merits and good faith of the suit or defense. No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(b) The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this subchapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(May 27, 1933, ch. 38, title III, §323, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Pub. L. 111–203, title

IX, §986(b)(5), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77xxx. Unlawful representations

It shall be unlawful for any person in offering, selling or issuing any security to represent or imply in any manner whatsoever that any action or failure to act by the Commission in the administration of this subchapter means that the Commission has in any way passed upon the merits of, or given approval to, any trustee, indenture or security, or any transaction or transactions therein, or that any such action or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this subchapter or any rule, regulation, or order thereunder, has the effect of a finding by the Commission that such statement or report is true and accurate on its face or that it is not false or misleading.

(May 27, 1933, ch. 38, title III, §324, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176; amended Aug. 10, 1954, ch. 667, title III, §305, 68 Stat. 688.)

AMENDMENTS

1954—Act Aug. 10, 1954, substituted "offering, selling, or issuing" for "issuing or selling".

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77yyy. Penalties

Any person who willfully violates any provision of this subchapter or any rule, regulation, or order thereunder, or any person who willfully, in any application, report, or document filed or required to be filed under the provisions of this subchapter or any rule, regulation, or order thereunder, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading,

shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title III, §325, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177; amended Pub. L. 94–29, §27(d), June 4, 1975, 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

§77zzz. Effect on existing law

Except as otherwise expressly provided, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person or security, insofar as such jurisdiction does not conflict with any provision of this subchapter or any rule, regulation, or order thereunder.

(May 27, 1933, ch. 38, title III, §326, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177; amended Pub. L. 111–203, title IX, §986(b)(6), July 21, 2010, 124 Stat. 1936.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Securities Act of 1933 or the Securities Exchange Act of 1934" for "Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§77aaaa. Contrary stipulations void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(May 27, 1933, ch. 38, title III, §327, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

§77bbbb. Separability

If any provision of this subchapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of the subchapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(May 27, 1933, ch. 38, title III, §328, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

This is Exhibit "C" referred to in the Affidavit of **EVAN FLASCHEN** sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

JORGE TERRONT
NOTARY PUBLIC
MY COMMISSION EXPIRES DECEMBER 31, 2018
CONNECTICUT

11 USC 1109: Right to be heard
Text contains those laws in effect on May 15, 2014

From Title 11-BANKRUPTCY
CHAPTER 11-REORGANIZATION
SUBCHAPTER I-OFFICERS AND ADMINISTRATION
Jump To:
Source Credit
Miscellaneous

§1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2629.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1109 of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. As previously discussed the section gives the Securities and Exchange Commission the right to appear and be heard and to raise any issue in a case under chapter 11; however, the Securities and Exchange Commission is not a party in interest and the Commission may not appeal from any judgment, order, or decree entered in the case. Under section 1109(b) a party in interest, including the debtor, the trustee, creditors committee, equity securities holders committee, a creditor, an equity security holder, or an indentured trustee, may raise and may appear and be heard on any issue in a case under chapter 11. Section 1109(c) of the Senate amendment has been moved to subchapter IV pertaining to Railroad Reorganizations.

SENATE REPORT NO. 95–989

Subsection (a) provides, in unqualified terms, that any creditor, equity security holder, or an indenture trustee shall have the right to be heard as a party in interest under this chapter in person, by an attorney, or by a committee. It is derived from section 206 of chapter X ([former] 11 U.S.C. 606).

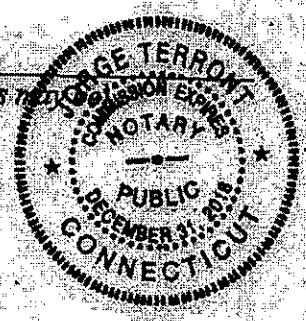
Subsection (b) provides that the Securities and Exchange Commission may appear by filing an appearance in a case of a public company and may appear in other cases if authorized or requested by the court. As a party in interest in either case, the Commission may raise and be heard on any issue. The Commission may not appeal from a judgment, order, or decree in a case, but may participate in any appeal by any other party in interest. This is the present law under section 208 of chapter X ([former] 11 U.S.C. 608).

HOUSE REPORT NO. 95–595

Section 1109 authorizes the Securities and Exchange Commission and any indenture trustee to intervene in the case at any time on any issue. They may raise an issue or may appear and be heard on an issue that is raised by someone else. The section, following current law, denies the right of appeal to the Securities and Exchange Commission. It does not, however, prevent the Commission from joining or participating in an appeal taken by a true party in interest. The Commission is merely prevented from initiating the appeal in any capacity.

This is Exhibit "D" referred to in the Affidavit of **EVAN FLASCHEN** sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)



Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

(1) the meeting of creditors under §341 or §1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under §707(a)(3) or §707(b) or is on dismissal of the case for failure to pay the filing fee;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (*l*) of this rule, the clerk, or some other

person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under §1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; and (2) for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan.

(c) CONTENT OF NOTICE.

(1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under §363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested.

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to §341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.

(e) NOTICE OF NO DIVIDEND. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) OTHER NOTICES. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

(1) the order for relief;

(2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305;

(3) the time allowed for filing claims pursuant to Rule 3002;

(4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004;

(5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007;

(6) the waiver, denial, or revocation of a discharge as provided in Rule 4006;

(7) entry of an order confirming a chapter 9, 11, or 12 plan;

(8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed $1,500;

(9) a notice under Rule 5008 regarding the presumption of abuse;

(10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and

(11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) ADDRESSING NOTICES.

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision—

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative

files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

(4) Notwithstanding Rule 2002(g)(1)–(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

(5) A creditor may treat a notice as not having been brought to the creditor's attention under §342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under §341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under §1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a

written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. §78aaa *et.*[1] *seq.*

(*l*) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.

(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(n) CAPTION. The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by §342(c) of the Code.

(*o*) NOTICE OF ORDER FOR RELIEF IN CONSUMER CASE. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.

(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS.

(1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

[1] So in original. Period probably should not appear.

(2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).

(3) Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be determined under Rule 2002(g).

(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES.

(1) *Notice of Petition for Recognition.* The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under §1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.

(2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under §1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.

(As amended Pub. L. 98–91, §2(a), Aug. 30, 1983, 97 Stat. 607; Pub. L. 98–353, title III, §321, July 10, 1984, 98 Stat. 357; Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 26, 2004, eff. Dec. 1, 2004; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009.)

This is Exhibit "E" referred to in the Affidavit of EVAN FLASCHEN sworn May 16, 2014

Commissioner for Taking Affidavits (or as may be)

JORGE TERRONT
NOTARY PUBLIC
COMMISSION EXPIRES DECEMBER 31, 2018
CONNECTICUT

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
DISTRICT OF DELAWARE

IN THE MATTER OF:	:	Chapter 11
Energy Future Holdings Corp., *et al.*	:	Case No. 14-10979 (CSS)
	:	Jointly Administered
Debtors.	:	NOTICE OF APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS*

Pursuant to Section 1102(a)(1) of the Bankruptcy Code, I hereby appoint the following persons to the Committee of Unsecured Creditors in connection with the above captioned case:

1. **Pension Benefit Guaranty Corporation** Attn: Craig Yamaoka, Senior Financial Analyst, 1200 K Street NW, Washington, DC 20005; Phone: 202-234-4070 x3614; Fax: 202-842-2643.

2. **HCL America, Inc.,** Attn: Raghu Raman Lakshmanan, 330 Potrero Avenue, Sunnyvale, CA 94085; Phone: 408-523-8331; Fax: 408-733-0482.

3. **The Bank of New York Mellon,** Attn: Dennis J. Roemlein, 601 Travis, 16th Floor, Houston, TX 77002, Phone: 713-483-6531; Fax: 713-483-6979.

4. **Law Debenture Trust Company of New York,** Attn: Frank Godino, VP, 400 Madison Avenue, New York, NY 10017. Phone: 646-747-1251; Fax: 212-750-1361.

5. **Holt Texas LTD, d/b/a Holt Cat,** Attn: Michael Puryear, Esquire, General Counsel, 3302 South W.W. White Road, San Antonio, TX 78222, Phone: 210-648-8921; Fax: 210-648-3559.

6. **ADA Carbon Solutions (Red River),** Attn: Peter Hansen, Esquire, General Counsel, 1460 W. Canal Court, Suite 100, Littleton, CO 80120; Phone: 303-962-1988; Fax: 303-962-1970.

7. **Wilmington Savings Fund Society,** Attn: Patrick J. Healy, 500 Delaware Avenue, Wilmington, DE 19801; Phone: 302-888-7420

ROBERTA A. DEANGELIS
United States Trustee, Region 3

/s/ Richard L. Schepacarter for
T. PATRICK TINKER
ASSISTANT UNITED STATES TRUSTEE

Dated: May 13, 2014

*The official committee of unsecured creditors is composed of creditors of Energy Future Competitive Holdings Company LLC ("EFCH"), EFCH's direct subsidiary, Texas Competitive Electric Holdings Company LLC ("TCEH LLC" and, together with EFCH and TCEH LLC's direct and indirect subsidiaries, the "TCEH Debtors") and EFH Corporate Services Company. The committee represents the interests of the unsecured creditors of only the TCEH Debtors and EFH Corporate Services Company and of no other debtors.

Attorney assigned to this Case: Richard L. Schepacarter, Phone: (302) 573-6491; Fax: (302) 573-6497.
Debtors' Counsel: Daniel DeFranceschi, Phone: (302) 651-7700; Fax: (302) 651-7701.

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC.,
INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC.,
1693926 ALBERTA LTD. doing business as 'THE TITLE STORE"

Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Toronto, Ontario M5L 1G4

MICHAEL WEINCZOK (33113D)
Tel: (416) 777-4026
Fax: (416) 865-1398

DAVID P. PREGER (36870L)
Tel: (416) 646-4606
Fax: (416) 865-1398

Lawyers for Computershare Trust Company, N.A., in its capacity as Indenture Trustee, and Computershare Trust Company of Canada, in its capacity as Collateral Trustee and Indenture Trustee ("Computershare") and agents for Perkins Coie LLP, US counsel to Computershare