Exhibit 1

Estimate of Administrative and Priority Claims

Potential priority claims and admin claims - estimated as of 1/18/2010

Categories	Low	High	
Lease pymts for rejected leases	2,561,775	2,561,775	Lease pymt through rejection date
Potential cure amounts	3,108,679	5,125,025	
Professional fees	14,526,057	14,526,057	Including holdback
Professional success fee	13,155,604	13,155,604	
Employee - John Kispert	1,750,000	1,750,000	Per amended agreement
Admin tax claim - Santa Clara	1,330,420	1,330,420	Amt due 4/1/09
Estimate for Warn claims	7,102,000	7,102,000	
Other admin & priority claims	848,999	1,136,038	Other admin & priority claims filed to date and not included in other line items
Interest on FRNs	4,930,085	4,930,085	Interest rate - 3.38063% December - February 22nd
	49,313,618	51,617,003	
Contingency	5,500,000	8,000,000	
	54,813,618	**59,617,003**	
Range without Japan	**55,000,000**	**60,000,000**	
Japan's admin claim			
Due 3/31/2010	10,000,000	10,000,000	
Due 6/30/2010	12,500,000	12,500,000	
Due 9/30/2010	12,500,000	12,500,000	
Due 12/31/2010	10,000,000	10,000,000	
Range with Japan's admin claim	**100,000,000**	**105,000,000**	

Exhibit 2

Causes of Action

The following shall be included in the definition of the term "Causes of Action" in the Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009 (the "**Plan**"):

1. In the Matter of: Certain Flash Memory and Products Containing The Same; Spansion, Inc., Spansion LLC v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung International, Inc., Samsung Semiconductor, Inc., Samsung Telecommunications America, LLC., Apple, Inc., Hon Hai Precision Industry Co., Ltd., AsusTek Computer Inc., Asus Computer International Inc., Kingston Technology Company, Inc., Kingston Technology (Shanghai) Co. Ltd., Kingston Technology Far East Co., Kingston Technology Far East (Malaysia), Lenovo Group Limited., Lenovo (United States) Inc., Lenovo (Beijing) Limited., International Information Products (Shenzhen) Co., Ltd., Lenovo Information Products (Shenzhen) Co.Ltd., Lenovo (Huiyang) Electronic Industrial Co. Ltd., Shanghai Lenovo Electronic Co., Ltd., PNY Technologies, Inc., Research In Motion Ltd., Research In Motion Corporation, Sony Corporation, Sony Corporation of America, Sony Ericsson Mobile Communications, AB., Sony Ericsson Mobile Communications (USA), Inc., Beijing SE Putian Mobile Communication Co., Ltd., Transcend Information Inc., Transcend Information, Inc. (US), Case No. 337-TA-664.

2. Spansion, LLC v. Samsung Electronics Co. LTD., Samsung Electronics America Inc., Samsung Semiconductor Inc., Samsung Telecommunications America LLC., Samsung Austin Semiconductor LLC, Case No. 08-855 (SLR).

3. Actions relating to strict enforcement of any of the Debtors' intellectual property rights, including patents, copyrights and trademarks, including claims against third parties for infringement of any such intellectual property rights or other misuse of such intellectual property.

4. Avoidance Actions.

5. Actions to recover money or property from customers, vendors and/or employees whether based on contract or tort.

6. Actions brought against any Entities for failure to pay for products or services provided or rendered by any of the Debtors.

7. Actions to recover any of the Debtors' or the Reorganized Debtors' accounts receivable or other receivables or rights to payment created or arising in the ordinary course of any of the Debtors' or the Reorganized Debtors' businesses, including claim overpayments and tax refunds.

8. All other actions which were pending as of the Petition Date.

9. All other actions, whether in law or in equity, whether known or unknown, which any Debtor or any Debtors' Estate may bring against any Entity.

Exhibit 3

Identity of Backstop Party

Silver Lake Sumeru, L.P., together with its designated affiliates and managed accounts, shall serve as the Backstop Party.

Exhibit 4

Backstop Rights Purchase Agreement

DRAFT

BACKSTOP RIGHTS PURCHASE AGREEMENT

between

SPANSION INC.

and

SLS SPANSION HOLDINGS, LLC

Dated as of January __, 2010

BACKSTOP RIGHTS PURCHASE AGREEMENT

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BACKSTOP RIGHTS PURCHASE AGREEMENT

This BACKSTOP RIGHTS PURCHASE AGREEMENT (this "Agreement"), dated as of January __, 2010, is entered into by and among Spansion Inc., a Delaware corporation (the "Company") and SLS Spansion Holdings, LLC, a Delaware limited liability company (the "Backstop Party") **[FUND GUARANTY TO BE ADDED]**. Capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Plan (as defined below).

RECITALS

WHEREAS, on December 17, 2009, the Company, Spansion Technology LLC, a Delaware limited liability company, Spansion LLC, a Delaware limited liability company, Cerium Laboratories LLC, a Delaware limited liability company, and Spansion International, Inc., a Delaware corporation (together with the Company, the "Debtors"), filed a Second Amended Joint Plan of Reorganization of the Debtors dated December 16, 2009 (the "Plan") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Case No. 09-10690 (KJC); and

WHEREAS, pursuant to the terms of the Plan, the Rights Offering Participants will be given the opportunity to purchase in the Rights Offering, on a pro rata basis in proportion to their respective holdings of such claims, up to an aggregate amount of 12,974,496 shares of New Spansion Common Stock (the "Rights Offering Shares") at a price of $8.43 per share (the "Subscription Price") for an aggregate purchase price of $109,375,000; and

WHEREAS, the Plan contemplates that the Debtors may decide to have a Backstop Party for the Rights Offering and that, if such decision is made, they will enter into an agreement such as this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Backstop Party hereby agree as follows:

Section 1. The Backstop Commitment.

(a) On the basis of the representations and warranties contained herein, but subject to the conditions set forth in Section 6, if the Rights Offering Participants shall not have purchased all of the Rights Offering Shares on or before **[**February 12, 2010**]** (the "Funding Deadline"), the Backstop Party hereby commits, and the Company hereby grants the Backstop Party the right, to purchase the number of Rights Offering Shares that were not purchased by the Rights Offering Participants on or before the Funding Deadline (the "Backstop Commitment"). The purchase price per Rights Offering Share purchased pursuant to this Section 1 shall be the Subscription Price. All amounts funded by the Backstop Party pursuant to this Section 1 shall be funded into an escrow account, maintained pursuant to an escrow agreement on terms and conditions, and with an escrow agent, acceptable to the Backstop Party.

(b) (i) On the **[**Funding Deadline**]**, the Backstop Party will purchase, and the Company will sell to the Backstop Party, at a price equal to the Subscription Price

therefor, such number of the Rights Offering Shares for which Rights Offering Participants have not committed to purchase by timely submitting completed Subscription Forms by the Subscription Deadline in accordance with the Plan (the "Subscription Gap"); *provided that*, the Company shall provide the Backstop Party with notice of the amount of the Subscription Gap not later than two (2) Business Days following the Subscription Deadline.

(ii) Within ___ (__) Business Days following the **[**Funding Deadline**]** (the "Subsequent Funding Date"), the Backstop Party will purchase, and the Company will sell to the Backstop Party, at a price equal to the Subscription Price therefor, such number of the Rights Offering Shares for which Rights Offering Participants, if any, have subscribed for by timely submitting completed Subscription Forms by the Subscription Deadline in accordance with the Plan but have failed to fund by the Funding Deadline (the "Failure to Fund Gap"); *provided that*, the Company shall provide the Backstop Party with notice of the amount of the Failure to Fund Gap not later than two (2) Business Days following the Funding Deadline.

(iii) Notwithstanding the other provisions of this Section 1(b), in lieu of receiving one of the Rights Offering Shares issuable to the Backstop Party under Section 1(b)(i) pursuant to the Backstop Commitment, the Backstop Party shall receive one (1) share of common stock of the Company classified as "Class B Common Stock" (the "Class B Share") . The Backstop Party shall have the exclusive right to receive Class B Shares, and the rights, preferences and privileges of such Class B Share shall be set forth in the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of the Company, in form and substance acceptable to the Backstop Party.

(c) Except as set forth in Section 1(d), all Rights Offering Shares and the Class B Share shall be delivered to the Backstop Party with any and all issue, stamp, transfer or similar taxes or duties payable in connection with such delivery duly paid by the Company to the extent required under the Confirmation Order or applicable law.

(d) Notwithstanding anything to the contrary in this Agreement, the Backstop Party, in its sole discretion, may designate that some or all of the Rights Offering Shares or the Class B Share, as the case may be, be issued in the name of and delivered to, one or more of its Affiliates or any other third party; *provided that*, the Backstop Party will be responsible for any and all issue, stamp, transfer or similar taxes or duties payable in connection therewith.

Section 2. Backstop Fee; Transaction Expenses.

(a) Immediately following the consummation of the Rights Offering, the Company shall pay to the Backstop Party, by wire transfer in immediately available funds to an account specified by the Backstop Party not less than one day prior to the Effective Date, a backstop commitment fee in an amount equal to Four Million Five Hundred Thousand Dollars ($4,500,000) (the "Backstop Fee").

(b) Whether or not the transactions contemplated hereby are consummated, the Company shall reimburse or pay, as the case may be, all of the reasonable fees and expenses

of the Backstop Party and its Affiliates incurred in connection with the transactions contemplated hereby (the "Transaction Expenses"), including without limitation reasonable expenses related to industry research, travel expenses, fees and expenses of Milbank, Tweed, Hadley & McCloy LLP and local Wilmington, Delaware counsel, as legal advisors to the Backstop Party and its Affiliates, and fees and expenses of the accountants, financial advisors and other professionals retained by the Backstop Party and its Affiliates in connection with the transactions contemplated herein. The Company shall pay all Transaction Expenses as soon as reasonably practical, but in any case not more than ten (10) Business Days after presentation of an invoice by or on behalf of the Backstop Party. These obligations are in addition to, and do not limit, the Company's obligations under Section 7. The provision for the payment of the Transaction Expenses is an integral part of the transactions contemplated by this Agreement, and without this provision the Backstop Party would not have entered into this Agreement and shall constitute an administrative expense of the Company under section 364(c)(1) of the Bankruptcy Code.

Section 3. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, the Backstop Party as of the date hereof and on the Effective Date as follows:

(a) Incorporation and Qualification. The Company and each of the direct and indirect subsidiaries of the Company has been duly organized and is validly existing as a corporation or other form of entity, where applicable, in good standing under the laws of their respective jurisdictions of organization, with the requisite power and authority to own its properties and conduct its business as currently conducted, subject, as applicable, to the restrictions that result from any such entity's status as a debtor-in-possession under chapter 11 of the Bankruptcy Code. The Company and each of its subsidiaries has been duly qualified as a foreign corporation or other form of entity for the transaction of business and, where applicable, is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts business so as to require such qualification, except to the extent the failure to be so qualified or, where applicable, be in good standing would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, results of operations, property or financial condition of the Company and its subsidiaries taken as a whole, or on the ability of the Company, subject to the approvals and other authorizations set forth in Section 3(g), to consummate the transactions contemplated by this Agreement or the Plan (a "Material Adverse Effect"). Notwithstanding the foregoing, no representation is made with respect to Spansion Japan Ltd.

(b) Corporate Power and Authority. The Company has the requisite corporate power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder, including the issuance of the Rights Offering Shares. The Company has taken all necessary corporate action required for the due authorization, execution, delivery and performance by it of this Agreement, including the issuance of the Rights Offering Shares. The issuance of the Rights Offering Shares to the Backstop Party on the Effective Date will have been duly and validly authorized. Subject to entry of the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the fourteen (14) day period set forth in Bankruptcy Rule 3020(e), on the Effective Date, the Debtors will have the requisite corporate power and authority to execute the Plan and to perform their obligations thereunder, and will have taken all

necessary corporate actions required for the due authorization, execution, delivery and performance by the Debtors of the Plan.

(c) Capitalization. After giving effect to the transactions contemplated by this Agreement and the Plan, the capital stock of the Company, as authorized by its Amended and Restated Certificate of Incorporation, will consist solely of shares of New Spansion Common Stock and the Class B Stock, if issued pursuant to Section 1(f), and no shares will be issued, outstanding, reserved for issuance or held in the treasury of the Company, except as provided in the Plan and disclosed in the Disclosure Statement (as dated December 16, 2009, the "December 16th Disclosure Statement").

(d) Execution and Delivery; Enforceability. This Agreement has been duly and validly executed and delivered by the Company, and constitutes the valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, reorganization, insolvency, moratorium and other laws affecting the enforcement of creditors' rights generally from time to time in effect and subject to general equitable principles. The Plan has been duly and validly filed with the Bankruptcy Court by the Debtors and, upon the entry of the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the fourteen (14) day period set forth in Bankruptcy Rule 3020(e), will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to general equitable principles.

(e) No Conflict. Subject to the entry of the Confirmation Orders and the expiration, or waiver by the Bankruptcy Court, of the fourteen (14) day period set forth in Bankruptcy Rule 3020(e), as applicable, the consummation of the Rights Offering by the Company, the issuance, sale and delivery of the Rights Offering Shares and compliance by the Company with all of the provisions hereof and thereof and the consummation of the transactions contemplated herein and therein (including compliance by the Backstop Party with its obligations hereunder and thereunder) (i) will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute a default under, or result in the acceleration of, or the creation of any lien under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) will not result in any violation of the provisions of the certificate of incorporation or bylaws of the Company and any other Debtor and (iii) will not result in any violation of, or any termination or material impairment of any rights under, any statute or any license, authorization, injunction, judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, except in any such case described in subclause (i) or (iii) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(f) Consents and Approvals. No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or by any third party pursuant to any contract or otherwise is required for the consummation of the Rights Offering by the Company and the execution and delivery by the Company of this

Agreement or the Plan and performance of and compliance by the Company with all of the provisions hereof and thereof and the consummation of the transactions contemplated herein and therein, except for (i) the entry of the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the ten (10) day period set forth in Bankruptcy Rules 6004(h) and 3020(e), as applicable; (ii) filings with respect to and the expiration or termination of the waiting period under Section 7A of the Clayton Act (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), if applicable; (iii) such consents, approvals, authorizations, registrations or qualifications as may be reasonably required under state securities or "blue sky" laws in connection with the purchase of Rights Offering Shares by the Backstop Party; or (iv) such consents, approvals, authorizations, registrations or qualifications, the absence of which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(g) No Material Adverse Change. Except as disclosed in the Company's Securities and Exchange Commission (the "Commission") filings as of the date of this Agreement (the "SEC Filings") or the December 16th Disclosure Statement, since September 27, 2009 there has not occurred any event, fact or circumstance which has had or would reasonably be expected to have, individually, or in the aggregate, a Material Adverse Effect on the Company and its subsidiaries.

(h) No Violation or Default; Licenses and Permits. Except as otherwise set forth in the SEC Filings or the December 16th Disclosure Statement, each of the Company and its subsidiaries (i) is in compliance with all laws, statutes, ordinances, rules, regulations, orders, judgments and decrees of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, and (ii) has not received written notice of any alleged material violation of any of the foregoing except, in the case of clauses (i) and (ii) above, for any such failure to comply, default or violation that would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Subject to the restrictions that result solely from the Company or any subsidiary's status as a debtor-in-possession under chapter 11 of the Bankruptcy Code (including that in certain instances such subsidiary's conduct of its business requires Bankruptcy Court approval), each of the Company and its subsidiaries holds all material licenses, franchises, permits, consents, registrations, certificates and other governmental and regulatory permits, authorizations and approvals required for the operation of the business as currently conducted by it and for the ownership, lease or operation of its material assets, except where the failure to possess or make the same would not, individually or in the aggregate, have a Material Adverse Effect and is not in violation of its certificate of incorporation, bylaws or other organizational document.

(i) Legal Proceedings. Except as described in the SEC Filings or the December 16th Disclosure Statement, there are no legal, governmental or regulatory investigations, actions, suits or proceedings pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries which, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, would reasonably be expected to have a Material Adverse Effect.

(j) Title to Intellectual Property. The Company and its subsidiaries own or possess adequate rights to use all material patents, patent applications, trademarks, service

marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of their respective businesses, except where the failure to own or possess any such rights could not reasonably be expected to have a Material Adverse Effect.

(k) No Undisclosed Relationships. No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company or any of its subsidiaries, on the other, that is required be disclosed in the SEC Filings or the December 16th Disclosure Statement and that are not so disclosed.

(l) Insurance. Except as would not, individually or in the aggregate, result in a Material Adverse Effect, the Company and its subsidiaries have insurance covering their respective properties, operations, personnel and businesses, including business interruption insurance, which insurance is in amounts and insures against such losses and risks as are customary for companies whose businesses are similar to the Company and its subsidiaries; and as of the date hereof, neither the Company nor any of its subsidiaries has (i) received written notice from any insurer or agent of such insurer that capital improvements or other material expenditures are required or necessary to be made in order to continue such insurance or (ii) any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage at reasonable cost from similar insurers as may be necessary to continue its business.

(m) No Broker's Fees. None of the Company or any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Backstop Party for a brokerage commission, finder's fee or like payment in connection with the transactions contemplated by this Agreement.

(n) Title to Real and Personal Property. The Company and its subsidiaries have good and marketable title to all real property owned by the Company and its subsidiaries and good title to all other tangible and intangible properties (other than Intellectual Property covered by Section 3(j)) owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (i) are described in the SEC Filings or the December 16th Disclosure Statement or (ii) individually and in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect. All of the leases and subleases to which the Company or its subsidiaries are a party are in full force and effect and enforceable by the Company or such subsidiary in accordance with their terms, and neither the Company nor any subsidiary has received any written notice of any claim that has been asserted by anyone adverse to the rights of the Company or any subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or such subsidiary to the continued possession of the leased or subleased property by under any such lease or sublease, except where any such claim or failure to be enforceable would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(o) Full Disclosure. No information contained in this Agreement, the Plan or the December 16th Disclosure Statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which made.

Section 4. Representations and Warranties of the Backstop Party. The Backstop Party represents and warrants to, and agrees, with respect to itself only, with, the Company as of the date hereof and as of the Effective Date as follows:

(a) Organization. The Backstop Party has been duly formed and is validly existing as a limited liability company in good standing under the laws of its jurisdiction of organization.

(b) Corporate Power and Authority. The Backstop Party has the requisite corporate or comparable power and authority to enter into, execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action required for the due authorization, execution, delivery and performance by it of this Agreement.

(c) Execution and Delivery. This Agreement has been duly and validly executed and delivered by the Backstop Party and constitutes its valid and binding obligation, enforceable against the Backstop Party in accordance with its terms, subject to general equitable principles.

(d) No Conflicts. The execution, delivery, and performance by the Backstop Party of this Agreement do not and shall not (i) violate any provision of its organizational documents or any law, rule, or regulation applicable to it or (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it is a party or under its organizational documents.

(e) Proceedings. No litigation or proceeding before any court, arbitrator, or administrative or governmental body is pending or, to its knowledge, threatened against it that would adversely affect the Backstop Party's ability to enter into this Agreement or perform its obligations hereunder.

(f) Consents and Approvals. No consent, approval, order, authorization, registration or qualification of or with any court or governmental agency or body having jurisdiction over the Backstop Party or the Backstop Party's Affiliates, is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for any consent, approval, order or authorization required under the Bankruptcy Code.

(g) Sufficiency of Funds. On the Funding Deadline and the Subsequent Funding Date, if any, the Backstop Party will have sufficient immediately available funds to make and complete the payment of the aggregate Subscription Price for the portion of the Rights Offering Shares that represents the Subscription Gap and the Failure to Fund Gap, respectively, and the availability of such funds will not then be subject to the consent, approval or authorization of any third party.

(h) No Registration Under the Securities Act. The Backstop Party understands (i) that the Rights Offering Shares and the Class B Share to be purchased by it pursuant to the terms of this Agreement have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), (ii) that, except as provided in the Registration Rights Agreement, the Company shall not be required to effect any registration or qualification under the Securities Act or any state securities law, (iii) that the Rights Offering Shares and the Class B Share will be issued in reliance upon exemptions contained in the Securities Act or interpretations thereof and in the applicable state securities laws, in each case to the extent that section 1145 of the Bankruptcy Code is not applicable, and (iv) that the Rights Offering Shares and the Class B Share may not be offered for sale, sold or otherwise transferred, in each case to the extent that section 1145 of the Bankruptcy Code is not applicable, except pursuant to a registration statement or in a transaction exempt from or not subject to registration under the Securities Act.

(i) Acquisition for Investment. The Rights Offering Shares and the Class B Share are being acquired under this Agreement by the Backstop Party in good faith solely for its own account, for investment and not with a view toward resale or other distribution within the meaning of the Securities Act; provided, however, that the disposition of the Backstop Party's property shall at all times be under its control. The Backstop Party will not, directly or indirectly, offer, transfer, sell, pledge, hypothecate or otherwise dispose of any of the Rights Offering Shares or the Class B Share (or solicit any offers to buy, purchase, or otherwise acquire or take a pledge of any of the Rights Offering Shares or the Class B Share), except pursuant to a registration statement or in a transaction exempt from or not subject to registration under the Securities Act and any applicable state securities laws.

(j) Independent Investigation; Retention of Tax Advisors. The Backstop Party has made its own inquiry and investigation into the Company and has undertaken such investigation and had access to such information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. The Backstop Party has consulted its own tax advisors with regard to its participation in the Rights Offering and the tax consequences thereof, and has not relied on any advice from the Company or its representatives regarding the tax consequences of an investment in the Rights Offering Shares or the Class B Share.

(k) Accredited Investor. The Backstop Party is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act, with such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the Rights Offering Shares or the Class B Share.

(l) No Broker's Fees. The Backstop Party is not a party to any contract, agreement or understanding with any Person (other than this Agreement) that would give rise to a claim against the Company for a brokerage commission, finder's fee or like payment in connection with the transactions contemplated hereby.

Section 5. Additional Covenants of the Company. Except as provided in this Agreement or otherwise consented to in writing by each of the Backstop Party, during the period

from the date of this Agreement to the Effective Date, the Company agrees with the Backstop Party as follows:

(a) Rights Offering. The Company will effectuate the Rights Offering, as provided herein and in the Plan and the December 16th Disclosure Statement, pursuant to the securities exemption provisions set forth in section 1145(a) of the Bankruptcy Code or other exemptions in the Securities Act or interpretations thereof.

(b) Registration Rights Agreement. The Company will file with the Bankruptcy Court as soon as practicable a form of a registration rights agreement (the "Registration Rights Agreement"), in the form attached as Exhibit C hereto. The Company and the Backstop Party shall use commercially reasonable efforts to finalize and execute, and seek Bankruptcy Court approval of, the Registration Rights Agreement as promptly as practicable.

(c) Conduct of Business. During the period from the date of this Agreement to the Effective Date, the Company and its subsidiaries shall carry on their businesses in the ordinary course (subject to any actions which are consistent with the SEC Filings and the December 16th Disclosure Statement and any limitations on such actions under the Bankruptcy Code) and, to the extent consistent therewith, use their commercially reasonable efforts to preserve intact their current business organizations, keep available the services of their current officers and employees and preserve their relationships with customers, suppliers, licensors, licensees, distributors and others having business dealings with the Company or its subsidiaries.

(d) Access to Information. Subject to applicable law, the Company shall (and shall cause its subsidiaries to) permit representatives of the Backstop Party and its Affiliates to visit and inspect any of the properties of the Company and its subsidiaries, to examine their corporate books and make copies or extracts therefrom and to discuss the affairs, finances and accounts of the Company and its subsidiaries with the principal officers of the Company and its subsidiaries, all at such reasonable times, upon reasonable notice and as often as the Backstop Party may reasonably request.

(e) Amendments to Organizational Documents. The Company will amend its certificate of incorporation, bylaws and any other required organizational documents to provide for the governance rights granted to holders of the New Spansion Common Stock and the Class B Shares; *provided that*, the rights, preferences and privileges of such Class B Shares as set forth on Exhibit A hereto shall be set forth in the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of the Company.

Section 6. Conditions.

(a) Conditions to the Obligations of Each Party. The respective obligations of the Backstop Party and the Company to effect the purchase of the Rights Offering Shares pursuant to this Agreement on the Effective Date are subject to the following conditions:

(i) No Restraint. No judgment, injunction, decree or other legal restraint shall prohibit the consummation of the Plan, the Rights Offering or the transactions contemplated by this Agreement.

(ii) HSR Act; Regulatory Approvals. If the purchase of Rights Offering Shares by the Backstop Party pursuant to this Agreement is subject to the terms of the HSR Act or the laws of any relevant foreign jurisdiction, the applicable waiting period shall have expired or been terminated thereunder with respect to such purchase.

(iii) No Legal Impediment to Issuance. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued in each by any federal, state or foreign governmental or regulatory authority that, as of the Effective Date, prohibits the issuance or sale of the Rights Offering Shares pursuant to this Agreement.

(iv) Consents. All other material governmental and third-party notifications, filings, consents, waivers and approvals required for the consummation of the transactions contemplated by this Agreement and the Plan shall have been made or received.

(b) Conditions to the Obligations of the Backstop Party. The obligation of the Backstop Party to purchase the Rights Offering Shares pursuant to this Agreement on the Effective Date are subject to the following conditions:

(i) Representations and Warranties and Covenants. The representations and warranties of the Company set forth in this Agreement (disregarding all qualifications and exceptions contained therein regarding materiality or Material Adverse Effect) shall be true and correct on the date hereof and on the Effective Date as if made on such date, except, where the failure of such representations and warranties to be so true and correct, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The Company shall have complied in all material respects with all of its material obligations hereunder.

(ii) Confirmation Order. An order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code (the "Confirmation Order") that is acceptable to the Backstop Party must have been entered and declared effective by the Bankruptcy Court, no order staying the Confirmation Order shall be in effect, and the Plan shall have become effective in accordance to its terms (the Backstop Party shall act reasonably in determining whether the Confirmation Order is acceptable, provided that any terms, conditions, provisions or omissions of the Confirmation Order that have a material impact on the Rights Offering, the Backstop Commitment or the terms set forth in this Agreement shall be acceptable to the Backstop Party in their sole discretion);

(iii) Plan and Disclosure Statement. The Plan as may be further amended or modified, and the December 16th Disclosure Statement as may be further amended or modified, shall be materially consistent with the terms and conditions contained in this Agreement, and must be acceptable to the Backstop Party (the Backstop Party shall act reasonably in determining whether such amended or modified Plan or such amended or modified disclosure statement are acceptable, provided that any terms, conditions, provisions or omissions of the amended or modified Plan or such amended or modified disclosure statement that have a material impact on the Rights Offering, the Backstop

Commitment or the terms set forth in this Agreement shall be acceptable to the Backstop Party in their sole discretion);

(iv) Conditions to Confirmation. Each of the conditions precedent to the confirmation of the Plan and the conditions precedent to the effectiveness of the Plan and the occurrence of the Effective Date shall have been satisfied in accordance with the Plan.

(v) Documentation. The Backstop Party shall have received all the documentation required to consummate the transaction contemplated hereby, each duly executed and in form and substance reasonably satisfactory to the Backstop Party.

(vi) Rights Offering. The Subscription Deadline shall have occurred.

(vii) No Material Adverse Effect. No Material Adverse Effect shall have occurred or shall be reasonably likely to occur.

(viii) Total Indebtedness. As of the Effective Date, the total outstanding indebtedness of the Company and its subsidiaries on a consolidated basis shall not exceed $525,000,000, not including up to $25,000,000 of additional indebtedness that may be issued in settlement of supplier claims, and all such indebtedness shall be on terms reasonably acceptable to the Backstop Party.

(ix) Total Shares. The total number of shares of New Spansion Common Stock and other common stock of the Company outstanding on the Effective Date shall not exceed 50,000,000 shares on a fully diluted basis (including shares issuable upon conversion of any convertible notes or other securities, and shares issuable upon exercise of options or warrants), but excluding up to 6,000,000 shares that may be issued as equity incentive awards or pursuant to options granted to employees of the Company and its subsidiaries.

(x) Amendments to Organizational Documents. The Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws of the Company are in a form reasonably acceptable to the Backstop Party.

(xi) Fees, Etc. All fees and other amounts required to be paid or reimbursed to the Backstop Party as of the Effective Date, including, without limitation, the Backstop Fee and the Transaction Expenses, shall have been paid or reimbursed in full.

(xii) Registration Rights Agreement. The Company shall have entered into the Registration Rights Agreement with the Backstop Party in accordance with Section 5(b), in form and substance reasonably satisfactory to the Backstop Party.

(c) Conditions to the Obligations of the Company. The obligation of the Company to effect the purchase of the Rights Offering Shares pursuant to this Agreement on the Effective Date are subject to the following condition:

(i) Representations and Warranties and Covenants. The representations and warranties of the Backstop Party set forth in this Agreement shall be true and correct in all material respects on the date hereof and on the Effective Date as if made on such date. The Backstop Party shall have complied in all material respects with all of their respective material obligations hereunder.

Section 7. Indemnification and Limitation on Liability. Whether or not the Rights Offering is consummated, the Company agrees to indemnify and hold harmless the Backstop Party, its Affiliates and their respective officers, directors, employees, advisors, stockholders, members, managers, partners, investment advisors, attorneys, accountants and agents (each, an "Indemnified Person") from and against any and all losses, claims, damages and liabilities to which any such Indemnified Person may become subject arising out of or in connection with the Rights Offering or this Agreement or any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any Indemnified Person is a party thereto, and to reimburse each Indemnified Person upon demand for any legal or other costs and expenses incurred in connection with investigating or defending, participating or testifying in any of the foregoing, *provided, that* the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable judgment of a court to have been incurred as a direct result of the willful misconduct, bad faith or gross negligence of such Indemnified Person. No Indemnified Person shall be liable to any Person for any punitive, exemplary, indirect or consequential damages in connection with its activities related to the Backstop Commitment or which may be alleged as a result of the Rights Offering or this Agreement. The obligations set forth in this Section 7 shall survive any termination hereof, and shall remain in effect even if the Rights Offering is not consummated. The foregoing provisions of this paragraph shall be in addition to any rights that the Backstop Party or any other indemnified person may have at common law or otherwise.

Section 8. Survival of Representations and Warranties. The representations and warranties made in this Agreement will survive the execution and delivery of this Agreement for the length of the applicable statute of limitations with respect thereto.

Section 9. Termination; Termination Fee.

(a) The Backstop Party may terminate this Agreement by written notice to the Company:

(i) if the Effective Date shall not have occurred by **[**March 15, 2010**]**;

(ii) upon the failure of any of the conditions set forth in Section 6 hereof to be satisfied, which failure cannot be cured by **[**March 15, 2010**]**; or

(iii) in the event of a material breach by the Company of this Agreement.

(b) If the Company does not proceed with the Rights Offering with the Backstop Commitment being provided by the Backstop Party pursuant to Section 1(b) hereof by not later than **[**March 15, 2010**]** (the "Outside Date"), the Company shall pay the Backstop Party a termination fee in an amount equal to Three Million Dollars ($3,000,000) (the "Termination

Fee"), payable in cash as soon as reasonably practical, but not more than ten (10) Business Days following the earlier to occur of the Outside Date and the termination of the Backstop Commitment. The Company shall also pay to the Backstop Party any Transaction Expenses certified by the Backstop Party to be due and payable hereunder that have not been paid theretofore and such Termination Fee and Transaction Expenses shall constitute administrative expenses of the Company under section 364(c)(1) of the Bankruptcy Code.

Section 10. Notices. All notices and other communications in connection with this Agreement will be in writing and will be deemed given (and will be deemed to have been duly given upon receipt) if delivered personally, sent via electronic facsimile (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

(a) If to the Backstop Party, to:

c/o Silver Lake Sumeru, L.P.
2775 Sand Hill Road
Suite 100
Menlo Park, CA 94025
Attn: Karen King, Esq.
Facsimile: (650) 234-2502

and

Milbank, Tweed, Hadley & McCloy LLP
601 South Figueroa Street, 30th Floor
Los Angeles, CA 90017
Attn: Gregory A. Bray, Esq.
and
Neil J Wertlieb, Esq.
Facsimile: (213) 629-5063

(b) If to the Company, to:

Spansion Inc.
915 DeGuigne Dr.
Sunnyvale, CA 94085
Attention: General Counsel
Facsimile:

with a copy to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, CA 94025
Attn: Tad J. Freese, Esq.
Facsimile: (650) 463-2600

Section 11. Assignment; Third-Party Beneficiaries. Neither this Agreement nor any of the rights, interests or obligations under this Agreement will be assigned by any of the parties (whether by operation of law or otherwise) without the prior written consent of the other party. Notwithstanding the previous sentence, this Agreement, or the Backstop Party's obligations hereunder, may be assigned, delegated or transferred, in whole or in part, by the Backstop Party to any entity or person over which the Backstop Party or any of its Affiliates exercises investment authority, including, without limitation, with respect to voting and dispositive rights. Notwithstanding the foregoing or any other provisions herein, no such assignment will relieve the assigning Backstop Party of its obligations hereunder if such assignee fails to perform such obligations. Except as provided in Section 7 with respect to the Indemnified Persons, this Agreement (including the documents and instruments referred to in this Agreement) is not intended to and does not confer upon any person other than the parties hereto any rights or remedies under this Agreement. Notwithstanding the foregoing or any other provisions herein to the contrary, the Backstop Party may not assign any of its rights or obligations under this Agreement, to the extent such assignment would affect the securities laws exemptions applicable to this transaction.

Section 12. Prior Negotiations; Entire Agreement. This Agreement (including the exhibits hereto and the documents and instruments referred to in this Agreement) constitutes the entire agreement of the parties and supersedes all prior agreements, arrangements or understandings, whether written or oral, between the parties with respect to the subject matter of this Agreement.

Section 13. Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflict of laws of the State of Delaware. By its execution and delivery of this Agreement, each of the parties hereto hereby irrevocably and unconditionally agrees for itself that the Bankruptcy Court shall have exclusive jurisdiction over any legal action, suit, or proceeding against it with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit, or proceeding; provided, however, that if the Bankruptcy Court abstains from exercising jurisdiction, or is otherwise without jurisdiction, then any such legal action, suit, or proceeding shall be brought exclusively in a Federal District Court in the State of Delaware. By execution and delivery of this Agreement, each of the parties hereto hereby irrevocably accepts and submits to the nonexclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit, or proceeding.

Section 14. Counterparts. This Agreement may be executed in any number of counterparts, all of which will be considered one and the same agreement and will become effective when counterparts have been signed by each of the parties and delivered to the other party (including via facsimile or other electronic transmission), it being understood that each party need not sign the same counterpart.

Section 15. Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions of this Agreement may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance, and subject, to the extent required, to the approval of the Bankruptcy

Court. No delay on the part of any party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof, nor will any waiver on the part of any party of any right, power or privilege pursuant to this Agreement, nor will any single or partial exercise of any right, power or privilege pursuant to this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement. The rights and remedies provided pursuant to this Agreement are cumulative and are not exclusive of any rights or remedies which any party otherwise may have at law or in equity.

Section 16. Headings. The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

Section 17. Specific Performance. The parties acknowledge and agree that any breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy, and, accordingly, the parties agree that, in addition to any other remedies, each will be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting bond.

[*Signature Page Follows*]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as of the date first above written.

"COMPANY"

SPANSION INC.

By: _____
Name:
Title:

"BACKSTOP PARTY"

SLS SPANSION HOLDINGS, LLC

By: _____
Name:
Title:

REGISTRATION RIGHTS AGREEMENT

by and among

SPANSION INC.

and

THE HOLDERS NAMED HEREIN

Dated as of January __, 2010

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, dated as of January __, 2010 (this "Agreement"), is entered into by and among Spansion Inc., a Delaware corporation (the "Company"), and each of the signatories hereto under the heading "Holders" (individually, a "Holder" and, collectively, the "Holders").

WHEREAS, this Agreement is being entered into in connection with the Backstop Rights Purchase Agreement entered into by and among the Company and the Holders and dated as of January __, 2010 (the "Backstop Agreement") and the acquisition of Common Stock (as hereinafter defined) on the date hereof by the Holders pursuant to the Backstop Agreement and the Plan (as hereinafter defined); and

WHEREAS, it is a condition precedent to providing the backstop commitment to the Company under the Backstop Agreement that the Company shall have executed and delivered to the Holders this Agreement; and

WHEREAS, to induce the Holders to provide the backstop commitment under the Backstop Agreement and the Plan, the Company has undertaken to register Registrable Common Stock (as hereinafter defined) under the Securities Act (as hereinafter defined) and to take certain other actions with respect to the Registrable Common Stock. This Agreement sets forth the terms and conditions of such undertaking.

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the parties hereto hereby agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms used herein and in the recitals above shall have the following meanings:

"Affiliate" of a Person means any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such other Person. For purposes of this definition, "control" means the ability of one Person to direct the management and policies of another Person.

"Agreement" has the meaning set forth in the preamble hereto.

"beneficial ownership" (and related terms such as "beneficially owned" or "beneficial owner") has the meaning set forth in Rule 13d-3 under the Exchange Act.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to be closed.

"Class B Common Stock" means the shares of common stock of the Company classified as "Class B Common Stock" that the Holders, at their election, have the right to receive in lieu of Common Stock.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Stock" means the common stock, par value $0.01 per share, of the Company.

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

"Company Indemnitee" has the meaning set forth in Section 9(a) hereof.

"Effective Date" means the effective date of the Plan pursuant to the terms thereof.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, or any similar or successor statute.

"Expenses" means all expenses incident to the Company's performance of or compliance with its obligations under this Agreement, including, without limitation, all registration, filing, listing, stock exchange and FINRA fees (including, without limitation, all fees and expenses of any "qualified independent underwriter" required by the rules of FINRA), all fees and expenses of complying with state securities or blue sky laws (including, without limitation, the reasonable fees, disbursements and other charges of counsel for the underwriters in connection with blue sky filings), all word processing, duplicating and printing expenses, messenger, telephone and delivery expenses, all rating agency fees, the fees, disbursements and other charges of counsel for the Company and of its independent public accountants, including, without limitation, the expenses incurred in connection with "cold comfort" letters required by or incident to such performance and compliance, the fees and expenses incurred in connection with the listing of the securities to be registered on each securities exchange or national market system on which similar securities issued by the Company are then listed, any fees and disbursements of underwriters customarily paid by issuers or sellers of securities, the reasonable fees, disbursements and other charges (not to exceed $30,000 in the aggregate for all jurisdictions) of one firm of counsel in each applicable jurisdiction (per registration statement prepared) to the Holders making a request pursuant to Section 2(a), Section 2(i) or Section 3 hereof (selected by the Holders beneficially owning a majority of the shares of Registrable Common Stock covered by such registration), the fees and expenses of any special experts retained by the Company in connection with such registration, and the fees and expenses of other Persons retained by the Company, but excluding underwriting discounts and commissions and applicable transfer taxes, if any, in each case relating to the shares of Registrable Common Stock sold by the Selling Holders, which discounts, commissions and transfer taxes shall be borne by the seller or Selling Holders.

"FINRA" shall mean the Financial Industry Regulatory Authority.

"Form S-3 Request" has the meaning set forth in Section 2(i) hereof.

"Holder Indemnitee" has the meaning set forth in Section 9(b) hereof.

"Holder" and "Holders" have the meanings set forth in the preamble hereto.

"Initiating Form S-3 Holder" has the meaning set forth in Section 2(i) hereof.

"Initiating Holder" has the meaning set forth in Section 2(a) hereof.

"Initiating Request" has the meaning set forth in Section 2(a) hereof.

"Loss" and "Losses" have the meanings set forth in Section 9(a) hereof.

"Offering Documents" has the meaning set forth in Section 9(a) hereof.

"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint stock company, trust, unincorporated organization, governmental or regulatory body or subdivision thereof or other entity.

"Piggyback Requesting Holder" has the meaning set forth in Section 3 hereof.

"Plan" means the Second Amended Joint Plan of Reorganization for the Debtors **[**confirmed by order of**]/[**filed with**]** the United States Bankruptcy Court for the District of Delaware, dated December 9, 2009, in the chapter 11 case commenced by the Company and certain of its Subsidiaries.

"Public Offering" means a public offering and sale of Common Stock pursuant to an effective registration statement under the Securities Act.

"Questionnaire" has the meaning set forth in Section 2(h) hereof.

"Registrable Common Stock" means any share of Common Stock acquired pursuant to the Backstop Agreement, the Rights Offering (as defined in the Plan) or otherwise in accordance with the Plan, and beneficially owned by the Holders from time to time, including shares of Class B Common Stock which are convertible into Common Stock; provided, however, that a share of Common Stock will cease to be Registrable Common Stock after it has been sold under a registration statement effected pursuant hereto or may be sold pursuant to Rule 144 promulgated under the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar or successor statute.

"Selling Holders" means the Holders requesting to be registered pursuant hereto.

"Shelf Registration" means a registration effected pursuant to a Shelf Registration Statement.

"Shelf Registration Statement" means a shelf registration statement, as may be amended or supplemented from time to time, filed pursuant to Rule 415 promulgated under the Securities Act.

"Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which fifty percent (50%)

or more of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote generally in the election of directors, managers or trustees thereof, or fifty percent (50%) or more of the equity interest therein, is at the time owned or controlled, directly or indirectly, by any Person or one or more of the other Subsidiaries of such Person or a combination thereof.

"Transfer" means any direct or indirect transfer, sale, offer, assignment, exchange, distribution, mortgage, pledge, hypothecation or other disposition. "Transferor" and "Transferee" have correlative meanings.

2. Securities Act Registration on Request.

(a) Request. At any time after ninety (90) days following the Effective Date, and from time to time thereafter prior to the termination of the Company's obligations hereunder pursuant to and in accordance with the terms of Section 17 hereof, any Holder (the "Initiating Holder") may make a written request (the "Initiating Request") to the Company for the registration with the Commission under the Securities Act (on Form S-3 or, if Form S-3 is not then available to the Company, Form S-1 or any other appropriate form) of all or part of the Initiating Holder's Registrable Common Stock, which request shall specify the number of shares to be disposed of by the Initiating Holder, the proposed plan of distribution therefor and whether or not a Shelf Registration Statement is being requested (subject to the conditions of Section 2(g)). Upon the receipt of any Initiating Request for registration pursuant to this Section 2(a), the Company promptly shall notify in writing all other Holders of the receipt of such request and will use its commercially reasonable efforts to effect, at the earliest practicable date, such registration under the Securities Act of:

(i) the Registrable Common Stock which the Company has been so requested to register by the Initiating Holder, and

(ii) all other Registrable Common Stock which the Company has been requested to register by any other Holders by written request given to the Company within twenty (20) days after the giving of written notice by the Company to such other Holders of the Initiating Request (or ten (10) days if the Company states in such written notice or gives telephonic notice to such other Holders, with written confirmation to follow promptly thereafter, stating that (i) such registration will be on Form S-3 (or, if Form S-3 is not then available to the Company, Form S-1 or any other appropriate form) and (ii) such shorter period of time is required because of a planned filing date),

all to the extent necessary to permit the disposition (in accordance with Section 2(c) hereof) of the Registrable Common Stock to be so registered; provided, that,

(A) the Company shall not be required to effect more than a total of three (3) registrations pursuant to this Section 2(a) for all Holders,

(B) if the intended method of distribution is an underwritten Public Offering, the Company shall not be required to effect such registration

pursuant to this Section 2(a) unless such underwriting shall be conducted on a "firm commitment" basis,

(C) if the Company shall have previously effected a registration pursuant to this Section 2(a), the Company shall not be required to effect any registration pursuant to this Section 2(a) until a period of one hundred eighty (180) days shall have elapsed from the date on which the previous such registration ceased to be effective,

(D) any Selling Holder whose Registrable Common Stock was to be included in any such registration pursuant to this Section 2(a), by written notice to the Company, may withdraw such request, and the Company shall not effect such registration in the event that the Selling Holders that have not elected to withdraw beneficially own, in the aggregate, less than the percentage of the shares of Registrable Common Stock required to initiate a request under this Section 2(a), and

(E) a Shelf Registration effected under this Section 2(a) shall comply with the procedures set forth in Section 2(h).

(b) Registration of Other Securities. Whenever the Company shall effect a registration pursuant to Section 2(a) hereof, no securities other than (i) Registrable Common Stock and (ii) subject to Section 2(f), Common Stock to be sold by the Company for its own account shall be included among the securities covered by such registration unless the Selling Holders beneficially owning not less than a majority of the shares of Registrable Common Stock to be covered by such registration shall have consented in writing to the inclusion of such other securities; provided, that, for the avoidance of doubt, nothing in this Section 2(b) shall prevent the Company from registering Common Stock to be sold by the Company for its own account pursuant to other registration statements.

(c) Registration Statement Form. Except as provided in Section 2(a), registrations under Section 2(a) hereof shall be on such appropriate registration statement form prescribed by the Commission under the Securities Act as shall be selected by the Company and as shall permit the disposition of the Registrable Common Stock pursuant to an underwritten offering unless the Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock requested to be included in such registration statement determine otherwise, in which case pursuant to the method of distribution reasonably determined by such Selling Holders. The Company agrees to include in any such registration statement filed pursuant to Section 2(a) hereof all information which the Selling Holders beneficially owning at least a majority of shares of the Registrable Common Stock covered by such registration statement effected pursuant hereto, upon advice of counsel as being required to be included in the registration statement, shall reasonably request. The Company shall use its commercially reasonable efforts to become eligible to use Form S-3 and, after becoming eligible to use Form S-3, shall use its commercially reasonable efforts to remain eligible to use Form S-3.

(d) Effective Registration Statement. A registration requested pursuant to Section 2(a) hereof shall not be deemed to have been effected:

(i) unless a registration statement with respect thereto has been declared effective by the Commission and remains effective in compliance with the provisions of the Securities Act and the laws of any state or other jurisdiction applicable to the disposition of Registrable Common Stock covered by such registration statement until such time as all of such Registrable Common Stock have been disposed of in accordance with such registration statement or there shall cease to be any Registrable Common Stock covered by such registration statement, provided, that, except with respect to any Shelf Registration, such period need not exceed ninety (90) days (plus a number of Business Days equal to the number of Business Days, if any, that the registration statement is not kept effective (including any days for which the use of the prospectus is suspended pursuant to Section 8(b)) after the initial date of its effectiveness and prior to the expiration of such ninety (90) day period), and, provided, further, that with respect to any Shelf Registration, such period need not extend beyond the period provided for in Section 2(g) hereof,

(ii) if, after it has become effective, such registration is subject to any stop order, injunction or other order or requirement of the Commission or other governmental or regulatory agency or court preventing the sale of securities under such registration statement for any reason (other than a violation of applicable law solely by any Selling Holder and has not thereafter become effective) or

(iii) if, in the case of an underwritten offering, the conditions to closing specified in an underwriting agreement to which the Company is a party are not satisfied or waived other than by reason of any breach or failure by any Selling Holder.

The Selling Holders to be included in a registration statement pursuant to Section 2(a) may at any time terminate such request for registration in accordance with Section 2(a)(ii)(D); provided, that, for the avoidance of doubt, the Company shall have been deemed to have effected such registration restatement for the purposes of this Section 2(a).

(e) Selection of Underwriters. The underwriter or underwriters of each underwritten offering, if any, of the Registrable Common Stock to be registered pursuant to Section 2(a) hereof shall be mutually selected by the Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock to be registered and the Company. In the case of any offering or registration initiated by the Company for its own account or any other offering not effected pursuant to Section 2(a) or 2(i) hereof, including any offering pursuant to which the Holders shall have piggyback rights pursuant to Section 3 hereof, the Company shall select a nationally recognized underwriter (or underwriters) for such offering in its sole discretion; provided that, the Company shall not identify any Holder or subsequent purchaser of Registrable Common Stock as an underwriter in any public disclosure with the Commission or any trading market without the prior written consent of such Holder or such subsequent purchaser, as the case may be, unless required by law. If the Company is required by law to identify any such party as an underwriter in any public disclosure or filing with the Commission or any trading market, it must notify such party in advance and such party shall have the option, in its sole discretion, to consent to such identification as an underwriter within five (5) Business Days or such party shall be deemed to have consented to have its Registrable Common Stock removed from the applicable registration statement.

(f) Priority in Requested Registration. If a registration requested pursuant to Section 2(a) hereof involves an underwritten Public Offering, and the managing underwriter of such underwritten offering shall advise the Company in writing (with a copy to each Selling Holder requesting that Registrable Common Stock be included in such registration statement) that, in its opinion, the number of shares of Registrable Common Stock requested to be included in such registration exceeds the number of such securities that can be sold in such offering within a price range stated to such managing underwriter by Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock requested to be included in such registration to be acceptable to such Selling Holders (such writing to state the basis of such opinion and the approximate number of securities which the managing underwriter believes may be included in such offering without such effect), then the Company shall include in such registration, to the extent of the number of shares which the Company is so advised the managing underwriter believes can be sold in such offering, (i) first, all Registrable Common Stock requested to be registered pursuant to Section 2(a) pro rata among the Selling Holders on the basis of the number of shares of Registrable Common Stock requested to be registered by all such Selling Holders, (ii) second, securities that the Company proposed to issue and sell for its own account and (iii) third, other securities, if any.

(g) Shelf Registrations. If one or more demands made pursuant to Section 2(a) hereof are for a Shelf Registration or any demands are made pursuant to Section 2(i) hereof, the period for which the Shelf Registration Statement in connection with the first Shelf Registration requested pursuant to Section 2(a) or 2(i) must remain effective need not extend beyond one (1) year from the date on which such Shelf Registration Statement initially was declared effective by the Commission and the period for which any subsequent Shelf Registration Statement in connection with the subsequent Shelf Registration requested pursuant to Section 2(a) or 2(i) must remain effective need not extend beyond nine (9) months from the date on which such Shelf Registration Statement initially was declared effective by the Commission (plus, in each case, a number of Business Days equal to the number of Business Days, if any, that the Shelf Registration Statement is not kept effective (including any days for which the use of the prospectus is suspended pursuant to Section 8(b)) after the initial date of its effectiveness and prior to such first-year or nine-month, as the case may be, anniversary thereof). The Company further agrees, if necessary, to supplement or amend the Shelf Registration Statement, if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration or by the Securities Act or by any other rules and regulations thereunder for shelf registration, and the Company agrees to furnish to the Holders whose Registrable Common Stock is included in such Shelf Registration Statement copies of any such supplement or amendment promptly after its being issued or filed with the Commission. Notwithstanding any other provision in this Agreement, a Holder shall only request a Shelf Registration, and the Company shall only effect a Shelf Registration, if the Company is eligible to file the Shelf Registration Statement on Form S-3 (or a successor form).

(h) Questionnaire. Notwithstanding any other provision hereof, no Holder's Registrable Common Stock shall be included in the Shelf Registration Statement unless and until such Holder furnishes to the Company a fully completed notice and questionnaire substantially in the form attached hereto as Exhibit A (the "Questionnaire") and such other information in writing as the Company may reasonably request in writing for use in connection with the Shelf

Registration Statement and any related application to be filed with or under state securities laws. As soon as practicable after a request for registration pursuant to Section 2(a), the Company shall provide the Questionnaire to the Holders. In order to be named as a selling stockholder in the Shelf Registration Statement at the time of effectiveness of the Shelf Registration Statement and to include in the Shelf Registration Statement all Registrable Common Stock requested to be included for sale by the Holder, each Holder must furnish to the Company in writing the completed Questionnaire and such other information reasonably requested by the Company and the Company will include information contained in the completed Questionnaire and such other information, if any, in the Shelf Registration Statement, as necessary and in a manner so that upon effectiveness of the Shelf Registration Statement, the Holder will be permitted to deliver the Shelf Registration Statement to purchasers of the Holder's Registrable Common Stock. At least thirty (30) days prior to the filing of the Shelf Registration Statement, the Company will provide to the Holders notice of its intention to file the Shelf Registration Statement and such other information the Company may reasonably request to be provided by the Holders. From and after the date that the Shelf Registration Statement becomes effective, upon receipt of a completed Questionnaire and such other information that the Company may reasonably request in writing, if any, the Company shall (i) as promptly as practicable after the date on which the Questionnaire is delivered, and in any event within the later of (x) fifteen (15) Business Days after receipt of such Questionnaire or (y) fifteen (15) Business Days after the expiration of any suspension pursuant to Section 8(b) in effect when the Questionnaire is delivered, file any amendments or supplements to the Shelf Registration Statement necessary for such Holder to be named as a selling stockholder and to include in the Shelf Registration Statement all Registrable Common Stock requested to be included for sale by such Holder or, if not permitted to name such Holder as a selling stockholder by supplement, file any necessary post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file any amendment or supplement to any document so that such Holder is named as a selling stockholder, and use its commercially reasonable efforts to cause such post-effective amendment to be declared effective as promptly as practicable; provided that the Company shall not be obligated to file more than one (1) post-effective amendment in any ninety (90) day period.

(i) Form S-3 Registration. Any Holder (an "Initiating Form S-3 Holder") may request at any time following the Company's Public Offering that the Company file a registration statement under the Securities Act on Form S-3 (or similar or successor form) covering the sale or other distribution of all or any portion of the Registrable Common Stock held by such Initiating Form S-3 Holder pursuant to Rule 415 under the Securities Act ("Form S-3 Request") if (i) the Company is a registrant qualified to use Form S-3 (or any similar or successor form) to register such Registrable Common Stock and (ii) the plan of distribution of the Registrable Common Stock is other than pursuant to an underwritten public offering. If such conditions are met, the Company shall use its commercially reasonable efforts to register under the Securities Act on Form S-3 (or any similar or successor form) at the earliest practicable date, for sale in accordance with the method of disposition specified in the Form S-3 Request, the number of Registrable Common Stock specified in such Form S-3 Request. In connection with a Form S-3 Request, the Company agrees to include in the prospectus included in any registration statement on Form S-3, such material describing the Company and intended to facilitate the sale of securities being so registered as is reasonably requested for inclusion therein by the Initiating Form S-3 Holders, whether or not the rules applicable to preparation of Form S-3 require the

inclusion of such information. Form S-3 Requests will not be deemed to be Initiating Requests as described in Section 2(a) hereof and Holders shall have the right to request an unlimited number of Form S-3 Requests. Notwithstanding the foregoing, the Company shall not be obligated to file more than one (1) registration statement on Form S-3 pursuant to this Section 2(i) in any given six (6) month period. No registration effected under this Section 2(i) shall relieve the Company of its obligation to effect any registration upon request under Section 2(a) hereof and no registration effected pursuant to this Section 2(i) shall be deemed to have been effected pursuant to Section 2(a) hereof.

3. Piggyback Registration. If the Company, at any time when a Shelf Registration Statement covering all outstanding shares of Registrable Common Stock is not effective, proposes to register Common Stock under the Securities Act by registration on any forms (other than Form S-4 or S-8 or any successor or similar form(s)), whether or not pursuant to registration rights granted to other holders of its securities and whether or not for sale for its own account, it shall give prompt written notice to all of the Holders of its intention to do so and of such Holders' rights under this Section 3, which notice, in any event, shall be given at least 21 days prior to such proposed registration. Upon the written request of any Holder receiving notice of such proposed registration (each, a "Piggyback Requesting Holder") made within 15 days after the receipt of any such notice (or 5 days if the Company states in such written notice or gives telephonic notice to the Holders, with written confirmation to follow promptly thereafter, stating that (i) such registration will be on Form S-3 (or, if Form S-3 is not then available to the Company, Form S-1 or any other appropriate form) and (ii) such shorter period of time is required because of a planned filing date), which request shall specify the Registrable Common Stock intended to be disposed of by such Piggyback Requesting Holder and the minimum offering price per share at which such Piggyback Requesting Holder is willing to sell its Registrable Common Stock, the Company shall, subject to Section 6(b) hereof, effect the registration under the Securities Act of all Registrable Common Stock which the Company has been so requested to register by the Piggyback Requesting Holders thereof; provided that,

(A) prior to the effective date of the registration statement filed in connection with such registration or, in the case of a Shelf Registration Statement, prior to the delivery of a preliminary prospectus related to such offering, and, in any event, promptly following receipt of notification by the Company from the managing underwriter (if an underwritten offering) of a range of prices at which such securities are likely to be sold, the Company shall so advise each Piggyback Requesting Holder of such price, and if such price is below the minimum price which shall be acceptable to such Piggyback Requesting Holder, such Piggyback Requesting Holder shall then have the right irrevocably to withdraw its request to have its Registrable Common Stock included in such registration statement, by delivery of written notice of such withdrawal to the Company within three (3) Business Days of its being advised of such price, without prejudice to the rights of any such Piggyback Requesting Holder to include Registrable Common Stock in any future registration (or registrations) pursuant to this Section 3 or to cause such registration to be effected as a registration under Section 2(a) or 2(i) hereof, as the case may be;

(B) if at any time after giving written notice of its intention to register the offer for sale of any securities and prior to the effective date of the registration statement filed in connection with such registration or, in the case of a Shelf Registration Statement, prior to the consummation of such offering, the Company shall determine for any reason not to register or to delay registration of such securities, the Company may, at its election, give written notice of such determination to each Piggyback Requesting Holder and (i) in the case of a determination not to register, the Company shall be relieved of its obligation to register any Registrable Common Stock in connection with such registration (but not from any obligation of the Company to pay the Expenses in connection therewith), without prejudice, however, to the rights of any Piggyback Requesting Holder to include Registrable Common Stock in any future registration (or registrations) pursuant to this Section 3 or, if applicable, to cause such registration to be effected as a registration under Section 2(a) or 2(i) hereof, as the case may be, and (ii) in the case of a determination to delay registering, shall be permitted to delay registering any Registrable Common Stock, for the same period as the delay in registering such other securities; and

(C) if such registration was initiated by the Company for its own account and involves an underwritten offering, each Piggyback Requesting Holder shall sell its Registrable Common Stock on the same terms and conditions as those that apply to the Company, and the underwriters of each such underwritten offering shall be a nationally recognized underwriter (or underwriters) selected by the Company in its sole discretion.

No registration effected under this Section 3 shall relieve the Company of its obligation to effect any registration upon request under Section 2(a) or 2(i) hereof and no registration effected pursuant to this Section 3 shall be deemed to have been effected pursuant to Section 2(a) or 2(i) hereof.

4. Expenses. Except as provided in the last paragraph of Section 5, the Company shall pay all Expenses in connection with any registration initiated pursuant to Sections 2(a), 2(i) or 3 hereof, whether or not such registration shall become effective and whether or not all or any portion of the Registrable Common Stock originally requested to be included in such registration are ultimately included in such registration.

5. Registration Procedures. If and whenever the Company is required to effect any registration under the Securities Act as provided in Sections 2(a), 2(i) and 3 hereof, the Company shall, as expeditiously as practicable:

(a) prepare and file with the Commission (promptly and, in the case of any registration pursuant to Section 2(a) or 2(i), in any event on or before the date that is (i) 90 days after the date of any Initiating Request or the Form S-3 Request or (ii) if, as of such ninetieth day, the Company does not have the audited financial statements required to be included in the registration statement, 30 days after the receipt by the Company from its independent public accountants of such audited financial statements, which the Company shall use its reasonable commercially reasonable efforts to obtain as promptly

as practicable) the requisite registration statement to effect such registration and thereafter use its commercially reasonable efforts to cause such registration statement to become and remain effective; provided, however, that the Company may discontinue any registration of its securities that are not shares of Registrable Common Stock (and, pursuant to, and under the circumstances specified in, Sections 3 and 8(b) hereof, its securities that are shares of Registrable Common Stock) at any time prior to the effective date of the registration statement relating thereto;

(b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Common Stock covered by such registration statement until such time as all of such Registrable Common Stock has been disposed of in accordance with the method of disposition set forth in such registration statement; provided, that, except with respect to any Shelf Registration, such period need not extend beyond 90 days after the effective date of the registration statement (plus a number of Business Days equal to the number of Business Days, if any, that the registration statement is not kept effective (including any days for which the use of the prospectus is suspended pursuant to Section 8(b)) after the initial date of its effectiveness and prior to the expiration of such 90-day period); and provided, further, that with respect to any Shelf Registration, such period need not exceed the applicable period provided for in Section 2(g) hereof;

(c) furnish to each seller of Registrable Common Stock covered by such registration statement and their representatives designated pursuant to Section 7(a), if any, and each underwriter, if any, such number of copies of such drafts and final conformed versions of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits and any documents incorporated by reference), such number of copies of such drafts and final versions of the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, including without limitation notification of whether such registration statement or amendment or supplement thereto will be reviewed by the Commission or any other regulatory authority, as the sellers beneficially owning at least a majority of the shares of Registrable Common Stock covered by such registration statement or any underwriter may reasonably request in writing; provided, that all drafts of such registration statement or amendment or supplement thereto shall be furnished to each seller of Registrable Common Stock covered by such registration statement and their representatives designated pursuant to Section 7(a) whether or not so requested;

(d) use its commercially reasonable efforts (i) to register or qualify all Registrable Common Stock and other securities, if any, covered by such registration statement under such other securities or blue sky laws of such states or other jurisdictions of the United States of America as the Selling Holders covered by such registration statement shall reasonably request in writing, (ii) to keep such registration or qualification in effect for so long as such registration statement remains in effect and (iii)

to take any other action that may be necessary or reasonably advisable to enable such sellers to consummate the disposition in such jurisdictions of the securities to be sold by such sellers, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this subsection (d) be obligated to be so qualified, to subject itself to taxation in such jurisdiction or to consent to general service of process in any such jurisdiction;

(e) use its commercially reasonable efforts to cause all Registrable Common Stock covered by such registration statement to be registered with or approved by such other federal or state governmental agencies or authorities as may be necessary upon the advice of counsel to the Company or counsel to the seller of Registrable Common Stock or Selling Holders to enable the seller or sellers thereof to consummate the disposition of such Registrable Common Stock;

(f) use its commercially reasonable efforts to obtain and, if obtained, furnish to each such seller's underwriters, if any, a signed

(i) opinion of counsel for the Company, dated the effective date of such registration statement (and, if such registration involves an underwritten offering, dated the date of the closing under the underwriting agreement and addressed to the underwriters), in the then-current customary form and covering such matters of the type customarily covered from time to time by legal opinions of such nature, and

(ii) "cold comfort" letter, dated the effective date of such registration statement (and, if such registration involves an underwritten offering, dated the date of the closing under the underwriting agreement and addressed to the underwriters) and signed by the independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement, reasonably satisfactory (based on the customary form and substance of "cold comfort" letters of issuers' independent public accountant customarily given in such an offering) in form and substance to such seller, in each case, covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of the accountants' comfort letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer's counsel and in accountants' comfort letters delivered to underwriters in such types of offerings of securities;

(g) notify each seller of Registrable Common Stock and other securities covered by such registration statement, if any, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such registration statement, as then in effect, includes an 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 in the light of the circumstances under which they were made and for which the Company chooses to suspend the use of the registration statement and prospectus pursuant to Section 8(b), and, in accordance with Section 8(b), at the

written request of any such seller of Registrable Common Stock, promptly prepare and furnish to it a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus, as supplemented or amended, shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made;

(h) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of a registration statement relating to the Registrable Common Stock at the earliest possible moment;

(i) otherwise comply with all applicable rules and regulations of the Commission and any other governmental agency or authority having jurisdiction over the offering, and make available to its stockholders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first full calendar month after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder, and furnish to each seller of Registrable Common Stock and to the managing underwriter, if any, at least ten days prior to the filing thereof (or such shorter time period reasonably necessary in light of applicable legal requirements) a copy of any amendment or supplement to such registration statement or prospectus;

(j) use its commercially reasonable efforts to cause all Registrable Common Stock covered by a registration statement (i) to be listed on a national securities exchange on which similar securities issued by the Company are then listed, if the listing of such Registrable Common Stock is then permitted under the rules of such exchange, or (ii) if the Company is not required pursuant to clause (i) above to list Registrable Common Stock on a specific national securities exchange, use its commercially reasonable efforts to list the Registrable Common Stock on a national securities exchange and, without limiting the generality of the foregoing, use its commercially reasonable efforts to arrange for at least two market makers to register with FINRA as such with respect to such Registrable Common Stock;

(k) provide a transfer agent and registrar for the Registrable Common Stock covered by a registration statement no later than the effective date thereof;

(l) enter into such agreements (including an underwriting agreement in customary form) and take such other actions as the Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock covered by such registration statement shall reasonably request in order to expedite or facilitate the disposition of such Registrable Common Stock, including customary indemnification;

(m) if requested by the managing underwriter(s) or the Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock being sold in connection with an underwritten offering, promptly incorporate in a prospectus

supplement or post-effective amendment such information provided to the Company in writing as the managing underwriter(s) and the Selling Holders beneficially owning at least a majority of the Registrable Common Stock being sold agree should be included therein relating to the plan of distribution with respect to such Registrable Common Stock, including without limitation, information with respect to the number of shares of Registrable Common Stock being sold to such underwriters, the purchase price being paid therefor by such underwriters and with respect to any other terms of the underwritten offering of the Registrable Common Stock to be sold in such offering, and make all required filings of such prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and

(n) cooperate with the Selling Holders and the managing underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Registrable Common Stock to be sold and not bearing any restrictive legends, and enable such Registrable Common Stock to be in such share amounts and registered in such names as the managing underwriter(s) or, if none, the Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock being offered for sale, may request at least three Business Days prior to any sale of Registrable Common Stock to the underwriters.

As a condition to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Common Stock of a Selling Holder, such Selling Holder must furnish to the Company in writing such information regarding itself, the Registrable Common Stock held by it and the intended methods of disposition of the Registrable Common Stock held by it as is necessary to effect the registration of such Selling Holders' Registrable Common Stock and is requested in writing by the Company. Except as otherwise required by Section 2(h), at least thirty days prior to the first anticipated filing date of a registration statement for any registration under this Agreement, the Company will notify in writing each Holder of the information referred to in the preceding sentence which the Company is requesting from such Holder whether or not such Holder has elected to have any of its Registrable Common Stock included in the registration statement. If, within ten days prior to the anticipated filing date, the Company has not received the requested information from such Holder, then the Company may file the registration statement without including Registrable Common Stock of such Holder if, in the opinion of the Company's counsel, such information is required to be included in such registration statement.

Each Holder agrees that as of the date that a final prospectus is made available to it for distribution to prospective purchasers of Registrable Common Stock it shall cease to distribute copies of any preliminary prospectus prepared in connection with the offer and sale of such Registrable Common Stock. Each Holder further agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 5(g) and a suspension of the use of the registration statement and prospectus pursuant to Section 8(b), such Holder shall forthwith discontinue such Holder's disposition of Registrable Common Stock pursuant to the registration statement and prospectus relating to such Registrable Common Stock until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 5(g) and, if so directed by the Company, shall deliver to the Company

(at the Company's expense) all copies, other than permanent file copies, then in such Holder's possession of the prospectus relating to such Registrable Common Stock at the time of receipt of such notice. If any event of the kind described in Section 5(g) occurs and such event is the fault solely of a Holder (or Holders), such Holder (or Holders) shall pay all Expenses attributable to the preparation, filing and delivery of any supplemented or amended prospectus contemplated by Section 5(g).

6. Underwritten Offerings.

(a) Requested Underwritten Offerings. If requested by the underwriters in connection with a request for a registration (that is not a Shelf Registration) under Section 2(a) hereof or any underwritten "takedown" of securities under a Shelf Registration Statement filed pursuant to Section 2(a), the Company shall enter into a firm commitment underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the Company, a majority of the Selling Holders whose Registrable Common Stock is to be included in such registration and the underwriters and to contain such representations and warranties by the Company and the Selling Holders and such other terms as are customary in agreements of that type, including, without limitation, indemnification and contribution to the effect and to the extent provided in Section 9 hereof.

(b) Piggyback Underwritten Offerings: Priority.

(i) If the Company proposes to register any of its securities under the Securities Act for its own account as contemplated by Section 3 hereof and such securities are to be distributed by or through one or more underwriters, and if the managing underwriter of such underwritten offering shall advise the Company in writing (with a copy to the Piggyback Requesting Holders) that if all the Registrable Common Stock requested to be included in such registration were so included, in its opinion, the number and type of securities proposed to be included in such registration would exceed the number and type of securities which the managing underwriter believes could be sold in such offering within a price range acceptable to the Company (such writing to state the basis of such opinion and the approximate number and type of securities which the managing underwriter believes may be included in such offering without such effect), then the Company shall include in such registration pursuant to Section 3, to the extent of the number of securities which the Company is so advised the managing underwriter believes can be sold in such offering, (i) first, securities that the Company proposes to issue and sell for its own account, (ii) second, Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof, pro rata among the Piggyback Requesting Holders on the basis of the number of shares of Registrable Common Stock requested to be registered by all such Piggyback Requesting Holders, if any, and (iii) third, other securities, if any.

(ii) In the case of any other registration contemplated by Section 3 involving an underwritten Public Offering, if the managing underwriter of such underwritten offering shall advise the Company in writing (with a copy to the Piggyback Requesting Holders) that if all Registrable Common Stock requested to be included in such registration were so included, in its opinion, the number and type of securities

proposed to be included in such registration would exceed the number and type of securities which the managing underwriter believes could be sold in such offering within a price range stated to such managing underwriter by Selling Holders beneficially owning at least a majority of the shares of Registrable Common Stock requested to be included in such registration to be acceptable to such Selling Holders (such writing to state the basis of such opinion and the approximate number and type of securities which the managing underwriter believes may be included in such offering without such effect), then the Company shall include in such registration pursuant to Section 3, to the extent of the number of securities which the Company is so advised the managing underwriter believes can be sold in such offering, (i) first, Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof, pro rata among the Piggyback Requesting Holders on the basis of the number of shares of Registrable Common Stock requested to be registered by all such Piggyback Requesting Holders, (ii) second, securities that the Company proposed to issue and sell for its own account and (iii) third, other securities, if any.

Any Selling Holder may withdraw its request to have all or any portion of its Registrable Common Stock included in any such offering by notice to the Company within 10 Business Days after receipt of a copy of a notice from the managing underwriter pursuant to this Section 6(b).

(c) Selling Holders to be Parties to Underwriting Agreement. Each Selling Holder whose Registrable Common Stock is to be distributed by underwriters in an underwritten offering contemplated by subsections (a) or (b) of this Section 6 shall be a party to the underwriting agreement between the Company, such underwriters and any such Selling Holder and, at its option, may reasonably require that any or all of the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters shall also be made to and for the benefit of such Selling Holder (except to the extent any such provision contradicts the terms of this Agreement) and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement be conditions precedent to the obligations of such Selling Holder. No such Selling Holder shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Selling Holder, such Selling Holder's Registrable Common Stock and such Selling Holder's intended method of distribution.

(d) Holdback Agreements. Each Holder agrees, unless otherwise agreed to by the managing underwriter for any underwritten offering pursuant to this Agreement, not to effect any sale or distribution of any equity securities of the Company or securities convertible into or exchangeable or exercisable for equity securities of the Company, including any sale under Rule 144 under the Securities Act, during the 10 days prior to the date on which an underwritten registration of Registrable Common Stock pursuant to Section 2 or 3 hereof has become effective and until the earlier of (a) the date on which all Registrable Common Stock to be sold pursuant to such underwritten registration has been sold by the underwriters and (b) 90 days after the effective date of such underwritten registration or such shorter period of time acceptable to the managing underwriter of such underwritten offering, if any, except as part of such underwritten registration or to the extent that such Holder is prohibited by applicable law from agreeing to withhold securities from sale or is acting in its capacity as a fiduciary or an investment adviser.

Without limiting the scope of the term "fiduciary," a Holder shall be deemed to be acting as a fiduciary or an investment adviser if its actions or the securities proposed to be sold are subject to the Employee Retirement Income Security Act of 1974, as amended, the Investment Company Act of 1940, as amended, or the Investment Advisers Act of 1940, as amended, or if such securities are held in a separate account under applicable insurance law or regulation.

The Company agrees (i) not to effect any sale or distribution of any equity securities of the Company, or securities convertible into or exchangeable or exercisable for equity securities of the Company (except pursuant to registrations on Form S-4 or Form S-8 or any successor thereto), during the 10 days prior to the date on which an underwritten registration of Registrable Common Stock pursuant to Section 2 or 3 hereof has become effective and until the earlier of (a) the date on which all Registrable Common Stock to be sold pursuant to such underwritten registration has been sold by the underwriters and (b) 90 days after the effective date of such underwritten registration or such shorter period of time approved in writing by the managing underwriter of such underwritten offering, if any, except as part of such underwritten registration, and (ii) to cause each holder of any equity securities, or securities convertible into or exchangeable or exercisable for equity securities, in each case, acquired from the Company at any time on or after the date of this Agreement (other than in a Public Offering or sale under Rule 144 promulgated under the Securities Act), who is a director or employee of or a consultant to the Company or who has received registration rights from the Company, to agree not to effect any sale or distribution of such securities during the applicable period (or such shorter period of time approved in writing by the managing underwriter of such underwritten offering, if any).

7. Preparation: Reasonable Investigation.

(a) Registration Statements. In connection with the preparation and filing of each registration statement under the Securities Act pursuant to this Agreement, the Company shall (i) give representatives (designated to the Company in writing) of each Selling Holder or group of Selling Holders, the underwriters, if any, and one firm of counsel, one firm of accountants and one firm of other agents retained on behalf of all underwriters and one firm of counsel, one firm of accountants and one firm of other agents retained by Selling Holders beneficially owning a majority of the shares of Registrable Common Stock covered by such registration statement on behalf of all Selling Holders, the reasonable opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the Commission, and each amendment thereof or supplement thereto, (ii) upon reasonable advance notice to the Company, give each of them such reasonable access to all financial and other records, corporate documents and properties of the Company and its Subsidiaries, as shall be necessary, in the reasonable opinion of such Selling Holders' and such underwriters' counsel, to conduct a reasonable due diligence investigation for purposes of the Securities Act, and (iii) upon reasonable advance notice to the Company, provide such reasonable opportunities to discuss the business of the Company with its officers, directors, employees and the independent public accountants who have certified its financial statements as shall be necessary, in the reasonable opinion of such Selling Holders' and such underwriters' counsel, to conduct a reasonable due diligence investigation for purposes of the Securities Act.

(b) Confidentiality. Each Selling Holder shall maintain the confidentiality of any confidential information received from or otherwise made available by the Company to such

Selling Holder in its capacity as such. Information that (i) is or becomes available to a Selling Holder from a public source other than as a result of a disclosure by such Selling Holder or any of its Affiliates or (ii) is disclosed to a Selling older by a third-party source who the Selling Holder reasonably believes is not bound by an obligation of confidentiality to the Company. Notwithstanding the foregoing, each Selling Holder shall be permitted to disclose confidential information solely if and only to the extent required to be disclosed by law, government regulation, or court order, provided, however, that such Selling Holder shall use commercially reasonable efforts to promptly provide the Company with the opportunity to seek confidential treatment of such confidential information. The Selling Holders shall not grant access, and the Company shall not be required to grant access, to information under this Section 7 to any Person who will not agree to maintain the confidentiality (to the same extent a Selling Holder is required to maintain confidentiality) of any confidential information received from or otherwise made available to it by the Company or the Selling Holders under this Agreement.

8. Postponements.

(a) Without limiting any other rights of the Holders under this Agreement, if the Company shall fail to file within the time period specified by this Agreement any registration statement to be filed pursuant to a request for registration under Section 2(a) or 2(i) hereof, (i) any Selling Holder whose Registrable Common Stock was to be included in such registration shall have the right to withdraw such request and (ii) the Selling Holders requesting registration shall have the right to withdraw such request to file a registration statement if and only if the Selling Holders that have not elected to withdraw beneficially own, in the aggregate, less than the percentage of shares of Registrable Common Stock required to initiate a request under Section 2(a), if applicable. Any withdrawal shall be made by giving written notice to the Company within 20 days after the date on which a registration statement would otherwise have been required to have been filed with the Commission under clause (i) of Section 5(a) hereof (i.e., 20 days after the date that is 90 days after the date of the relevant Initiating Request or Form S-3 Request, or, if, as of such ninetieth day, the Company does not have the audited financial statements required to be included in the registration statement, 30 days after the receipt by the Company from its independent public accountants of such audited financial statements). In the event of a withdrawal described in clause (ii) of this Section 8(a), the request for registration shall not be counted for purposes of determining the number of registrations to which the Holders are entitled pursuant to Section 2(a) hereof. The Company shall pay all Expenses incurred in connection with any withdrawal described in clauses (i) and (ii) of this Section 8(a).

(b) The Company shall not be obligated to file any registration statement, or file any amendment or supplement to any registration statement, and may suspend the registration process and/or any Selling Holder's ability to use a prospectus, at any time (but not to exceed one time in any twelve-month period) when the Company, in the good faith judgment of its Board of Directors, reasonably believes that (i) the continuation of the registration process thereof at the time requested would adversely affect a pending or proposed material financing or a material acquisition, merger, recapitalization, consolidation, reorganization or similar transaction, or negotiations, discussions or pending proposals with respect thereto or (ii) the registration statement and any prospectus would, in the Company's judgment, contain a material misstatement of fact or omission as a result of an event that has occurred or is continuing. The filing of a registration statement, or any amendment or supplement thereto, by the Company

cannot be deferred, and the Selling Holders' rights to make sales pursuant to an effective registration statement cannot be suspended, pursuant to the provisions of the preceding sentence, (x) in the case of clause (i) above, for more than ten days after the abandonment or consummation of any of the proposals or transactions set forth in such clause (i), (y) in the case of clause (ii) above, following such time as the Company no longer believes, in its judgment, that the registration statement and any prospectus would contain a material misstatement of fact or omission as a result of an event that has occurred or is continuing; provided that the Company will use its commercially reasonable efforts to update the disclosure in such registration statement and prospectus (whether by amendment or by incorporation by reference) as soon as practicable such that the registration statement and prospectus will not contain a material misstatement of fact or omission, or (z) in any event, in the case of either clause (i) or clause (ii) above, for more than 120 days after the date of the Board of Directors' determination; provided that the Company may not suspend any Selling Holder's ability to use a prospectus pursuant to this Section 8(b) (including but not limited to as set forth in Section 5(g)) for more than an aggregate of 120 days in any 365-day period. The Company shall give notice to the Selling Holders that the registration process has been suspended and upon notice duly given pursuant to Section 18(f) hereof, each Selling Holder agrees not to sell any Registrable Common Stock pursuant to any registration statement until such Selling Holder's receipt of copies of the supplemented or amended prospectus, or until it is advised in writing by the Company that the prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such prospectus. The Company shall not specify the nature of the event giving rise to a suspension in any notice to the Selling Holders of the existence of such a suspension. If the Company suspends the Selling Holders' rights to make sales pursuant hereto, the applicable registration period shall be extended by the number of days of such suspension.

9. Indemnification.

(a) Indemnification by the Company. In connection with any registration statement filed by the Company pursuant to Section 2(a), 2(i) or 3 hereof, to the fullest extent permitted by law the Company shall, and hereby agrees to, indemnify and hold harmless, each Holder and seller of any Registrable Common Stock covered by such registration statement and each other Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls (within the meaning of the Exchange Act) such Holder or seller or any such underwriter, and their respective stockholders, directors, officers, employees, partners, agents and Affiliates (each, a "Company Indemnitee" for purposes of this Section 9(a)), against any losses, claims, damages, liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof and whether or not such indemnified party is a party thereto), joint or several, and expenses, including, without limitation, the reasonable fees, disbursements and other charges of legal counsel and reasonable costs of investigation, to which such Company Indemnitee may become subject under the Securities Act or otherwise (collectively, a "Loss" or "Losses"), insofar as such Losses arise out of, are based upon or relate to (i) any breach of any representation or warranty made by the Company in this Agreement or any other certificate, instrument or document contemplated hereby, (ii) any breach of any covenant, agreement or obligation of the Company contained in this Agreement or any other certificate, instrument or document contemplated hereby, or (iii) any untrue statement or alleged untrue statement of any

material fact contained in any registration statement under which such securities were registered or otherwise offered or sold under the Securities Act or otherwise, any preliminary prospectus, final prospectus or summary prospectus related thereto, or any amendment or supplement thereto (or in any document incorporated by reference in any of the foregoing) (collectively, "Offering Documents"), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances in which they were made not misleading or any violation by the Company of any federal or state law, rule or regulation applicable to the Company and relating to action required of or inaction by the Company in connection with any such registration; provided that, the Company shall not be liable to any Company Indemnitee in any such case to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Offering Documents in reliance upon and in conformity with information furnished to the Company in a writing by such Company Indemnitee specifically stating that it is expressly for use therein. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Indemnitee and shall survive the transfer of such securities by such Company Indemnitee.

(b) Indemnification by the Offerors and Sellers. In connection with any registration statement filed by the Company pursuant to Section 2(a), 2(i) or 3 hereof in which a Selling Holder has registered for sale Registrable Common Stock, each such Selling Holder or seller of Registrable Common Stock shall, and hereby agrees to, on a several and not joint basis, indemnify and hold harmless to the fullest extent permitted by law the Company and each of its directors, officers, employees, agents, partners, stockholders, Affiliates and each other Person, if any, who controls (within the meaning of the Exchange Act) the Company and each other seller and such seller's employees, directors, officers, stockholders, partners, agents and Affiliates (each, a "Holder Indemnitee" for purposes of this Section 9(b)), against all Losses insofar as such Losses arise out of, are based upon or relate to any untrue statement or alleged untrue statement of a material fact contained in any Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in the light of circumstances in which they were made not misleading, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with information furnished to the Company in a writing duly executed by such Selling Holder or seller of Registrable Common Stock expressly for use therein; provided, however, that the liability of such indemnifying party under this Section 9(b) shall be limited to the amount of the net proceeds received by such indemnifying party in the sale of Registrable Common Stock giving rise to such liability. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Selling Holder Indemnitee and shall survive the transfer of such securities by such indemnifying party.

(c) Notices of Losses, etc. Promptly after receipt by an indemnified party of written notice of the commencement of any action or proceeding involving a Loss referred to in the preceding subsections of this Section 9, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; provided, however, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under

the preceding subsections of this Section 9, except to the extent that the indemnifying party is materially and actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist in respect of such Loss, to assume and control the defense thereof, in each case at its own expense, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after its assumption of the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation, unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim after the assumption of the defense thereof. No indemnifying party shall be liable for any settlement of any such action or proceeding effected without its written consent, which shall not be unreasonably withheld. No indemnifying party shall, without the consent of the indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such Loss or which requires action on the part of such indemnified party or otherwise subjects the indemnified party to any obligation or restriction to which it would not otherwise be subject.

(d) Contribution. If the indemnification provided for in this Section 9 shall for any reason be unavailable to an indemnified party under subsection (a) or (b) of this Section 9 in respect of any Loss, then, in lieu of the amount paid or payable under subsection (a) or (b) of this Section 9, the indemnified party and the indemnifying party under subsection (a) or (b) of this Section 9 shall contribute to the aggregate Losses (including legal or other expenses reasonably incurred in connection with investigating the same) (i) in such proportion as is appropriate to reflect the relative fault of the Company and the prospective Selling Holders covered by the registration statement which resulted in such Loss or action in respect thereof, with respect to the statements, omissions or action which resulted in such Loss or action in respect thereof, as well as any other relevant equitable considerations, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and such prospective sellers, on the other hand, from their sale of Registrable Common Stock; provided that, for purposes of this clause (ii), the relative benefits received by the prospective sellers shall be deemed not to exceed the net proceeds received by such sellers. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The obligations, if any, of the Selling Holders to contribute as provided in this subsection (d) are several in proportion to the relative value of their respective Registrable Common Stock covered by such registration statement and not joint. In addition, no Person shall be obligated to contribute hereunder any amounts in payment for any settlement of any action or Loss effected without such Person's consent, which shall not be unreasonably withheld.

(e) Indemnification Payments. The indemnification and contribution required by this Section 9 shall be made by periodic payments of the amount thereof during the course of any investigation or defense, as and when any Loss is incurred and is due and payable.

10. Registration Rights to Others.

If the Company shall at any time hereafter provide to any holder of any securities of the Company rights with respect to the registration of such securities under the Securities Act or the Exchange Act, such rights shall not be in conflict with or adversely affect any of the rights provided to the Holders in, or conflict (in a manner that adversely affects the Holders) with any other provisions included in, this Agreement.

11. Adjustments Affecting Registrable Common Stock.

Without the written consent of the Holders beneficially owning a majority of the outstanding shares of Registrable Common Stock, the Company shall not effect or permit to occur any combination, subdivision or reclassification of Registrable Common Stock that would materially adversely affect the ability of the Holders to include such Registrable Common Stock in any registration of its securities under the Securities Act contemplated by this Agreement or the marketability of such Registrable Common Stock under any such registration or other offering.

12. Rule 144 and Rule 144A; Listing.

If the Company has a class of equity securities registered under the Exchange Act, the Company shall take all actions reasonably necessary to:

(a) enable the Holders to sell Registrable Common Stock without registration under the Securities Act to the maximum extent permitted by the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, (ii) Rule 144A under the Securities Act, as such Rule may be amended from time to time, or (iii) any similar rules or regulations hereafter adopted by the Commission, including, without limiting the generality of the foregoing, filing on a timely basis all reports required to be filed under the Exchange Act. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements; and

(b) cause the Common Stock to be listed or qualified for trading on a national securities exchange in the United States on or as soon as reasonably practicable following the Effective Date.

13. Amendments and Waivers.

Any provision of this Agreement may be amended, modified or waived if, but only if, the written consent to such amendment, modification or waiver has been obtained from the Company and (i) except as provided in clauses (ii) and (iii) below, from the Holders of at least two-thirds of the shares of Registrable Common Stock affected by such amendment, modification or waiver, (ii) in the case of any amendment, modification or waiver of any provision of Section 4, 8 or 9 hereof or this Section 13 or any provisions as to the number of

requests for registration to which Holders are entitled under Section 2 or 3 hereof, from each Holder, and (iii) in the case of any other amendment, modification or waiver of any provision of this Agreement which adversely affects any right and/or obligation under this Agreement of any Holder, from each Holder so affected. Notwithstanding the foregoing, the Company may from time to time add additional Holders as parties to this Agreement. In order to become a party to this Agreement, such additional party must execute a joinder agreement, in form and substance satisfactory to the Company, evidencing such party's agreement to be bound hereby as a Holder, and upon the Company's receipt of any such additional Holder's executed joinder agreement, such additional Holder shall be deemed to be a party hereto and bound hereby.

14. Nominees for Beneficial Owners.

In the event that any Registrable Common Stock is held by a nominee for the beneficial owner thereof, the beneficial owner thereof may, at its election in writing delivered to the Company, be treated as the holder of such Registrable Common Stock for purposes of any request or other action by any Holder or Holders pursuant to this Agreement or any determination of the number or percentage of shares of Registrable Common Stock held by any Holder or Holders contemplated by this Agreement. If the beneficial owner of any Registrable Common Stock so elects, the Company may require assurances reasonably satisfactory to it of such owner's beneficial ownership of such Registrable Common Stock.

15. Assignment.

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Any Holder may Transfer to any permitted Transferee (as permitted under applicable law) its Registrable Common Stock and its rights and obligations under this Agreement, provided that such Transferee shall agree in writing prior to the assignment to be bound by this Agreement as if it were an original party hereto, whereupon such Transferee shall for all purposes be deemed to be a Holder under this Agreement but only if (i) such Transferee beneficially owns at least two percent (2%) of the then outstanding shares of Registrable Common Stock after giving effect to such Transfer or (ii) the Transferor Transfers to such Transferee at least two percent (2%) of the shares of Registrable Common Stock outstanding as of the date of this Agreement. Except as provided above or otherwise permitted by this Agreement, neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any Holder without the prior written consent of the other parties hereto. The Company may not assign this Agreement or any right, remedy, obligation or liability arising hereunder or by reason hereof without the consent of the Holders beneficially owning a majority of the outstanding shares of Registrable Common Stock.

16. Calculation of Percentage or Number of Shares of Registrable Common Stock.

For purposes of this Agreement, all references to a percentage or number of shares of Registrable Common Stock or Common Stock shall be calculated based upon the number of shares of Registrable Common Stock or Common Stock, as the case may be, outstanding at the time such calculation is made (assuming conversion of all outstanding Class B Common Stock into Common Stock) and shall exclude any Registrable Common Stock or

Common Stock, as the case may be, beneficially owned by the Company or any Subsidiary of the Company. For the purposes of calculating any percentage or number of shares of Registrable Common Stock or Common Stock as contemplated by the previous sentence, the terms "Holder" and "Initiating Holder" shall include all Affiliates thereof (other than the Company and its Subsidiaries) beneficially owning any shares of Registrable Common Stock or Common Stock.

17. Termination of Registration Rights. This Agreement, including, without limitation, the Company's obligations under Sections 2(a), 2(i) and 3 hereof to register Common Stock for sale under the Securities Act shall terminate on the earlier of (i) the first date on which there are no Holders that are parties to this Agreement or (ii) the first date on which all outstanding shares of Registrable Common Stock constitute less than one percent (1%) of the then outstanding shares of Common Stock (assuming conversion of all outstanding Class B Common Stock into Common Stock). Notwithstanding any termination of this Agreement pursuant to this Section 17, the parties' obligations under Section 4 and Section 9 hereof shall continue in full force and effect.

18. Miscellaneous.

(a) Further Assurances. The Company shall execute such documents and other papers and perform such further acts as may be reasonably required or advisable to carry out the provisions of this Agreement and the transactions contemplated hereby.

(b) Headings. The headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provisions hereof.

(c) Conflicting Instructions. A Person is deemed to be a holder of Registrable Common Stock whenever such Person owns of record Registrable Common Stock. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Common Stock, the Company will act upon the basis of instructions, notice or election received from the registered owner of such Registrable Common Stock.

(d) Remedies. Each Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and the Company hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(e) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and there are no restrictions, promises, representations, warranties, covenants, or undertakings with respect to the subject matter hereof, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof.

(f) Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or two Business Days after being delivered to a recognized courier (whose stated terms of delivery are two Business Days or less to the destination of such notice), or five calendar days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed as set forth on Schedule A hereto to the parties hereto, or to such other address as may be hereafter notified by the respective parties hereto.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

(h) Severability. Notwithstanding any provision of this Agreement, neither the Company nor any other party hereto shall be required to take any action which would be in violation of any applicable federal or state securities law. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of any other provision of this Agreement in such jurisdiction or the validity, legality or enforceability of this Agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement.

19. Transfer Agent. The Company shall serve as transfer agent with respect to transfers of shares of Common Stock until such time as it retains a third party transfer agent to manage such responsibilities.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SPANSION INC.

By: _____
Name:
Title:

HOLDERS:

SLS SPANSION HOLDINGS, LLC

By: _____
Name:
Title:

[OTHER SILVER LAKE ENTITIES]

By: _____
Name:
Title:

SCHEDULE A

NOTICES

If to the Company, to:

Spansion Inc.
915 DeGuigne Dr.
Sunnyvale, CA 94085
Attn: General Counsel
Facsimile:

with a copy to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, CA 94025
Attn: Tad J. Freese, Esq.
Facsimile: (650) 463-2600

If to the Holders, to:

c/o SLS Spansion Holdings, LLC
2775 Sand Hill Road
Suite 100
Menlo Park, CA 94025
Attn: Karen King, Esq.
Facsimile: (650) 234-2502

with a copy to:

Milbank, Tweed, Hadley & McCloy LLP
601 South Figueroa Street, 30th Floor
Los Angeles, CA 90017
Attn: Gregory A. Bray, Esq.
and
Neil J Wertlieb, Esq.
Facsimile: (213) 629-5063

EXHIBIT A

FORM OF SELLING STOCKHOLDER QUESTIONNAIRE

The undersigned beneficial owner (the "Selling Stockholder") of shares (the "Registrable Common Stock") of common stock, par value $0.01 per share, of Spansion Inc. (the "Company"), hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Common Stock beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Selling Stockholder Questionnaire, understands that it will be bound by the terms and conditions of this Selling Stockholder Questionnaire and the Registration Rights Agreement, dated as of January [●], 2010, among the Company and the Holders named therein (the "Registration Rights Agreement"). Capitalized terms used and not defined herein shall have the meaning ascribed to them in the Registration Rights Agreement.

In accordance with the Registration Rights Agreement, Selling Stockholders that do not complete this Selling Stockholder Questionnaire and deliver it to the Company as provided below will not be named selling stockholders in the prospectus and therefore will not be permitted to sell any Registrable Common Stock pursuant to the Shelf Registration Statement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Company's directors, the Company's officers and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against certain losses arising in connection with statements concerning the undersigned made in the Shelf Registration Statement or the related prospectus in reliance upon the information provided in this Selling Stockholder Questionnaire. The undersigned hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons set forth therein.

Certain legal consequences arise from being named a selling stockholder in the Shelf Registration Statement and the related prospectus. Accordingly, holders and beneficial owners are advised to consult their own securities law counsel regarding the consequences of being named or not named as a selling stockholder in the Shelf Registration Statement and the related prospectus.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

(1) (a) Full Legal Name of Selling Stockholder:

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Common Stock listed in (3) below is held:

(c) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which Registrable Common Stock listed in (3) below is held:

(2) Address for Notices to Selling Stockholder:

_____

_____

Telephone (including area code): _____

Fax (including area code): _____

Contact Person: _____

(3) Beneficial Ownership of Registrable Common Stock:

_____

(a) Type and Principal Amount/Number of Registrable Common Stock beneficially owned:

_____

(b) CUSIP No(s). of such Registrable Common Stock beneficially owned:

_____

(4) Beneficial Ownership of Other Securities of the Company Owned by the Selling Stockholder:
Except as set forth below in this Item (4), the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Common Stock listed above in Item (3).

(a) Type and Amount of Other Securities beneficially owned by the Selling Stockholder:

_____

(b) CUSIP No(s). of such Other Securities beneficially owned:

_____

(5) Relationship with the Company:
Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here: _____

(6) Is the Selling Stockholder a registered broker-dealer?

Yes ☐

No ☐

If "Yes", please answer subsection (a) and subsection (b):

(a) Did the Selling Stockholder acquire the Registrable Common Stock as compensation for underwriting/broker-dealer activities to the Company?

Yes ☐

No ☐

(b) If you answered "No" to question 6(a), please explain your reason for acquiring the Registrable Common Stock:

_____

_____

(7) Is the Selling Stockholder an affiliate of a registered broker-dealer?

Yes ☐

No ☐

If "Yes", please identify the registered broker-dealer(s), describe the nature of the affiliation(s) and answer subsection (a) and subsection (b):

_____

(a) Did the Selling Stockholder purchase the Registrable Common Stock in the ordinary course of business (if no, please explain)?

Yes ☐
No ☐ Explain: _____

(b) Did the Selling Stockholder have an agreement or understanding, directly or indirectly, with any person to distribute the Registrable Common Stock at the same time the Registrable Common Stock were originally purchased (if yes, please explain)?

Yes ☐ Explain: _____
No ☐

(8) Is the Selling Stockholder a non-public entity?

Yes ☐
No ☐

If "Yes", please answer subsection (a):

(a) Identify the natural person or persons that have voting or investment control over the Registrable Common Stock that the non-public entity owns:

_____

_____

(9) Plan of Distribution:

Except as set forth below, the undersigned Selling Stockholder (including its donees and pledgees) intends to distribute the Registrable Common Stock listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all): Such Registrable Common Stock may be sold from time to time directly by the undersigned Selling Stockholder or, alternatively, in accordance with the Registration Rights Agreement, through underwriters, broker-dealers or agents. If the Registrable Common Stock is sold through underwriters or broker-dealers, the Selling Stockholders will be responsible for underwriting discounts or commissions or agent commissions. Such Registrable Common Stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve cross or block transactions) (i) on any national securities exchange or quotation service on which the Registrable Common Stock may be listed or quoted at the time of sale, (ii) in the over-the-counter market, (iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market, or (iv) through the writing of options. In connection with sales of the Registrable Common Stock or otherwise, the undersigned Selling Stockholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Common Stock in the course of hedging positions they assume. The undersigned Selling Stockholder may also sell Registrable Common Stock short and deliver Registrable Common Stock to close out short positions, or loan or pledge Registrable Common Stock to broker-dealers that in turn may sell such securities.

State any exceptions here: _____

The undersigned Selling Stockholder acknowledges that it understands its obligations to comply with the provisions of the Exchange Act, and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Common Stock pursuant to the Shelf Registration Agreement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify the Selling Stockholder against certain liabilities.

In the event the undersigned transfers all or any portion of the Registrable Common Stock listed in Item (3) above after the date on which such information is provided to the Company other than pursuant to the Shelf Registration Statement, the undersigned agrees to notify the transferee(s) at the time of the transfer of its rights and obligations under this Selling Stockholder Questionnaire and the Registration Rights Agreement.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law or by the staff of the Commission for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing, by hand-delivery, first-class mail, or air courier guaranteeing overnight delivery to the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (9) above and the inclusion of such information in the Shelf Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Shelf Registration Statement and the related prospectus.

By signing below, the undersigned agrees that if the Company notifies the undersigned in accordance with and pursuant to the Registration Rights Agreement that Shelf Registration Statement is not available, the undersigned will in accordance with and pursuant to the Registration Rights Agreement suspend use of the prospectus until notice from the Company that the prospectus is again available.

Once this Selling Stockholder Questionnaire is executed by the undersigned and received by the Company, the terms of this Selling Stockholder Questionnaire, and the representations, warranties and agreements contained herein, shall be binding on, shall inure to the benefit of and shall be enforceable by the respective successors, heirs, personal representatives and assigns of the Company and the undersigned with respect to the Registrable Common Stock beneficially owned by the undersigned and listed in Item (3) above. This Selling Stockholder Questionnaire shall be governed in all respects by the laws of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Selling Stockholder Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:_____

_____
Beneficial Owner

By:_____
Name:_____
Title:_____

PLEASE RETURN THE COMPLETED AND EXECUTED
SELLING STOCKHOLDER QUESTIONNAIRE TO THE COMPANY AT:

Spansion Inc.
915 DeGuigne Dr.
Sunnyvale, CA 94085
Attention: General Counsel
Facsimile:

Exhibit 5

Adjusted Plan Equity Value for Conversion Price Calculation

Draft Calculation of Adjusted Plan Equity Value for Conversion Price Calculation (1)
Dollars in Millions

	Disclosure Statement	
Estimated value of the Reorganized Debtors' operations on a going-concern basis	$762.5	
plus the net value associated with auction rate securities owned by the Debtors	42.9	
plus the remaining proceeds from the sale of the Debtors' Suzhou facility	15.4	
plus the positive difference between Cash and Cash equivalents on hand as of the Effective Date and the Administrative and Priority Claims Estimate		
Cash and Cash equivalents on hand as of the Effective Date		302.3
less the Administrative and Priority Claims Estimate		(80.0)
Total	222.3	
less the par value of liabilities associated with capital leases as of the Effective Date that have been assumed by the Debtors	(5.0)	
less the aggregate principal amount of New Convertible Notes, New Senior Notes and New Spansion Debt as of the Effective Date	(475.0)	
less the Cash payment described in Clause (a) of Section 3.3(2)(a) of the Plan	(158.3)	
less any payments to be made to Spansion Japan Limited on or after the Effective Date (2)	0.0	
Adjusted Plan Equity Value for Conversion Price Calculation (3)	$404.8	

(1) Based on estimates set forth in the Disclosure Statement; subject to adjustment to reflect the impact of the settlement with Spansion Japan, the final determination of the estimated value of the Reorganized Debtors' operations on a going-concern basis, as well as revised estimates for cash and cash equivalents on hand as of the Effective Date and the Administrative and Priority Claims Estimate.

(2) Only to the extent the amount of such payment is fixed as of the Effective Date; excludes any payments to be made in the ordinary course of business pursuant to a foundry or sort agreement and any amount that is otherwise included in the Administrative and Priority Claims Estimate.

(3) The Conversion Price for the New Convertible Notes is equal to: (i) the Adjusted Plan Equity Value for Conversion Price Calculation; (ii) plus $100 million; (iii) divided by 50 million; (iv) multiplied by 115%.

Exhibit 6

Indenture and Form of Note for New Convertible Notes

SPANSION, INC.

as Issuer,

the **GUARANTORS** party hereto

AND

LAW DEBENTURE TRUST COMPANY OF NEW YORK

as Trustee

Indenture

Dated as of _____ ___, 2010

4.75% CONVERTIBLE SENIOR SECURED NOTES DUE 2017

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Exhibits

Schedules

INDENTURE, dated as of _____ __, 2010, among SPANSION, INC., a Delaware corporation, as Issuer (the "**Issuer**"), SPANSION LLC, a Delaware limited liability company, as guarantor ("**SLLC**"), SPANSION TECHNOLOGY LLC, a Delaware limited liability company, as guarantor ("**Intermediate Holdco**"), SPANSION INTERNATIONAL, INC., a Delaware corporation, as guarantor ("**SI**"), and CERIUM LABORATORIES LLC, a Delaware limited liability company, as guarantor ("**CL**" and together with SLLC, Intermediate Holdco, SI and any other Person that Guarantees the Notes from time to time, the "**Guarantors**"), the other Guarantors party hereto from time to time and LAW DEBENTURE TRUST COMPANY OF NEW YORK, as Trustee (the "**Trustee**").

RECITALS OF THE ISSUER

WHEREAS, SLLC (as issuer), the Issuer (as guarantor), Intermediate Holdco (as guarantor), certain other guarantors and Wells Fargo Bank, National Association, in its capacity as trustee, entered into that certain Indenture dated as of March 18, 2007 (as amended, restated, supplemented and/or modified prior to the date hereof, the "**Prepetition Indenture**") pursuant to which SLLC issued $625,000,000 of Senior Secured Floating Rate Notes due 2013 (the "**Prepetition FRN Notes**");

WHEREAS, on March 1, 2009, the Issuer, SLLC, Intermediate Holdco and certain of Issuer's domestic subsidiaries (together with the Issuer, SLLC and Intermediate Holdco, the "**Debtors**") each filed voluntary petitions for relief under Title 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (such cases, the "**Cases**");

WHEREAS, in conjunction with the Debtors' emergence from bankruptcy protection, the Debtors and certain of their creditors have agreed to restructure certain of their liabilities, including without limitation, the Debtors' liabilities under the Prepetition FRN Notes and the Prepetition Indenture;

WHEREAS, as part of such restructuring of the liabilities under the Prepetition FRN Notes and the Prepetition Indenture, the holders of the Prepetition FRN Notes have agreed to cancel $**[237,500,000]** of the Prepetition FRN Notes (and the corresponding guarantees) provided that as consideration for such cancellation, $**[237,500,000]** of 4.75% Convertible Senior Secured Notes due 2017 are issued by the Issuer to such holders pursuant to the terms and conditions hereof (the "**Notes**"; as further defined in **Section 1.01** below);

WHEREAS, the Issuer has authorized the issuance of the Notes and has reserved for issuance the shares of Common Stock of the Issuer issuable upon conversion of the Notes; and

WHEREAS, the Issuer and each of the Guarantors have duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, in consideration of the premises and for the exchange of **[$237,500,000]** of the Prepetition FRN Notes for **[$237,500,000]** of the Notes by the Holders thereof, each party to this Indenture agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Notes.

I. DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01. DEFINITIONS.

"**Additional Assets**" means:

(i) any Property (other than cash, Cash Equivalents and securities) to be owned by the Issuer or any Obligor and used in a Related Business;

(ii) Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Issuer or another Restricted Subsidiary from any Person other than the Issuer or an Affiliate of the Issuer; *provided, however*, that such Restricted Subsidiary is primarily engaged in a Related Business; or

(iii) Capital Stock of a Permitted Joint Venture; *provided however*, that the acquisition of such Capital Stock is permitted by Section 3.09.

"**Additional Shares**" has the meaning set forth in **Section 5.02(a).**

"**Affiliate**" of any specified Person means:

(a) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; or

(b) any other Person who is a director or executive officer of:

(i) such specified Person;

(ii) any Subsidiary of such specified Person; or

(iii) any Person described in clause (a) above.

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

"**Affiliate Transaction**" has the meaning set forth in **Section 3.14(a).**

"**Agent**" means any Registrar, Paying Agent, Collateral Agent, Conversion Agent or agent for service or notices and demands.

"**Agent Members"** has the meaning set forth in **Section 2.09(f).**

"**Aggregate Payments**" has the meaning set forth in **Section 12.10**.

"**Asset Sale**" means any sale, lease, transfer, issuance or other disposition (or series of related sales, leases, transfers, issuances or dispositions) by the Issuer or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "disposition"), of

(a) any shares of Capital Stock of a Restricted Subsidiary (other than the directors' qualifying shares), or

(b) any other Property of the Issuer or any Restricted Subsidiary outside of the ordinary course of business of the Issuer or such Restricted Subsidiary,

other than, in the case of clause (a) or (b) above,

(i) any disposition by a Restricted Subsidiary to an Obligor or by a Restricted Subsidiary that is not an Obligor to another Restricted Subsidiary,

(ii) any disposition that constitutes a Permitted Investment or Restricted Payment permitted by **Section 3.09**,

(iii) any disposition effected in compliance with **Section 6.01**,

(iv) the sale or other disposition of cash, Cash Equivalents or the UBS Auction Rate Securities,

(v) the exchange of assets held by the Issuer or a Restricted Subsidiary of the Issuer for assets held by any Person (including Capital Stock of such Person), provided that (A) the assets received by the Issuer or such Restricted Subsidiary of the Issuer in any such exchange will immediately constitute, be part of or used in a Related Business, and (B) any such assets received are of a comparable Fair Market Value to the assets exchanged,

(vi) any disposition of surplus, discontinued, damaged or worn-out equipment or other immaterial assets no longer used in the ongoing business of the Issuer and its Restricted Subsidiaries in an aggregate amount not to exceed $1 million per year;

(vii) the sale of Capital Stock and/or other equity interests of Spansion Singapore by SLLC to Powertech Technology Inc. or the sale of the inventory, equipment or otherwise, in each case of Spansion Singapore by Spansion Singapore to Powertech Technology Inc. provided that, in each case, the sale proceeds are (i) reinvested in the Obligors to be used as working capital, (ii) applied to the outstanding Revolving Credit Obligations, (iii) used to fund capital expenditures of the Obligors and/or (iv) used by the Obligors for any other permitted purposes under this Indenture, and

(viii) any disposition of the assets of the Issuer and/or the Restricted Subsidiaries in a single transaction or series of related transactions provided that the aggregate consideration with respect to all of such transactions does not exceed $5 million per year.

"**Attributable Debt**" in respect of a Sale and Leaseback Transaction means, at any date of determination, (a) if such Sale and Leaseback Transaction is a Capital Lease Obligation, the amount of Debt represented thereby according to the definition of "**Capital Lease Obligations**," and (b) in all other instances, the present value (discounted at the interest rate implicit in such

transaction, determined in accordance with GAAP) of the total obligations of the lessee for 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).

"**Authorized Share Failure**" has the meaning specified in **Section 5.08**.

"**Authorized Share Failure Deadline**" has the meaning specified in **Section 5.08**.

"**Average Life**" means, as of any date of determination, with respect to any Debt or Preferred Stock, the quotient obtained by dividing:

(a) the sum of the product of the number of years (rounded to the nearest one-twelfth of one year) from the date of determination to the dates of each successive scheduled principal payment of such Debt or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by

(b) the sum of all such payments.

"**Averaging Period"** has the meaning specified in **Section 5.06(f)**.

"**Bank Collateral Agent**" means the administrative agent under the Revolving Credit Agreement.

"**Bank Obligations**" means all Revolving Credit Obligations secured by Liens on the Collateral that rank senior to the Liens securing the Notes with respect to the Secondary Collateral and junior to the Liens securing the Notes with respect to the Primary Collateral; provided that the amount of Debt in respect of such Revolving Credit Obligations does not exceed the applicable Revolver Cap Amount.

"**Bankruptcy Custodian**" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. Federal or state law or law of any other jurisdiction relating to bankruptcy, insolvency, winding-up, liquidation, reorganization or relief of debtors.

"**Board of Directors**" means the board of directors or board of managers of the referent person. Unless the context otherwise requires, "Board of Directors" shall refer to the managing member or Board of Directors, as applicable, of the Issuer.

"**Board Resolution**" means a copy of a resolution of the Board of Directors, certified by the Secretary or an Assistant Secretary, or an equivalent officer, to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banking institutions in New York City are authorized or required by law to close.

"**Call Right**" has the meaning specified in **Section 4.07**.

"**Call Right Repurchase Date**" means, with respect to any Note to be redeemed pursuant to **Section 4.09**, the date fixed for redemption of such Note by the Issuer.

"**Call Right Repurchase Notice**" has the meaning specified in **Section 4.09**.

"**Capital Expenditures"** means all liabilities incurred, expenditures made or payments due (whether or not made) by the Issuer or any of its Subsidiaries for the acquisition of any fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year, including the principal portion of Capital Lease Obligations.

"**Capital Lease Obligations**" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined 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 prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of **Section 3.10**, a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

"**Capital Stock**" means, with respect to any Person, any shares or other equivalents (however designated) of any class of corporate stock or partnership interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest in such Person, including Preferred Stock, but excluding any debt security convertible or exchangeable into such equity interest.

"**Capital Stock Sale Proceeds**" means the aggregate cash proceeds received by the Issuer from the issuance or sale (other than to a Guarantor or with respect to any Common Stock issued (i) pursuant to the Equity Incentive Plan, (ii) as Unsecured Creditors' Common Stock, (iii) as part of the Rights Offering, or (iv) upon conversion of the Notes to Common Stock in accordance with this Indenture) by the Issuer of its Capital Stock (other than Disqualified Stock) after the Issue Date, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

"**Cases**" shall have the meaning given to such term in the Recitals hereto.

"**Cash Collateral Account**" means the account to be established under the Convertible Note Pledge and Security Agreement to hold proceeds of Primary Collateral to the extent required hereby, which account will be secured by a perfected first priority lien for the benefit of the holders of the Notes.

"**Cash Equivalents**" means any of the following:

(a) United States dollars, Japanese yen or euros;

(b) Investments in U.S. Government Obligations maturing within 365 days of the date of acquisition thereof;

(c) certificates of deposit and eurodollar time deposits with maturities of 12 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 12 months and overnight bank deposits, in each case with any domestic commercial bank or any commercial bank in Japan or a member state of the European Union having capital and surplus in excess of $500 million;

(d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;

(e) commercial paper, having the highest rating obtainable from Moody's or S&P and in each case maturing within one year after the date of acquisition;

(f) money market funds at least 90% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (e) of this definition; and

(g) in the case of a Foreign Restricted Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such person conducts business.

"**Casualty Event**" means any damage to, or destruction of, any real or personal property or improvements that constitute Collateral.

"**Casualty Proceeds"** means (i) with respect to any Condemnation Event, all awards or payments received by the Issuer or any Guarantor by reason of such Condemnation Event, including all amounts received with respect to any transfer in lieu or anticipation of such Condemnation Event or in settlement of any proceeding relating to such Condemnation Event, and (ii) with respect to any Casualty Event, all insurance proceeds or payments with respect to Collateral which the Issuer or any Guarantor receives under any insurance policy by reason of such Casualty Event, plus the amounts of any deductibles under insurance policies with respect to Collateral and, if the Issuer or any Guarantor fails to maintain any insurance policy with respect to Collateral, the amounts which would have been available thereunder with respect to such Casualty Event had the Issuer or such Guarantor maintained an insurance policy.

"**CL**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party and thereafter means the successor.

"**Claim**" has the meaning specified in **Section 8.07(b)**.

"**Closing Date Cash Payment**" means the cash payment made to the **[Trustee][trustee under the Prepetition Indenture]** for the benefit of the Prepetition FRN Noteholders on the Issue Date in partial payment of the indebtedness evidenced by the Prepetition FRN Notes in an amount equal to (i) **[$158.3]** million plus (ii) the amount of all accrued and unpaid interest accruing with respect to the FRN Claims (as defined in the Plan of Reorganization) from the Petition Date to the Issue Date.

"**Closing Date Mortgages**" shall have the meaning set forth in Section 11.01(g) of this Indenture and shall include that certain (i) Deed of Trust, Security Agreement, Assignment of Rents and

Financing Statement dated as of the date hereof between SLLC and [_____], for the benefit of Trustee, encumbering certain real property located in Travis County, Texas and (ii) Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement dated as of the date hereof by SLLC to [_____], for the benefit of Trustee, encumbering certain real property located in the City of Sunnyvale, Santa Clara County, California "**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means all "Collateral" as defined in the Convertible Note Pledge and Security Agreement, including, without limitation, the Primary Collateral and the Secondary Collateral, but in all cases shall exclude the Excluded Property.

"**Collateral Agent**" means the Trustee in its capacity as the collateral agent or any collateral agent appointed by the Trustee pursuant to the Indenture and the Convertible Note Security Documents.

"**Collateral Requirement**" means the requirement that:

(a) all documents and instruments, including Uniform Commercial Code financing statements, mortgages and intellectual property security agreements and other recordings, required by law to be executed and/or filed, registered or recorded to create the Liens intended to be created by the Convertible Note Security Documents and perfect or record such Liens as valid Liens with priority set forth in the Convertible Note Security Documents free of any other Liens except for Permitted Liens, shall have been executed and/or filed, registered or recorded (as applicable); and

(b) the Collateral Agent shall have received, with respect to each property subject to a mortgage, counterparts of a mortgage duly executed and delivered by the record owner of such mortgaged property, a lender's title insurance policy insuring the lien of each mortgage, an existing survey of the mortgaged property and the Opinions of Counsel required pursuant to **Section 3.16(b)**.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Stock**" means the shares of common stock, par value $0.01 per share, of the Issuer as they exist on the date of this Indenture or any other Reference Property into which the Common Stock shall be reclassified, changed, converted into or exchanged for in accordance with to **Section 5.11**.

"**Compliance Certificate**" has the meaning specified in **Section 3.06(a)**.

"**Condemnation Event**" means any condemnation or other taking or temporary or permanent requisition of any Collateral, any interest therein or right appurtenant thereto, or any change of grade affecting any Collateral, as the result of the exercise of any right of condemnation or eminent domain. A transfer to a governmental authority in lieu or anticipation of condemnation shall be deemed to be a Condemnation Event.

"**Condition Precedent Letter Agreement**" means that certain Letter Agreement dated as of _____ __, 2010 by and between the Issuer and the Ad Hoc Consortium (as defined in the Plan of Reorganization).

"**Confirmation Order"** means that certain final order entered by the Bankruptcy Court approving the Plan of Reorganization (which is not subject to appeal, stay, injunction or contest).

"**Consolidated Cash Flow**" means, for any period, an amount equal to, for the Issuer and its Consolidated Restricted Subsidiaries:

(a) the sum of Consolidated Net Income for such period, plus the following to the extent reducing Consolidated Net Income for such period:

(i) the provision for taxes based on income or profits or utilized in computing net loss;

(ii) Consolidated Fixed Charges;

(iii) depreciation and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) of the Issuer and its Consolidated Restricted Subsidiaries for such period; and

(iv) any other non-cash, unusual, non-operating and/or non-recurring expense or other loss (other than any such non-cash item to the extent that it represents an accrual of, or reserve for, cash expenditures in any future period); and

(v) losses from any sale or disposition of Property and other assets (other than sales in the ordinary course of business) and any other extraordinary losses minus

(b) to the extent included in determining Consolidated Net Income, the sum of:

(i) actuarially determined minimum pension funding obligations;

(ii) gains from any sale or disposition of Property and other assets, other than sales in the ordinary course of business and any other extraordinary gains; and

(iii) all non-cash, unusual, non-operating and/or non-recurring revenue or other gain (other than any such non-cash item to the extent that it will result in the receipt of cash payments in any future period).

"Consolidated EBITDA" shall mean, for any period, the sum (without duplication) of (a) Consolidated Net Income for such period, plus (b) the amount which, in the determination of Consolidated Net Income for such period, has been deducted for (i) interest expense, (ii) total federal, state, local and foreign income taxes, (iii) depreciation, amortization expense and other non-cash charges (excluding non-cash charges that are expected to become cash charges in a future period or that are reserves for future cash charges), (iv) unusual, non-operating and/or non-recurring expenses and other losses, (v) other cash restructuring charges in an aggregate

amount not to exceed $[_____] **[Bracketed language is subject to discussion and agreement]** during any four fiscal quarter period, (vi) losses on any sale or disposition of Property or other assets (other than sales in the ordinary course of business) and any other extraordinary losses and (vii) pension plan expenses, all as determined in accordance with GAAP, minus (c) the amount which, in determining such Consolidated Net Income for such period had been added for (i) actuarially determined minimum pension funding obligations, (ii) gains from any sale or disposition of Property or other assets, other than sales in the ordinary course of business and any other extraordinary gains and (iii) all non-cash gains (other than any such non-cash item to the extent that it will result in the receipt of cash payments in any future period), and (iv) unusual, non-operating and/or non-recurring revenue and any other gains. For the avoidance of doubt, Consolidated EBITDA shall not include any cancellation of indebtedness income arising in connection with the cancellation and discharge of any of the Obligors' Debt and other liabilities in connection with the Cases or otherwise.

"**Consolidated Fixed Charge Coverage Ratio**" means, as of any date of determination, the ratio of:

(a) the aggregate amount of Consolidated Cash Flow for the most recent four consecutive fiscal quarters for which internal financial statements are available; to

(b) Consolidated Fixed Charges for such four fiscal quarters; provided, however, that:

(i) if

(A) since the beginning of such period the Issuer or any Restricted Subsidiary has Incurred any Debt that remains outstanding or Repaid any Debt, or

(B) the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio is Repayment of Debt,

Consolidated Fixed Charges for such four-quarter period shall be calculated after giving effect on a *pro forma* basis to such Incurrence or Repayment as if such Debt was Incurred or Repaid on the first day of such four-quarter period; *provided* that, in the event of any such Repayment of Debt, Consolidated Cash Flow for such period shall be calculated as if the Issuer or such Restricted Subsidiary had not earned any interest income actually earned during such period in respect of the funds used to Repay such Debt; and

(ii) if

(A) since the beginning of such period the Issuer or any Restricted Subsidiary shall have made any Asset Sale or an Investment (by merger or otherwise) in any Restricted Subsidiary (or any Person that becomes a Restricted Subsidiary) or an acquisition of Property which constitutes all or substantially all of an operating unit of a business,

(B) the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio is such an Asset Sale, Investment or acquisition, or

(C) since the beginning of such period any Person, that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any Restricted Subsidiary since the beginning of such period, shall have made such an Asset Sale, Investment or acquisition,

then Consolidated Cash Flow for such four-quarter period shall be calculated after giving *pro forma* effect to such Asset Sale, Investment or acquisition as if such Asset Sale, Investment or acquisition had occurred on the first day of such four-quarter period.

If any Debt bears a floating rate of interest and is being given *pro forma* effect, the interest expense on such Debt shall be calculated as if the base interest rate in effect for such floating rate of interest on the date of determination had been the applicable base interest rate for the entire period (taking into account any Interest Rate Agreement applicable to such Debt if such Interest Rate Agreement has a remaining term in excess of 12 months). In the event the Capital Stock of any Restricted Subsidiary is sold during the period, the Issuer shall be deemed, for purposes of clause (i) above, to have Repaid during such period the Debt of such Restricted Subsidiary to the extent the Issuer and its continuing Restricted Subsidiaries are no longer liable for such Debt after such sale.

"Consolidated Fixed Charges" means, for any period, the total interest expense of the Issuer and its Consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest expense, and to the extent Incurred by the Issuer or its Restricted Subsidiaries, without duplication,

(a) any and all mandatory (including regularly scheduled) repayments of principal of Debt (other than principal payments on account of revolving loans unless such prepayment is accompanied by a corresponding reduction of the revolving commitments thereunder),

(b) interest expense attributable to leases constituting part of a Sale and Leaseback Transaction and to Capital Lease Obligations **[and all other payments on account of Capital Expenditures] [Bracketed language is subject to discussion and agreement]**,

(c) amortization of debt discount and debt issuance costs, including commitment fees,

(d) capitalized interest,

(e) non-cash interest expense,

(f) commissions, discounts and other fees and charges owed with respect to letters of credit and banker's acceptance financing,

(g) net costs associated with Hedging Obligations (including amortization of fees) related to Interest Rate Agreements,

(h) Disqualified Stock Dividends,

(i) Preferred Stock Dividends,

(j) interest Incurred in connection with Investments in discontinued operations, and

(k) interest actually paid by the Issuer or any Restricted Subsidiary on account of any Guarantee of Debt of any other Person.

"Consolidated Net Income" means, for any period, the net income (loss) of the Issuer and its Consolidated Restricted Subsidiaries; provided, however, that there shall not be included in such Consolidated Net Income (including the related tax effect):

(a) any net income of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary, except that, subject to the exclusion contained in clause (c) below, equity of the Issuer and its Consolidated Restricted Subsidiaries in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (b) below);

(b) any net income of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to the Issuer, except that, subject to the exclusion contained in clause (d) below, the equity of the Issuer and its Consolidated Restricted Subsidiaries in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the greater of (i) the aggregate amount of cash actually distributed by such Restricted Subsidiary during such period to the Issuer or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause (b)) and (ii) the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause (b));

(c) any gain or loss realized upon the sale or other disposition of any Property of the Issuer or any of its consolidated Subsidiaries (including pursuant to any Sale and Leaseback Transaction) that is not sold or otherwise disposed of in the ordinary course of business;

(d) any net extraordinary gain or loss;

(e) to the extent non-cash, any unusual, non-operating or non-recurring gain or loss;

(f) the cumulative effect of a change in accounting principles;

(g) any non-cash compensation expense realized for grants of performance shares, stock options or other rights to officers, directors and employees of the Issuer or any Restricted Subsidiary; provided that such shares, options or other rights can be redeemed at the option of the holder only for Capital Stock of the Issuer (other than Disqualified Stock);

(h) any cash or non-cash expenses attributable to the closing of manufacturing facilities or the lay-off of employees, in either case which are recorded as "restructuring and other special charges" in accordance with GAAP; and

(i) gains or losses due to fluctuations in currency values.

Notwithstanding the foregoing, for purposes of **Section 3.09** only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of Property from Unrestricted Subsidiaries to the Issuer or a Restricted Subsidiary to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under clause (a)(iii)(D) thereof. For the avoidance of doubt, Consolidated Net Income shall not include any cancellation of indebtedness income arising in connection with the cancellation and discharge of any of the Obligors' and/or other Restricted Subsidiaries' Debt and other liabilities in connection with the Cases or otherwise.

"**Consolidated Restricted Subsidiary**" means, for any Person, each Restricted Subsidiary of such Person (whether now existing or hereinafter created or acquired) the financial statements of which are consolidated for financial statement reporting purposes with the financial statements of such Person in accordance with GAAP.

"**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that person with respect to any Debt, lease or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; provided, that indemnification provisions not otherwise constituting a guarantee shall not be deemed to be a "contingent obligation."

"**Contributing Guarantors**" has the meaning specified in **Section 12.10**.

"**Conversion Agent**" has the meaning specified in **Section 2.06(a)** and shall include any additional conversion agents appointed pursuant to **Section 2.06(a)**.

"**Conversion Date**" has the meaning specified in **Section 5.03(b)**.

"**Conversion Notice**" has the meaning specified in **Section 5.03(a)**.

"**Conversion Obligation**" has the meaning specified in **Section 5.04(a)**.

"**Conversion Price**" means, at any time, $1,000 divided by the Conversion Rate as at that time.

"**Conversion Rate**" means the Initial Conversion Rate, as it may be adjusted pursuant to **Section 5.02** or **Section 5.06**.

"**Convertible Note Intellectual Property Security Agreements**" means (i) that certain Trademark Security Agreement dated as of the date hereof by and between Collateral Agent and Obligors, (ii) that certain Patent Security Agreement dated as of the date hereof by and between

Collateral Agent and Obligors and (iii) that certain Copyright Security Agreement dated as of the date hereof by and between Collateral Agent and Obligors, as each may be amended, restated, supplemented and/or modified from time to time.

"**Convertible Note Pledge and Security Agreement**" means that certain Pledge and Security Agreement dated as of the date hereof, among Issuer, SLLC, the other Obligators party thereto from time to time, as Grantors, and Law Debenture Trust Company of New York, as Collateral Agent.

"**Convertible Note Security Documents**" means, (i) the Intercreditor Agreement, (ii) the Convertible Note Pledge and Security Agreement, (iii) the Convertible Note Intellectual Property Security Agreements, (iv) the Foreign Pledge Agreements, (v) the Foreign Intellectual Property Security Agreements, (vi) the Closing Date Mortgages and (vii) other security documents, mortgages, control agreements, collateral assignments and UCC financing statements granting or evidencing a security interest and/or mortgage(s) in any property and assets of any Person to secure the Obligations under this Indenture, the Notes and the Note Guaranties as each may be amended, restated, supplemented or otherwise modified from time to time.

"**Corporate Trust Office**" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 400 Madison Avenue, 4th Floor, New York, New York 10017, Attention: Corporate Trust Administration or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the principal Corporate Trust Office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

"**Credit Facilities**" means, with respect to the Issuer or any Restricted Subsidiary, one or more debt or commercial paper facilities with banks or other institutional lenders providing for revolving credit loans, term loans, notes, receivables or inventory financing (including through the sale of receivables or inventory to such lenders or to special purpose, bankruptcy remote entities formed to borrow from such lenders against such receivables or inventory) or trade or standby letters of credit, in each case as any such facility may be revised, restructured or Refinanced from time to time, including to extend the maturity thereof, to increase the amount of commitments thereunder (provided that any such increase is permitted under **Section 3.08**), or to add Restricted Subsidiaries as additional borrowers or guarantors thereunder, whether by the same or any other agent, lender or group of lenders or investors and whether such revision, restructuring or Refinancing is under one or more Debt facilities or commercial paper facilities, indentures or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters or credit, together with related documents thereto (including, without limitation, any guaranty agreements and security documents). Notwithstanding the foregoing, Credit Facilities shall not include Debt of the Obligors evidenced by the Notes issued on the date of the Indenture, the New Credit Facility or the Senior Secured Bonds.

"**Creditors' Committee**" means the official committee of unsecured creditors of the Debtors appointed by the United States Trustee in the Cases pursuant to Section 1102 of the Bankruptcy

Code as its composition has changed from time to time by addition, resignation or removal of its members.

"**Currency Exchange Protection Agreement**" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

"**Custodian**" means the Trustee, as custodian with respect to the Global Notes, or any successor entity.

"**Debt**" means, with respect to any Person on any date of determination (without duplication):

(a) the principal of and premium (if any) in respect of:

(i) debt of such Person for borrowed money; and

(ii) debt evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;

(b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale and Leaseback Transactions entered into by such Person;

(c) all obligations of such Person representing the deferred purchase price of Property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) 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 third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the Repayment of any Disqualified Stock or, with respect to any Subsidiary of such Person, any Preferred Stock (but excluding, in each case, any accrued dividends);

(f) all obligations of the type referred to in clauses (a) through (e) above of other Persons, and all dividends of other Persons the payment of which, in either case, such Person is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) above of other Persons secured by any Lien on any Property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such Property or the amount of the obligation so secured; and

(h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Debt of any Person at any date shall be the outstanding balance, or the accreted value of such Debt in the case of Debt issued with original issue discount, at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. The amount of Debt represented by a Hedging Obligation shall be equal to:

(i) zero if such Hedging Obligation has been Incurred pursuant to **Section 3.08(a)(vi)** or **(vii)**; or

(ii) the notional amount of such Hedging Obligation if not Incurred pursuant to such clauses.

"**Debtors**" has the meaning specified in the Recitals hereto.

"**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.

"**Default Rate**" has the meaning specified in **Section 3.01(b)**.

"**Depositary**" means The Depositary Trust Company until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Depositary**" shall mean such successor Depositary.

"**Disclosure Statement**" means that certain Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization dated December 16, 2009 filed by the Issuer.

"**Disqualified Stock**" means any Capital Stock of the Issuer or any of its Restricted Subsidiaries that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in either case at the option of the holder thereof) or otherwise:

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

(b) is or may become redeemable or repurchaseable at the option of the holder thereof, in whole or in part; or

(c) is convertible or exchangeable at the option of the holder thereof for Debt or Disqualified Stock,

on or prior to, in the case of clause (a), (b) or (c), 123 days following the Stated Maturity Date. Notwithstanding the foregoing, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a Fundamental Change or an Asset Sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Issuer may not repurchase

or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with **Section 3.09** hereof.

"**Disqualified Stock Dividends**" means all dividends with respect to Disqualified Stock of the Issuer held by Persons other than a Restricted Subsidiary. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income tax rate (expressed as a decimal number between 1 and 0) then applicable to the Issuer.

"**Distributed Property**" has the meaning specified in **Section 5.06(d)**.

"**Domestic Restricted Subsidiary**" means any Restricted Subsidiary other than a Foreign Restricted Subsidiary.

"**Domestic Subsidiary**" means any Subsidiary of the Issuer other than a Foreign Subsidiary.

"**Eligible Market**" has the meaning specified in **Section 4.07(b)**.

"**Environmental Law(s)**" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection, preservation or restoration of the environment or the release or threatened release of any materials into the environment.

"**Equity Conditions**" has the meaning specified in **Section 4.07(b)**.

"**Equity Conditions Measuring Period**" has the meaning specified in **Section 4.07(b)**.

"**Equity Incentive Plan**" shall mean that certain equity incentive plan pursuant to which up to 9,005,376 shares of the Issuer's common stock is available to be issued by the Issuer to employees, management and the directors of the Issuer and the Subsidiaries of the Issuer provided, however, that grants of no more than 3,752,240 shares of the Issuer's common stock may be issued for an exercise, conversion or purchase price below (i) in the 90 days following the Issue Date, the greater of (A) the value per share of the Issuer's common stock issued under the Plan of Reorganization or (B) the fair market value per share of the Issuer's common stock at the time of issuance and (ii) thereafter, the fair market value per share of the Issuer's common stock at the time of grant. Pursuant to the Plan of Reorganization, as of the Issue Date, the Equity Incentive Plan shall have a term of 10 years, and shall permit the issuance of up to 9,005,376 shares in the form of incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, and other standard equity incentive awards.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that, together with the Obligors, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code. Notwithstanding the foregoing, for purposes of any liability related to a Multiemployer Plan under Title IV of ERISA, the term "**ERISA Affiliate**" means any trade or

business that, together with the Obligors, is treated as a single employer within the meaning of Section 4001(b) of ERISA.

"**ERISA Event**" means (a) a "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder for which the notice requirement has not been waived with respect to any Pension Plan, (b) the existence with respect to any Pension Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, (d) the incurrence by any Obligor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, (e) the receipt by any Obligor or any ERISA Affiliate from the PBGC or plan administrator of any notice relating to an intention to terminate any Pension Plan or Pension Plans or to appoint a trustee to administer any Pension Plan, (f) the receipt by any Obligor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Obligor or any ERISA Affiliate of any notice of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or (g) the incurrence by any Obligor, Subsidiary or Affiliate of any liability with respect to any Foreign Plan as a result of any noncompliance with the terms of such Foreign Plan, the failure to satisfy any applicable funding requirements, or any violation of applicable foreign law.

"**Event of Default**" has the meaning specified in **Section 7.01**.

"**Ex-Date**" means, with respect to any issuance or distribution to holders of the Common Stock or any other equity security, the first date on which the shares of the Common Stock or any other equity security trade on the Relevant Exchange, regular way, without the right to receive such issuance or distribution.

"**Excess Proceeds**" has the meaning specified in **Section 3.11(c)**.

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

"**Excluded Property**" means the following:

(a) any General Intangible, Chattel Paper, Instrument or Account which by its terms prohibits the creation of a Lien therein (whether by assignment otherwise or that would provide the third party to such agreement the right to terminate such agreement), except to the extent that Sections 9-406(d), 9-407(a) or 9-408(a) of the UCC are effective to render any such prohibition ineffective; provided, however, that if any General Intangible, Chattel Paper, Instrument or Account contains any term restricting or requiring consent of any Person (other than a Grantor) obligated thereon to any exercise of remedies under the applicable Security Documents in respect of the Liens therein granted under the granting clause in the applicable Security Document, then the enforcement of such Lien under the applicable Security Documents shall be subject to obtaining consent thereto (but such provision shall not limit the creation, attachment or perfection of the Liens under such Security Document);

(b) any Property that is subject to an agreement which by its terms prohibits the creation of a Lien therein (whether by assignment or otherwise), except to the extent that

Sections 9-406(d), 9-407(a) or 9-408(a) of the UCC are effective to render any such prohibition ineffective; provided, however, that if any such agreement contains any term restricting or requiring consent of any Person (other than a Grantor) obligated thereon to any exercise of remedies under the applicable Security Documents in respect of the Lien therein granted under the granting clause in the applicable Security Document (and no restriction on the creation, attachment or perfection of the Lien), then the enforcement of such Lien under the applicable Security Document shall be subject to obtaining a consent) (but such provision shall not limit the creation, attachment or perfection of the Lien in such Property under the applicable Security Document);

(c) any permit, lease, license (including any License) or franchise to the extent any Law applicable thereto is effective to prohibit the creation of a Lien therein;

(d) any Equipment (including any Software incorporated therein) or other Property owned by any Grantor on the date hereof or hereafter acquired that is subject to a Lien securing a purchase money obligation or Capital Lease Obligations permitted to be incurred pursuant to the provisions of this Indenture to the extent that the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money obligation or Capitalized Lease) validly prohibits the creation of any other Lien on such Property or provides that the creation of any such Lien would provide the third party to such agreement the right to terminate such agreement;

(e) in excess of 65% of any of the outstanding Equity Interests (with voting rights) of a controlled foreign corporation (as defined in Section 957(a) of the Code) owned by any Grantor (or such other amount as would result in adverse tax consequences for any Grantor) unless such controlled foreign corporation is a Material Foreign Subsidiary (in which case, subject to the Legal Limitations, the Property that is Collateral shall include (and the Excluded Property shall not include) 100% of the Equity Interests of such foreign controlled corporation, including 100% of the Equity Interests holding the voting power of all classes of Equity Interests of such Material Foreign Subsidiary);

(f) the UBS Auction Rate Securities; and

(g) any "intent-to-use" application for Trademark registration filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing under Section 1(c) or Section 1(d) of the Lanham Act of a "Statement of Use" or an "Amendment to Allege Use" with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a Lien therein prior to such filing would impair the validity or enforceability of any registration that issues from such intent-to-use Trademark application under applicable federal law.

With respect to the property described in clauses (a) through (d) of this definition, such property shall constitute Excluded Property only to the extent and for so long as the creation of a Lien on such property in favor of the Collateral Agent is, and remains, validly prohibited or subject to a right to terminate the underlying agreement, and upon termination of such prohibition or right (however occurring), such property shall cease to constitute Excluded Property (and shall thereafter constitute Collateral for all purposes). Notwithstanding any other provisions set forth

herein, capitalized terms used but not defined in this definition shall have the meanings ascribed to them in the Pledge and Security Agreement. "**FAC Regulations**" has the meaning set forth in **Section 3.27(xvi)**.

"**Fair Market Value**" means, with respect to any Property, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided,

(a) if such Property has a Fair Market Value equal to or less than $[25] million, by any Officer of the Issuer (in his or her good faith judgment), or

(b) if such Property has a Fair Market Value in excess of $[25] million, by at least a majority of the Board of Directors and evidenced by a Board Resolution dated within 30 days before the relevant transaction.

"**Fair Share**" has the meaning specified in **Section 12.10**.

"**Fair Share Contribution Amount**" has the meaning specified in **Section 12.10**.

"**Foreign Intellectual Property Security Agreements**" shall mean those certain intellectual property security agreements evidencing the Obligors' grant of security interest in their respective intellectual property registered outside of the United States. Foreign Intellectual Property Security Agreements shall include and the Obligors shall enter into an intellectual property security agreement for each of the following jurisdictions, in each case, in accordance with **[Section 4.01(p)]** of the Convertible Note Pledge and Security Agreement: Japan, China, Canada, Germany, Britain, Hong Kong, Singapore, South Korea and Taiwan.

"**Foreign Plan**" means any employee pension, deferred compensation, or other retirement plan, program, or arrangement (other than a Pension Plan) contributed to or maintained by any Obligor, Subsidiary or Affiliate with respect to any employees employed outside of the United States.

"Foreign Pledge Agreements" shall mean those certain Pledge Agreements (one for each such Subsidiary) evidencing SLLC's pledge of its Capital Stock (other than the Excluded Property) in Spansion Holdings (Singapore) Pte. Ltd., Spansion (Thailand) Limited and Saifun Semiconductors Ltd. (Israel).

"**Foreign Restricted Subsidiary**" means any Foreign Subsidiary that is not an Unrestricted Subsidiary.

"**Foreign Subsidiary**" means any Subsidiary of the Issuer that is not formed under the laws of the United States of America or any jurisdiction thereof.

"**Fundamental Change**" means the occurrence of any one of the following events at any time after the Issue Date:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, whether as part of one transaction or a series of related transactions, of more than 50% of the total voting power of the Voting Stock of the Issuer; or

(b) the sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, whether as one transaction or a series of related transactions, of all or substantially all the Property of Issuer, SLLC or the Obligors taken as a whole, (other than a disposition of such Property (other than by Issuer) as an entirety or virtually as an entirety to a Wholly Owned Restricted Subsidiary that is an Obligor), shall have occurred or the Issuer or SLLC merges or consolidates with or into any other Person or any other Person merges or consolidates with or into the Issuer or SLLC, in any such event pursuant to a transaction in which the outstanding Voting Stock of the Issuer or SLLC is reclassified into or exchanged for cash, securities or other Property, other than any such transaction where:

(i) the outstanding Voting Stock of the Issuer or SLLC (as applicable) is reclassified into or exchanged for other Voting Stock of the Issuer or SLLC (as applicable) or for Voting Stock of the Surviving Person; and

(ii) the holders of the Voting Stock of the Issuer or SLLC (as applicable) immediately prior to such transaction own, directly or indirectly, not less than a majority of the Voting Stock of the Issuer or SLLC (as applicable) or the Surviving Person immediately after such transaction and in substantially the same proportion as before the transaction; or

(c) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Issuer or SLLC (as applicable) (together with any new directors whose election or appointment by such Board or whose nomination for election by the stockholders of the Issuer or SLLC (as applicable) was approved by a vote of not less than a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute at least a majority of the Board of Directors of the Issuer or SLLC (as applicable) then in office;

(d) The Issuer ceases to directly or indirectly own 100% of the Capital Stock of SLLC;

(e) the stockholders of the Issuer or any Obligors shall have approved any plan of liquidation or dissolution of the Issuer and/or SLLC, except, in the case of the liquidation or dissolution of SLLC, in connection with the merger of SLLC into the Issuer; or

(f) if shares of the Common Stock, or shares of any other Capital Stock into which the Notes are convertible pursuant to the terms of this Indenture, are not listed for trading on any United States national or regional securities exchange after **_____[INSERT DATE EQUAL TO 270 DAYS AFTER THE ISSUE DATE].**

Notwithstanding the foregoing, any transaction or event described above shall not constitute a Fundamental Change if, in connection with such transaction or event, or as a result therefrom, a transaction described in **clause (b)** above occurs (without regard to any exclusion to such clause described in the **paragraphs** (**i**) or (**ii**) thereunder) and at least 90% of the consideration paid for the Common Stock (excluding cash payments for fractional shares, cash payments made pursuant to dissenters' appraisal rights and cash dividends) consists of shares of common stock (or depositary receipts in respect thereof) traded on any Relevant Exchange (or will be so traded or quoted immediately following the completion of the merger or consolidation or such other transaction) and, as a result of such transaction, the Notes become convertible into such shares of common stock (or depositary receipts in respect thereof) pursuant to **Section 5.11.**

Notwithstanding any other provisions set forth in this definition, the merger of SLLC into the Issuer shall not constitute a Fundamental Change.

"**Fundamental Change Effective Date**" has the meaning specified in **Section 5.02(c)**.

"**Fundamental Change Expiration Time**" has the meaning specified in **Section 4.02(b)**.

"**Fundamental Change Offer**" has the meaning specified in **Section 4.03(f)**.

"**Fundamental Change Repurchase Date**" has the meaning specified in **Section 4.02(a).**

"**Fundamental Change Repurchase Notice**" has the meaning specified in **Section 4.02(b)**.

"**Fundamental Change Repurchase Price**" has the meaning specified in **Section 4.02(a)**.

"**Fundamental Change Repurchase Right Notice**" has the meaning specified in **Section 4.01(a)**.

"**Funding Guarantors**" has the meaning specified in **Section 12.10**.

"**GAAP**" means generally accepted accounting principles consistently applied as in effect in the United States from time to time.

"**Global Note**" means a Note in global form registered in the Note Register in the name of a Depositary or a nominee thereof.

"**Guarantee**" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to

take-or-pay or to maintain financial statement conditions or otherwise), provided, however, that the term "Guarantee" shall not include:

(i) endorsements for collection or deposit in the ordinary course of business; or

(ii) a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute a Permitted Investment under clauses (a)(i), (a)(ii), or (a)(iii) of the definition of "Permitted Investment".

The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means (i) SLLC, (ii) Intermediate Holdco, (iii) SI, (iv) CL, (v) each other Domestic Restricted Subsidiary (other than any Domestic Restricted Subsidiary of the Issuer that is owned directly or indirectly by a Foreign Subsidiary that is not a Guarantor), (vi) each Material Foreign Subsidiary, and (vii) each other Person that Guarantees the Notes until such time as such Person is released from its Guarantee. Each of the Guarantors shall constitute Restricted Subsidiaries.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, mold and all other substances or wastes of any nature regulated or subject to regulation pursuant to any Environmental Law (including, any that are or become classified as hazardous or toxic under any Environmental Law).

"**Hedging Obligation**" of any Person means any obligation of such Person pursuant to any Interest Rate Agreement, Currency Exchange Protection Agreement or any other similar agreement or arrangement.

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

"**Incur**" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by merger, conversion, exchange or otherwise), extend, assume, Guarantee or become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or 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, and is not theretofore classified as Debt, becoming Debt shall not be deemed an Incurrence of such Debt; *provided further, however*, that any Debt or other obligations of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary.

"**Indenture**" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"**Indenture Documents**" means, collectively, this instrument and the Convertible Note Security Documents, in each case, as amended from time to time in accordance with the terms thereof.

"**Initial Conversion Rate**" means _____ shares of Common Stock per $1,000 principal amount of Notes. **[NTD: This will be calculated by reference to a conversion price per share equal to the Adjusted Plan Equity Value for Conversion Price Calculation (as defined in the Plan or Reorganization, plus $100 million; divided by 50 million; multiplied by 115%.]**

"**Intercreditor Agreement**" means the Intercreditor Agreement dated on or about the Issue Date among Bank of America, N.A., as Bank Collateral Agent, the Trustee, as trustee and the Collateral Agent under the Notes, **[Law Debenture Trust Company of New York, as trustee and collateral agent under the Senior Secured Bond Indenture], [AGENT UNDER NEW CREDIT FACILITY]** and as acknowledged by the Issuer and each other Guarantor named therein, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

"**interest**" means, when used with reference to the Notes, any interest payable under the terms of the Notes, including any interest payable at the Default Rate under the terms of the Notes.

"**Interest Payment Date**" means each January 31 and July 31 of each year, commencing July 31, 2010.

"**Interest Rate**" means 4.75% per annum.

"**Interest Rate Agreement**" means, for any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement designed to protect against fluctuations in interest rates.

"**Intermediate Holdco**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party and thereafter means the successor.

"**Investment**" by any Person means any direct or indirect loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person), advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, or Incurrence of a Guarantee of any obligation of, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Debt issued by, any other Person. For purposes of **Section 3.09** and **Section 3.15** and the definition of "Restricted Payment," the term "Investment" shall include (a) upon the issuance, sale or other disposition of Capital Stock of any Restricted Subsidiary to a Person other than the Issuer or another Restricted Subsidiary as a result of which such Restricted Subsidiary ceases to be a Restricted Subsidiary, the Fair Market Value of the remaining interest, if any, in such former Restricted Subsidiary held by the Issuer or such other Restricted Subsidiary, and (b) at the time that a Subsidiary of the Issuer is designated an Unrestricted Subsidiary, the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary; *provided, however*, that upon a redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary of an amount (if positive) equal to:

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

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

In determining the amount of any Investment made by transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such Investment.

"**Issue Date**" means _____ __, 2010, being the date the Notes are originally issued.

"**Issuer**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party pursuant to the applicable provisions of this Indenture and thereafter means the successor.

"**Issuer Governing Documents**" means the amended and restated certificate of incorporation or organization and amended and restated bylaws or certificate of incorporation or formation, in each case, of the Issuer substantially consistent with the forms of such certificates and bylaws contained in the Plan Supplement (as defined in the Plan of Reorganization).

"**Last Reported Sale Price**" means, with respect to the Common Stock or any other security for which a Last Reported Sale Price must be determined, on any date, the closing sale price per share of Common Stock or unit of such other security (or, if no closing sale price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on such date as reported in composite transactions for the Relevant Exchange, if any. If the Common Stock or such other security is not listed for trading on a United States national or regional securities exchange on such date, the "**Last Reported Sale Price**" shall be the average of the last quoted bid and ask prices per share of Common Stock or unit of such other security in the over-the-counter market on such date, as reported by Pink Sheets LLC or similar organization. If the Common Stock or such other security is not so quoted, the "**Last Reported Sale Price**" shall be the average of the mid-point of the last bid and ask prices for the Common Stock or such other security on such date from each of at least three nationally recognized independent investment banking firms, selected from time to time by the Issuer for that purpose. The Last Reported Sale Price shall be determined without reference to extended or after hours trading. Any such determination shall be conclusive absent manifest error.

"**Legal Limitations**" means any and all financial assistance, corporate benefit and other similar principles under any applicable law which prohibit, limit or otherwise restrict the ability of a Foreign Subsidiary to provide a Note Guaranty, or require that the Note Guaranty (or any collateral pledged as security for such a Foreign Subsidiary's obligations under such Note Guaranty) be limited by an amount or otherwise to the extent of such legal limitations.

"**Lien**" means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation,

conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing or any Sale and Leaseback Transaction).

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change pursuant to **clauses (a)** or **(b)** of the definition thereof other than, for the avoidance of doubt, any such transaction or event that is not a Fundamental Change as a result of the paragraph following **clause (f)** thereof.

"**Market Disruption Event**" means the occurrence or existence for more than a one-half hour period in the aggregate on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Relevant Exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock on the Relevant Exchange, and such suspension or limitation occurs or exists at any time within the 30 minutes prior to the closing time of the Relevant Exchange on such day.

"**Material Adverse Effect**" means, any event, circumstance, happening or condition, which has resulted or is reasonably likely to result in a material adverse effect on (a) the operations, business, assets, condition (financial or otherwise), or results of operations of the Obligors taken as a whole, (b) the ability of the Obligors to pay or perform their obligations under this Indenture, the Notes or the other Convertible Note Security Documents, (c) the validity or enforceability of (i) this Indenture and the Notes or (ii) the Convertible Note Security Documents taken as a whole, (d) the rights of or benefits available to the Trustee, the Collateral Agent or the Holders under this Indenture, the Notes or any of the other Convertible Note Security Documents or (e) the validity, perfection or priority of the Liens on Collateral in favor of the Collateral Agent pursuant to the Convertible Note Security Documents.

"**Material Foreign Subsidiary**" has the meaning given to such term in **[Section 1.03 of]** the Convertible Note Pledge and Security Agreement.

"**Maturity**" means, in respect of any Note, the date on which the principal, the Purchase Price, the Fundamental Change Repurchase Price or the Call Right Repurchase Price of such Note becomes due and payable pursuant to this Indenture, whether at the Stated Maturity Date, the Purchase Date, the Fundamental Change Repurchase Date, Put Right Repurchase Date or Call Right Repurchase Date by declaration of acceleration or otherwise.

"**Moody's**" means Moody's Investors Service or any successor to the rating agency business thereof.

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"**Net Available Cash**" from any Asset Sale means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Debt or other obligations or liabilities relating to the Property that is the subject of such Asset Sale or received in any other non-cash form), in each case net of:

(a) all legal, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;

(b) all payments made on or in respect of any Debt that is secured by any Property subject to such Asset Sale, in accordance with the terms of any Lien upon such Property, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law, be repaid out of the proceeds from such Asset Sale;

(c) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale; and

(d) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the Property disposed of in such Asset Sale and retained by the Issuer or any Restricted Subsidiary after such Asset Sale until such amounts are no longer required to be held in reserve.

"**New Credit Facility**" means that certain credit facility consisting of new unsecured notes issued by or other unsecured debt obligations provided to one or more of the Debtors on or before the Issue Date in an aggregate original principal amount of **[up to $275 million],** all of the proceeds from which, if any, shall be used by the Obligors to make all (or, if the Rights Offering closes, some) of the portion of the Closing Date Cash Payment in excess of $158.3 million.

"**New Credit Facility Obligations**" means the **["Obligations"]** as defined in **[_____]**.

"**New Debt Documents**" means the indentures, credit agreements, other documents governing the New Credit Facility and any guaranties, and intercreditor and/or subordination agreements executed in connection therewith.

"**Note**" has the meaning specified in the first paragraph of the Recitals of the Issuer.

"**Note Guaranty**" means the guaranty of the Notes by a Guarantor pursuant to the Indenture.

"**Note Register**" has the meaning specified in **Section 2.06(b)**.

"**Note Registrar**" has the meaning specified in **Section 2.06(a)** and shall include any co-registrars appointed pursuant to **Section 2.06(a)**.

"**Notifying Holders**" means the registered Holders of not less than 25% in the aggregate principal amount of the Notes then outstanding.

"**Obligations**" means, with respect to any Debt, all obligations (whether in existence or arising on the Issue Date or arising afterwards, absolute or contingent, direct or indirect) for or in respect of principal (when due, upon acceleration (or on a regularly scheduled payment date), upon redemption, upon mandatory repayment or repurchase pursuant to a mandatory offer to purchase, or otherwise), premium, interest, penalties, fees, indemnification, reimbursement and other amounts payable and liabilities with respect to such Debt, including all interest accrued or accruing after the commencement of any bankruptcy, insolvency or reorganization or similar

case or proceeding at the contract rate (including, without limitation, any contract rate applicable upon default) specified in the relevant documentation, whether or not the claim for such interest is allowed as a claim in such case or proceeding.

"**Obligors**" means, collectively, the Issuer and the Guarantors and each, individually, an "**Obligor**."

"**OFAC Regulations**" shall have the meaning given to such term in **Section 3.27(xv)**.

"**Offer Amount**" has the meaning specified in **Section 3.11(e)**.

"**Offer Period**" has the meaning specified in **Section 3.11(e)**.

"**Officer**" means the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, the Secretary or any Executive Vice President of the Issuer or any other Obligor, as applicable.

"**Officer's Certificate**" means a certificate signed by an Officer of the Issuer and delivered to the Trustee.

"**Opinion of Counsel**" means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be counsel to the Issuer or the other Obligors (who may be an employee of the Issuer or the one of the other Obligors who is an attorney) or the Trustee (as applicable).

"**Outstanding**" means, in respect of a Note, that such Note is outstanding pursuant to the terms of **Section 2.12**.

"**Paying Agent**" has the meaning specified in **Section 2.06(a)** and shall include any additional paying agents appointed pursuant to **Section 2.06(a)**.

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any Plan that is a defined benefit pension plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Obligor or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Perfection Certificate**" means a certificate substantially in the form of Exhibit A attached to the Convertible Note Pledge and Security Agreement, completed by the Issuer and SLLC on behalf of itself and each other Grantor (as defined in the Convertible Note Pledge and Security Agreement).

"**Permitted Debt**" has the meaning set forth in **Section 3.08(a)**.

"**Permitted Investment**" means any Investment by:

(a) the Issuer or a Restricted Subsidiary in existence on the Issue Date or by the Issuer or a Restricted Subsidiary in:

(i) the Issuer or any Obligor;

(ii) any Person that will, upon the making of such Investment, become an Obligor;

(iii) any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its Property to, the Issuer or an Obligor;

(iv) Cash Equivalents;

(v) receivables owing to the Issuer or a Restricted Subsidiary, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Issuer or such Restricted Subsidiary deems reasonable under the circumstances;

(vi) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(vii) loans and advances to employees made in the ordinary course of business consistent with past practices of the Issuer or a Restricted Subsidiary, as the case may be; provided that such loans and advances do not exceed $5 million in the aggregate at any one time outstanding;

(viii) stock, obligations or other securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or a Restricted Subsidiary or in satisfaction of judgments;

(ix) any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated in compliance with **Section 3.11**;

(x) Investments in Permitted Joint Ventures that do not exceed 10% of Total Assets of the Issuer in the aggregate outstanding at any time;

(xi) any acquisition of assets or Capital Stock solely in exchange for the issuance of Capital Stock (other than Disqualified Stock) of the Issuer;

(xii) Investments represented by Hedging Obligations if such Hedging Obligation has been Incurred pursuant to **Section 3.08(a)(vi)** or **(vii)**; and

(xiii) other Investments (other than Investments in any Issuer or Obligor) made for Fair Market Value that do not exceed $17.5 million in the aggregate outstanding at any one time.

(b) any Restricted Subsidiary (that is not an Obligor) in:

(i) another Restricted Subsidiary;

(ii) any Person that will, upon the making of such Investment, become a Restricted Subsidiary; and

(iii) any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its Property to, the Issuer or another Restricted Subsidiary.

"**Permitted Joint Venture**" means any Person which is, directly or indirectly, engaged principally in a Related Business, and the Capital Stock, or securities convertible into Capital Stock, of which is owned by the Issuer and one or more Persons other than the Issuer or any of its Affiliates.

"**Permitted Liens**" means:

(a) Liens securing the Notes, the Note Guaranties and other Obligations in respect thereof under the Indenture and the Convertible Note Security Documents;

(b) Liens on the Collateral to secure Debt permitted to be Incurred pursuant to **Section 3.08(a)(i)** (which Liens secure the Revolving Credit Obligations Incurred pursuant to clause (y) of such **Section 3.08(a)(i)** may be senior to the Liens on the Notes in the case of Secondary Collateral and shall be junior to the Liens on the Notes in the case of Primary Collateral and in other cases shall have junior Liens to the Notes);

(c) Liens to secure Debt permitted to be Incurred pursuant to **Section 3.08(a)(ii)**; provided that any such Lien may not extend to any Property of the Issuer or any Restricted Subsidiary, other than the Property acquired, constructed or leased with the proceeds of any such Debt and any improvements or accessions to such Property;

(d) Liens for taxes, assessments or governmental charges or levies on the Property of the Issuer and/or Restricted Subsidiary if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor;

(e) Liens imposed by law, such as carriers', landlords', warehousemen's and mechanics' Liens and other similar Liens, on the Property of the Issuer and/or Restricted Subsidiaries arising in the ordinary course of business and securing payment of obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;

(f) Liens on the Property of the Issuer and/or Restricted Subsidiaries Incurred in the ordinary course of business to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and Incurred in a manner consistent with industry practice, in each case which are not Incurred in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate impair in any material respect the use of Property in the operation of the business of the Issuer and the Restricted Subsidiaries taken as a whole;

(g) Liens on Property at the time the Issuer and/or Restricted Subsidiaries acquired such Property, including any acquisition by means of a merger or consolidation with or into the Issuer and/or such Restricted Subsidiary/Subsidiaries; *provided*, however, that any such Lien may not extend to any other Property of the Issuer or of any Restricted Subsidiary; *provided, further, however*, that such Liens shall not have been Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Property was acquired by the Issuer and/or such Restricted Subsidiary/Subsidiaries;

(h) pledges or deposits by the Issuer and/or Restricted Subsidiaries under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Debt) or leases to which the Issuer and/or Restricted Subsidiary/Subsidiaries are party, or deposits to secure public or statutory obligations of the Issuer and/or Restricted Subsidiaries, surety or appeal bonds, performance bonds or deposits for the payment of rent or margin deposits, in each case Incurred in the ordinary course of business;

(i) utility easements, building restrictions and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character;

(j) Liens securing Debt permitted to be Incurred with respect to Hedging Obligations pursuant to **Section 3.08** on collateral for such Debt to which the Hedging Obligations relate;

(k) Liens on the Capital Stock of any Unrestricted Subsidiary or any Foreign Restricted Subsidiary (that is not a Material Foreign Subsidiary) to secure Debt of that Subsidiary;

(l) Liens in favor of the Issuer or any Obligor;

(m) Liens existing on the Issue Date not otherwise described in clauses (a) through (l) above, each of which is listed on **Schedule D**;

(n) Liens on the Property of the Issuer and/or Restricted Subsidiaries to secure any Permitted Refinancing Debt, in whole or in part, of any Debt secured by any Lien referred to in clauses (a), (b), (c), (g), (m) or (o) of this definition; *provided however*, that any such Lien shall be limited to all or part of the same Property that secured the original Debt (together with any improvements and accessions to such Property) and the aggregate principal amount of Debt that is secured by such Lien shall not be increased to an amount greater than the sum of:

(i) the outstanding principal amount, or, if greater, the committed amount, of the Debt secured by Liens described under clauses (b), (c), (g), (m) or (o) above, as the case may be, at the time the original Lien became a Permitted Lien under the Indenture; and

(ii) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by the Issuer and/or Restricted Subsidiaries in connection with such Refinancing;

(o) Liens securing the Senior Secured Bond Obligations;

(p) other Liens to secure Debt, so long as (i) the aggregate principal amount of Debt secured thereby does not exceed $100 million,(ii) such Debt is permitted under **Section 3.08(a)(xi)** and (iii) such Liens are junior in all respects to the Liens securing the Obligations under this Indenture and the Notes;

(q) Liens on UBS Auction Rate Securities to secure Debt permitted to be Incurred pursuant to Section 3.08(xiii); and

(r) Liens shown as exceptions to title in the title insurance policies or commitments, to the extent that such exceptions are reasonably acceptable to the Required Holders, issued in connection with the Closing Date Mortgages and any subsequent mortgages or deeds of trust executed pursuant to this Indenture and/or the Convertible Note Pledge and Security Agreement..

"**Permitted Refinancing Debt**" means any Debt that Refinances any other Debt, including any successive Refinancings, so long as:

(a) such Debt is in an aggregate principal amount (or if Incurred with original issue discount, an aggregate accreted value) not in excess of the sum of:

(i) the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding of the Debt being Refinanced, and

(ii) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, related to such Refinancing;

(b) the Average Life of such Debt is equal to or greater than the Average Life of the Debt being Refinanced;

(c) the Stated Maturity of such Debt is no earlier than the Stated Maturity of the Debt being Refinanced;

(d) the new Debt shall not be senior in right of payment to the Debt being Refinanced; and

(e) the new Debt shall not be secured if the Debt being Refinanced was unsecured; and

(f) the new Debt shall not be secured by Liens senior to the Liens securing the Debt being Refinanced

provided, however, that Permitted Refinancing Debt shall not include:

(x) debt of a Subsidiary that Refinances Debt of the Issuer; or

(y) Debt of the Issuer or a Restricted Subsidiary that Refinances Debt of (i) an Unrestricted Subsidiary or (ii) a Foreign Subsidiary that is not a Material Foreign Subsidiary.

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

"**Petition Date**" shall mean March 1, 2009.

"**Physical Notes**" means permanent certificated Notes in registered form issued in denominations of $1,000 principal amount and integral multiples thereof.

"**Plan**" means any employee benefit plan within the meaning of Section 3(3) of ERISA in which any Obligor or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA, including, but not limited to, any Pension Plan or Multiemployer Plan.

"**Plan of Reorganization**" means the Debtors' plan of reorganization which (i) provides for, *inter alia*, (x) the full payment or other satisfaction of the Prepetition Senior ABL Credit Facility, (y) the cancellation of the Prepetition FRN Notes and all indebtedness outstanding thereunder and under the Prepetition Indenture and (z) the payment or satisfaction in full of administrative and priority claims and expenses outstanding in connection with the Cases, and (ii) approves, in all respects, (A) the payment of the Closing Date Cash Payment, (B) the issuance of the Unsecured Creditors' Common Stock, (C) the issuance of common stock of the Issuer pursuant to the Rights Offering (to the extent that the Rights Offering Documents are entered into on the Issue Date), (D) the Equity Incentive Plan, (E) the terms of this facility, the Revolving Credit Facility, the Senior Secured Bond Facility (to the extent entered into on the Issue Date) and the New Credit Facility (to the extent entered into on the Issue Date) and (F) the execution copies of this Indenture, the Security Documents, the Senior Secured Bond Indenture (to the extent entered into on the Issue Date), the Senior Secured Bond Security Documents (to the extent entered into on the Issue Date), the Rights Offering Documents (to the extent entered into on the Issue Date), the New Debt Documents (to the extent entered into on the Issue Date), the Revolving Credit Agreement and the Revolving Credit Security Documents.

"**Preferred Stock**" means any Capital Stock of a Person, however designated, which entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

"**Preferred Stock Dividends**" means all dividends with respect to Preferred Stock of Restricted Subsidiaries held by Persons other than the Issuer or a Restricted Subsidiary. The amount of any

such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income rate (expressed as a decimal number between 1 and 0) then applicable to the issuer of such Preferred Stock.

"**Prepayment Offer**" has the meaning specified in **Section 3.11(c)**.

"**Prepetition FRN Noteholders**" means the holders of the Prepetition FRN Notes immediately prior to the Issue Date.

"**Prepetition FRN Notes**" shall have the meaning set forth in the Recitals hereto.

"**Prepetition Indenture**" shall have the meaning set forth in the Recitals hereto.

"**Prepetition Senior ABL Credit Facility**" means that certain credit facility extended pursuant to that certain Credit Agreement dated September 19, 2005, as amended, by and among SLLC, Bank of America, N.A., as agent, and certain other lenders and other parties thereto.

["Primary Collateral" means "Noteholder Priority Collateral" as defined in the Intercreditor Agreement as in effect on the Issue Date. , including, upon the payment in full of the [Bank Obligations][Revolving Credit Obligations] and the termination of the commitments under the Revolving Credit Agreement, all Secondary Collateral.]

"**Property**" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities (including auction rate securities) of, any other Person and intellectual property. Unless expressly provided otherwise herein or in the Convertible Note Security Documents, for purposes of any calculation required pursuant to the Indenture, the value of any Property shall be its Fair Market Value.

"**Protected Purchaser**" has the meaning specified in **Section 2.11(a)**.

"**Purchase Date**" has the meaning specified in **Section 3.11(d)**.

"**Purchase Money Debt**" means Debt:

(a) consisting of the deferred purchase price of Property, conditional sale obligations, obligations under any title retention agreement, other purchase money obligations and obligations in respect of industrial revenue bonds, in each case where the maturity of such Debt does not exceed the anticipated useful life of the Property being financed; and

(b) Incurred to finance the acquisition, construction or lease by the Issuer or a Restricted Subsidiary of such Property, including additions and improvements thereto; *provided, however*, that such Debt is Incurred within 180 days after the acquisition, construction or lease of such Property by the Issuer or such Restricted Subsidiary.

"**Put Right**" has the meaning specified in **Section 4.05(a)**.

"**Put Right Repurchase Notice**" has the meaning specified in **Section 4.05(b)(i)**.

"**Put Right Repurchase Date**" has the meaning specified in **Section 4.05(c)(iv)**.

"**Put Right Repurchase Price**" has the meaning specified in **Section 4.05(a).**

"**Record Date**" means, with respect to any Interest Payment Date, the January 15 or July 15 immediately preceding such Interest Payment Date (whether or not a Business Day).

"**Reference Property**" has the meaning specified in **Section 5.11(a)**.

"**Refinance**" means, in respect of any Debt, to refinance, extend, renew, refund or Repay, or to issue other Debt, in exchange or replacement for, such Debt. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Related Business**" means any business that is related, ancillary or complementary to the businesses of the Issuer and the Restricted Subsidiaries on the Issue Date and any reasonable extension thereof.

"**Relevant Exchange**" means, at any time, the principal United States national or regional securities exchange or market on which the Common Stock is listed or admitted for trading at such time.

"**Reorganization Event**" has the meaning specified in **Section 5.11(a)**.

"**Repay**" means, in respect of any Debt, to repay, prepay, repurchase, redeem, legally defease or otherwise retire such Debt. "**Repayment**" and "**Repaid**" shall have correlative meanings. For purposes of **Section 3.11** and the definition of "Consolidated Fixed Charge Coverage Ratio," Debt shall be considered to have been Repaid only to the extent the related loan commitment, if any, shall have been permanently reduced in connection therewith.

"**Required Holders**" means the registered Holders of not less than 50% in the aggregate principal amount of the Notes then outstanding.

"**Required Reserve Amount**" has the meaning specified in **Section 5.08**.

"**Responsible Officer**" means any officer of the Trustee within the corporate trust department of the Trustee including any senior vice president, vice president, assistant vice president, 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, with direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer of the Trustee to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"**Restricted Payment**" means:

(a) any dividend or distribution (whether made in cash, securities or other Property) declared or paid on or with respect to any shares of the Capital Stock of the Issuer or any Restricted Subsidiary (including any payment in connection with any merger or consolidation with or into the Issuer or any Restricted Subsidiary), except for (i) any dividend or distribution

that is made solely to the Issuer or a Restricted Subsidiary (that is an Obligor) (and, if such Restricted Subsidiary receiving such dividend or other distribution is not a Wholly Owned Restricted Subsidiary, to the other shareholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by the Issuer or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis), (ii) any dividend or distribution that is made by the Issuer or a Restricted Subsidiary (that is an Obligor) to a Restricted Subsidiary (that is not an Obligor) (and, if such Restricted Subsidiary receiving such dividend or other distribution is not a Wholly Owned Restricted Subsidiary, to the other shareholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by the Issuer or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis) provided that any such dividend or distribution shall only be made in the form of Capital Stock of the issuer of such dividend and/or distribution, (iii) any dividend or distribution that is made solely to a Restricted Subsidiary from a Restricted Subsidiary (that is not an Obligor) or (iv) any dividend or distribution payable solely in shares of Capital Stock (other than Disqualified Stock) of the Issuer;

(b) the purchase, repurchase, redemption, acquisition or retirement for value of any Capital Stock of the Issuer or any Restricted Subsidiary (other than from the Issuer or a Restricted Subsidiary and other than for Capital Stock of the Issuer that is not Disqualified Stock);

(c) the purchase, repurchase, redemption, acquisition, payment (whether consisting of a principal payment, interest payment or any other type of payment) or retirement for value of any Subordinated Obligations prior to 91 days after the Stated Maturity Date (with respect to the Notes) and payment in full of the Notes (excluding, in each case, any such payment in connection with a change of control thereunder, which requires payment in full of the Notes prior to the payment of such Debt provided that the Notes are paid in full prior to such purchase, repurchase, redemption, acquisition, payment or retirement of any Subordinated Obligations); and

(d) any Investment (other than Permitted Investments) in any Person.

"**Restricted Payment Basket**" shall have the meaning set forth in Section 3.09(b)(iii).

"**Restricted Subsidiary**" means any Subsidiary of the Issuer other than an Unrestricted Subsidiary.

"**Revolver Cap Amount**" has the meaning given to ["**Cap Amount**"] in the Intercreditor Agreement, as in effect on the Issue Date, with respect to the Revolving Credit Obligations.

"**Revolving Credit Agreement**" means that certain Credit Agreement dated as of [], 20__ among the Issuer, [SLLC,] the Revolving Credit Agent, and a syndicate of lenders, as may be revised, restructured or Refinanced from time to time, including to extend the maturity thereof, to increase the amount of commitments thereunder (*provided* that any such increase is permitted under the covenant described under **Section 3.09** and the Revolving Credit Agreement), or to add Restricted Subsidiaries as additional borrowers or guarantors thereunder, whether by the same or any other agent, lender or group of lenders or investors and whether such revision, restructuring

or Refinancing is under one or more Debt facilities or commercial paper facilities, indentures or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters or credit, together with related documents thereto (including, without limitation, any guaranty agreements and security documents) or, in the event such agreement is terminated and not immediately replaced, any Credit Facility into which the Issuer subsequently enters that the Issuer designates, in a notice to the Trustee, as a replacement, as it may be revised, restructured or Refinanced from time to time, subject to the *proviso* set forth above.

"**Revolving Credit Facility**" shall mean the credit facility evidenced by the Revolving Credit Agreement and the Revolving Credit Security Documents.

"**Revolving Credit Obligations**" has the meaning given to **["Obligations"]** set forth in the Revolving Credit Agreement as in effect on the Issue Date.

"**Revolving Credit Security Documents**" has the meaning given to "_____"set forth in the Revolving Credit Agreement, as in effect on the date hereof.

"**Rights Offering**" means that certain rights offering of New Spansion Common Stock (as defined in the Plan of Reorganization) in an amount of up to $109,375,000 to be offered to the Rights Offering Participants (as defined in the Plan of Reorganization), pursuant to the Rights Offering Documents. If the Rights Offering does not occur on or prior to the Issue Date, it shall not be consummated.

"**Rights Offering Documents**" means [_____] and the other agreements, documents and instruments evidencing the Rights Offering.

"**Rule 144**" means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Rule 144A**" means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Sale and Leaseback Transaction**" means any direct or indirect arrangement relating to Property now owned or hereafter acquired whereby the Issuer or a Restricted Subsidiary transfers such Property to another Person and the Issuer or a Restricted Subsidiary leases it from such Person.

"**Scheduled Trading Day**" means a day during which trading in the Common Stock is scheduled to occur on the Relevant Exchange. If the Common Stock is not then listed or admitted for trading on a United States national or regional securities exchange or market, "**Scheduled Trading Day**" shall mean a Business Day.

"**Secondary Collateral**" means ["Revolving Credit Priority Collateral"] as defined in the Intercreditor Agreement as in effect on the Issue Date.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Security Agreement Supplement**" shall have the meaning given to such term in the Convertible Note Pledge and Security Agreement.

"**Senior Exchangeable Subordinated Debentures Indenture**" means that certain Indenture dated as of June 12, 2006 providing for the issuance of $207,000,000 aggregate principal amount of 2.25% Senior Exchangeable Subordinated Indentures due 2016 by SLLC in favor of the holders thereof, as amended and in effect immediately prior to the Issue Date.

"**Senior Notes Indenture**" means that certain Indenture dated as of December 21, 2005 providing for the issuance of $250,000,000 aggregate principal amount of 11.25% Senior Notes due 2016 by SLLC in favor of the holders thereof, as amended and in effect immediately prior to the Issue Date.

"Senior Secured Bonds" means the 10.75% Senior Secured Bonds due _____ __, 2014 issued by the Issuer

"Senior Secured Bond Agent" shall mean the Trustee under the Senior Secured Bond Indenture.

"**Senior Secured Bond Facility**" means that certain credit facility evidenced by the Senior Secured Bond Indenture, the Senior Secured Bonds and the Senior Secured Bond Documents.

"**Senior Secured Bond Indenture"** shall mean that certain Indenture dated as of the date hereof providing for the issuance of the Senior Secured Bonds by the Issuer to the holders thereof, as amended, restated, supplemented and/or modified from time to time in accordance with the provisions hereof and thereof.

"**Senior Secured Bond Obligations"** means the Obligations outstanding under the Senior Secured Bonds and the Senior Secured Bond Indenture.

"**Senior Secured Bond Security Documents"** shall have the meaning ascribed to "Security Documents" set forth in the Senior Secured Bond Indenture, as in effect on the date hereof.

"**Significant Subsidiary"** means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Issuer within the meaning of Rule 1-02 under Regulation S-X promulgated by the United States Securities and Exchange Commission.

"**SLLC**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party and thereafter means the successor.

"**Spansion Singapore**" means Spansion Holdings (Singapore) Pte. Ltd.

"**Spin-Off**" has the meaning specified in **Section 5.06(d)**.

"**Stated Maturity**" means with respect to any Debt or security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the

happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"**Stated Maturity Date**" means, for any Note, _____ __, 2017.

"**Stock Price**" means, for a Make-Whole Fundamental Change (a) if holders of the Common Stock receive only cash consideration for their shares of Common Stock in connection with such Make-Whole Fundamental Change, the cash amount paid per share of Common Stock and (b) in all other cases, the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Fundamental Change Effective Date of such Make-Whole Fundamental Change.

"**Subordinated Obligations**" means any Debt of the Issuer or any other Obligor (whether outstanding on the Issue Date or thereafter incurred) that is subordinate or junior in right of payment to the Notes pursuant to a written agreement to that effect and the New Credit Facility Obligations.

"**Subsidiary**" means, in respect of any Person, any corporation, company (including any limited liability company), association, partnership, joint venture or other business entity of which at least a majority of the total voting power of the Voting Stock is at the time owned or controlled, directly or indirectly, by:

(a) such Person;

(b) such Person and one or more Subsidiaries of such Person; or

(c) one or more Subsidiaries of such Person.

"**Supplemental Indenture**" has the meaning specified in **Section 3.13(a)**.

"**Surviving Person**" means the surviving Person formed by merger or consolidation and for purposes of **Article Eight**, a Person to whom all or substantially all of the property of the Issuer or Guarantor (as applicable) is sold, transferred, assigned, leased, conveyed or otherwise disposed.

"**TIA**" means the Trust Indenture Act of 1939 (15 U.S. Code §§77aaa-77bbbb) as in effect on the date of the Indenture; *provided, however,* that in the event the Trust Indenture Act of 1939 is amended after such date, "TIA" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"**Total Assets**" means, with respect to any date of determination, the total consolidated assets of the referenced Person or Persons shown on its consolidated balance sheet in accordance with GAAP on the last day of the fiscal quarter prior to the date of determination.

"**Trading Day**" means a day during which (a) trading in the Common Stock generally occurs on the Relevant Exchange and (b) there is no Market Disruption Event. If the Common Stock is not then listed or admitted for trading on a United States national or regional securities exchange or market, then "**Trading Day**" means a Business Day.

"**Trustee**" means the Person named as the "**Trustee**" in this Indenture until a successor replaces it pursuant to this Indenture and thereafter "**Trustee**" shall mean such successor Trustee.

"**UBS Auction Rate Securities**" means those certain auction rate securities owned by SLLC and pledged to UBS Bank USA to secure that certain revolving line of credit of up to $85 million evidenced by that certain Credit Line Account Application and Agreement dated as of December 29, 2008, as amended, restated, supplemented and/or otherwise modified, between SLLC and UBS Bank USA.

"**United States**" means the United States of America.

"**Unrestricted Subsidiary**" means, at any date of determination, any Subsidiary of the Issuer that, together with all other Unrestricted Subsidiaries, (i) had consolidated assets comprising in the aggregate less than 2% of the Total Assets of the Issuer and its Subsidiaries on the last day of the most recent fiscal quarter for which financial statements are available and (ii) contributed in the aggregate less than 2% of the Consolidated EBITDA of the Issuer and all of its Subsidiaries for the period of four fiscal quarters most recently ended for which financial statements are available. As of the date hereof, **Schedule B** sets forth a list of the all of the Unrestricted Subsidiaries, as supplemented from time to time in accordance with the provisions hereof. Unless so designated as an Unrestricted Subsidiary in accordance with Section 3.15 hereof, any Person that becomes a Subsidiary of the Issuer will be classified as a Restricted Subsidiary.

"**Unsecured Creditors' Common Stock**" means the Issuer's common stock issued pursuant to the Plan of Reorganization to all unsecured creditors of the Debtors holding allowed Class 5A claims, Class 5B claims and/or Class 5C claims, in each case, under the Plan of Reorganization.

"**U.S. Government Obligations**" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"**Valuation Period**" has the meaning specified in **Section 5.06(d)**.

"**Voting Stock**" of any Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"**Wholly Owned Subsidiary**" of any Person means a Subsidiary of such Person, all the Capital Stock of which (other than directors' qualifying shares) is owned by such Person or another Wholly Owned Subsidiary of such Person.

"**Withdrawal Liability**" has the meaning ascribed to such term in Section 4201 of ERISA.

1.02. RULES OF CONSTRUCTION.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in **Section 1.01** have the meanings assigned to them in **Section 1.01** and include the plural as well as the singular;

(b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

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

1.03. COMPLIANCE CERTIFICATES AND OPINIONS.

(a) Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer shall furnish to the Trustee such certificates and opinions as may be required hereunder. Each such certificate or opinion shall be given in the form of an Officer's Certificate, if to be given by an officer of the Issuer, or an Opinion of Counsel, if to be given by counsel, and shall comply with any other requirement set forth in this Indenture.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(ii) 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;

(iii) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

1.04. FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters

upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

1.05. BENEFITS OF INDENTURE.

Except as provided in **Article Thirteen** hereof, nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

1.06. NO RECOURSE AGAINST OTHERS.

No director, officer, employee, stockholder or Affiliate of the Issuer from time to time shall have any liability for any obligations of the Issuer under the Notes or this Indenture. Each Holder by accepting a Note waives and releases such liability.

II. THE NOTES

2.01. DESIGNATION, AMOUNT AND ISSUANCE OF NOTES.

The Notes shall be designated as "**4.75% Convertible Senior Secured Notes due 2017**." The Notes shall be limited to an aggregate principal amount of up to $237,500,000. Upon the execution of this Indenture, or from time to time thereafter, Notes may be executed by the Issuer and delivered to the Trustee for authentication in accordance with **Section 2.05**.

2.02. FORM OF THE NOTES.

(a) The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in **Exhibit A** hereto. The terms and provisions contained in the form of Notes attached as **Exhibit A** hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Issuer and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

(b) Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends, endorsements or changes as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required by the custodian for the Global Notes, the Depositary or by The Nasdaq Stock Market, Inc. in order for the Notes to be tradable on The PORTAL Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or as may be required to

comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

(c) So long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, subject to **Section 2.09**, all of the Notes will be represented by one or more Global Notes. The transfer and exchange of beneficial interests in any such Global Notes shall be effected through the Depositary in accordance with this Indenture and the applicable procedures of the Depositary. Except as provided in **Section 2.09**, beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered Holders of such Global Note.

(d) Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect issuances, repurchases, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the custodian for the Global Note, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture.

2.03. DATE AND DENOMINATION OF NOTES AND INTEREST.

The Notes shall be issuable in fully registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Notes attached as **Exhibit A** hereto. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

2.04. PAYMENTS ON THE NOTES.

(a) On the Stated Maturity Date, each Holder shall be entitled to receive on such date the principal amount of the Notes held, *plus* accrued and unpaid interest to, but not including, the Stated Maturity Date.

(b) On each Interest Payment Date, the Person in whose name a Note is registered on the Note Register at the close of business on the Record Date for such Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date, except that the interest payable upon Maturity shall be payable to the Person to whom principal is payable upon Maturity.

(c) If any Interest Payment Date or any date on which principal or any other amount is payable in respect of the Notes falls on a day that is not a Business Day, such payment of interest or principal, as the case may be, shall be postponed to the next succeeding Business Day and no interest or other amount shall be paid as a result of such postponement.

(d) The Issuer shall pay any amount of principal when due:

(i) with respect to Global Notes, to the Depositary or its nominee in immediately available funds; and

(ii) with respect to Physical Notes, at the office of the Paying Agent, which initially shall be the Corporate Trust Office.

(e) The Issuer shall pay interest on each Interest Payment Date:

(i) with respect to any Global Notes by wire transfer of immediately available funds to the account of the Paying Agent;

(ii) with respect to any Physical Notes having a principal amount of $2,000,000 or less, by check mailed to the address of the Person entitled thereto as it appears in the Note Register; provided that at Maturity, interest will be payable at the office of the Issuer maintained by the Issuer for such purposes, which shall initially be the Corporate Trust Office; and

(iii) with respect to any Physical Notes having a principal amount of more than $2,000,000, either (A) by check mailed to the address of the Person entitled thereto as it appears in the Note Register or (B) at the election of the Person entitled thereto, by wire transfer in immediately available funds to an account within the United States of such Person if such Person has duly delivered notice of such election and applicable wire instructions to the Registrar not later than the Record Date for such Interest Payment Date and has not delivered notice to the Registrar revoking such election prior to such Record Date; provided that at Maturity, interest will be payable at the office of the Issuer maintained by the Issuer for such purposes, which shall initially be the Corporate Trust Office.

2.05. EXECUTION AND AUTHENTICATION.

(a) One or more Officers shall sign the Notes for the Issuer by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

(b) The Issuer shall deliver the Notes executed by the Issuer to the Trustee for authentication together with an authentication order executed by the Chief Executive Officer of the Issuer ordering the authentication and delivery of such Notes, which authentication order shall set forth the number of separate Notes certificates, the principal amount of each of the Notes to be authenticated, the date on which the original issue of Notes is to be authenticated, the Holder of each such Note and delivery instructions. Upon receipt of such executed Notes and such authentication order, the Trustee shall authenticate and deliver such Notes in accordance with such authentication order.

(c) A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

(d) The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate the Notes. Any such appointment shall be evidenced by an instrument signed by a Responsible Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, 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 any Note Registrar, Paying Agent or agent for service of notices and demands.

2.06. NOTE REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

(a) The Issuer shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the "**Note Registrar**"), an office or agency where Notes may be presented for payment (the "**Paying Agent**") and an office or agency where Notes may be presented for conversion (the "**Conversion Agent**"), in each case, in the Borough of Manhattan, The City of New York. The Issuer initially appoints the Trustee as Note Registrar, Conversion Agent and Paying Agent in connection with the Notes. The Issuer may from time to time appoint one or more additional Conversion Agents, Paying Agents and co-registrars and may from time to time rescind such designations.

(b) The Note Registrar shall keep a register of the Notes (the "**Note Register**") and of their transfer and exchange.

(c) The Issuer shall enter into an appropriate agency agreement with any Note Registrar, Paying Agent or Conversion Agent not a party to this Indenture. Each such agreement shall implement the provisions of this Indenture that relate to such agent.

(d) The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of each such office or agency, if not the Trustee, or if not designated or appointed by the Trustee.

(e) If at any time the Issuer fails to maintain a Note Registrar, Paying Agent or Conversion Agent or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(f) The Issuer may remove any Note Registrar, Paying Agent or Conversion Agent at any time and without prior notice to Holders by written notice to such Note Registrar, Paying Agent or Conversion Agent and to the Trustee; provided that no such removal shall become effective until (i) acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Note Registrar, Paying Agent or Conversion Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Note Registrar, Paying Agent or Conversion Agent until the appointment of a successor in accordance with **clause (i)** above. The Note Registrar, Paying Agent or Conversion Agent may resign at any time upon written notice; provided that the Trustee may resign as Paying Agent, Conversion Agent or Note Registrar only if the Trustee also resigns as Trustee in accordance with **Section 8.11**.

2.07. PAYING AGENT TO HOLD MONEY IN TRUST.

(a) On or prior to each due date of the principal and interest on any Note, the Issuer shall deposit with the Paying Agent a sum sufficient to pay such principal and interest when so becoming due. If such deposit is made, or such segregation is effected, on a due date for such principal or interest, such deposit shall be received by 11:00 a.m., New York City time, on such due date.

(b) The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust solely for the benefit of Holders and/or the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee of any default by the Issuer in making any such payment.

(c) The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this **Section 2.07**, the Paying Agent shall have no further liability for the money delivered to the Trustee.

2.08. EXCHANGE AND REGISTRATION OF TRANSFER OF NOTES.

(a) The Issuer shall cause to be kept at the Corporate Trust Office the Note Register in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or in any form capable of being converted into written form within a reasonably prompt period of time.

(b) Upon surrender for registration of transfer of any Notes to the Note Registrar, and satisfaction of the requirements for such transfer set forth in this **Section 2.08** and in **Section 2.10**, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

(c) Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture, upon surrender of the Notes to be exchanged at the office of the Note Registrar. Whenever any Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

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

(e) All Notes presented or surrendered for registration of transfer or for exchange, repurchase, redemption or conversion shall (if so required by the Issuer or the Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form

satisfactory to the Issuer, duly executed by the Holder thereof or his attorney duly authorized in writing.

(f) No service charge shall be made to any Holder for any registration of, transfer or exchange of Notes, but the Issuer may require payment by the Holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

(g) Neither the Issuer nor the Trustee nor any Note Registrar shall be required to exchange, issue or register a transfer of any Notes or portions thereof (i) tendered for repurchase (and not withdrawn) pursuant to **Article Four**, (ii) surrendered for conversion pursuant to **Article Five**, or (iii) selected for redemption pursuant to **Article Four**.

2.09. GLOBAL NOTES.

(a) Each Global Note authenticated under this Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to the Depositary or a nominee thereof or custodian for the Global Notes therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless:

(i) the Depositary (A) has notified the Issuer that it is unwilling or unable to continue as Depositary for such Global Note or (B) has ceased to be a clearing agency registered under the Exchange Act, and in each case, a successor depositary has not been appointed by the Issuer within 90 calendar days; or

(ii) in accordance with **clause (c)** below.

Any Global Notes exchanged pursuant to this **Section 2.09(b)** shall be so exchanged in whole and not in part.

(c) In addition, Physical Notes shall be issued in exchange for beneficial interests in a Global Note upon request by or on behalf of the Depositary in accordance with customary procedures following the request of a beneficial owner seeking to enforce its rights under the Notes or this Indenture upon the occurrence and during the continuance of an Event of Default.

(d) Notes issued in exchange for a Global Note or any portion thereof pursuant to **Section 2.09(b)** or **Section 2.09(c)** shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Notes or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear any legends required hereunder. Any Global Notes to be exchanged shall be surrendered by the Depositary to the Trustee, as Note Registrar, provided that pending completion of the exchange of a Global Note, the Trustee acting as custodian for the Global Notes for the Depositary or its nominee with respect to such Global

Notes, shall reduce the principal amount thereof, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and make available for delivery the Notes issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

(e) In the event of the occurrence of any of the events specified in **Section 2.09(b)** above or upon any request described in **Section 2.09(c)**, the Issuer will promptly make available to the Trustee a sufficient supply of Physical Notes in definitive, fully registered form, without interest coupons.

(f) Neither any members of, or participants in, the Depositary ("**Agent Members**") nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Notes registered in the name of the Depositary or any nominee thereof, and the Depositary or such nominee, as the case may be, may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner and Holder of such Global Notes for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Notes.

(g) At such time as all interests in a Global Note have been redeemed, repurchased, converted, cancelled or exchanged for Physical Notes, such Global Note shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the custodian for the Global Note. At any time prior to such cancellation, if any interest in a Global Note is redeemed, repurchased, converted, cancelled or exchanged for Physical Notes, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the custodian for the Global Note, be appropriately reduced, and an endorsement shall be made on such Global Note, by the Trustee or the custodian for the Global Note, at the direction of the Trustee, to reflect such reduction.

2.10. RESPONSIBILITIES AND OBLIGATIONS RELATING TO THE DEPOSITARY.

(a) Neither the Issuer nor the Trustee shall have any responsibility or obligation to any Agent Members or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Agent Member or other Person (other than the Depositary) of any notice or the payment of any amount under or with respect to such Notes.

(b) All notices and communications to be given to the Holders of Notes and all payments to be made to Holders of Notes under the Notes shall be given or made only to or upon

the order of the registered Holders of Notes (which shall be the Depositary or its nominee in the case of a Global Note).

(c) The rights of beneficial owners in any Global Notes shall be exercised only through the Depositary subject to the customary procedures of the Depositary.

(d) The Issuer and the Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Agent Members.

(e) The Issuer and 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 Notes (including any transfers between or among Agent Members) 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.

2.11. REPLACEMENT NOTES.

(a) If a mutilated Note is surrendered to the Note Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Note if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Holder:

(i) notifies the Issuer or the Trustee within a reasonable time after he has notice of such loss, destruction or wrongful taking and the Note Registrar does not register a transfer prior to receiving such notification;

(ii) makes such request to the Issuer or the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "**Protected Purchaser**"); and

(iii) satisfies any other reasonable requirements of the Trustee and the Issuer. Such Holder shall furnish an indemnity bond sufficient in the judgment of the Trustee to protect the Issuer, the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar from any loss or liability that any of them may suffer if a Note is replaced and subsequently presented or claimed for payment.

(b) The Issuer and the Trustee may charge the Holder for their expenses in replacing a Note.

(c) In case any Note which (i) has matured or is about to mature, (ii) has been properly tendered for repurchase on a Fundamental Change Repurchase Date (and not withdrawn), (iii) is to be converted into shares of Common Stock or redeemed or repurchased for cash, shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a substitute Note, convert or authorize the conversion of, or redeem or repurchase or authorize redemption or repurchase of, the same (without surrender thereof except in the case of a mutilated Notes), as the case may be, if the applicant for such conversion or redemption or

repurchase shall furnish to the Issuer, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or in connection with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence to their satisfaction of the destruction, loss or theft of such Notes and of the ownership thereof.

(d) The provisions of this **Section 2.11** are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Notes.

2.12. OUTSTANDING NOTES.

(a) At any time, the Notes outstanding at that time are all Notes that have been authenticated by the Trustee and delivered under this Indenture as at that time, other than:

(i) Notes cancelled by the Trustee or accepted by the Trustee for cancellation as at that time;

(ii) Notes replaced pursuant to **Section 2.11** as at that time, unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Note is held by a Protected Purchaser;

(iii) Notes repurchased pursuant to **Article Four** which are no longer outstanding as at that time pursuant to **Section 4.03(d)** or **Section 4.06(d)**;

(iv) Notes redeemed pursuant to **Article Four** which are no longer outstanding as at that time pursuant to **Section 4.10(c)**;

(v) Notes converted pursuant to **Article Five** which are no longer outstanding as at that time pursuant to **Section 5.05(g)**; and

(vi) Notes that have matured at the Stated Maturity in respect of which the Paying Agent segregates and holds in trust, in accordance with this Indenture, as of the Stated Maturity Date, sufficient funds to pay all amounts due on the Stated Maturity Date with respect to such Notes maturing and the Paying Agent is not prohibited from paying such money to the Holders on such date pursuant to the terms of this Indenture.

(b) Subject to **Section 2.12(c)**, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

(c) Notwithstanding anything else in this **Section 2.12**, in determining whether the Holders of the requisite principal amount of Notes outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by any Obligor or any Affiliate of an Obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have

been pledged in good faith may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not an Obligor or any Affiliate of an Obligor.

(d) The Issuer may from time to time repurchase outstanding Notes on the open market or in negotiated or other transactions without prior notice to the Holders.

2.13. TEMPORARY NOTES.

(a) Pending the preparation of Notes in certificated form, the Issuer may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Issuer, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for a temporary Note, all as may be determined by the Issuer. Every such temporary Note shall be executed by the Issuer and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form.

(b) Without unreasonable delay, the Issuer will execute and deliver to the Trustee or such authenticating agent Notes in certificated form and thereupon any or all temporary Notes may be surrendered in exchange therefor, at the office of the Note Registrar and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Issuer at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

2.14. CANCELLATION.

(a) The Issuer may, at any time, deliver Notes to the Trustee for cancellation. The Note Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment or cancellation and deliver canceled Notes to the Issuer pursuant to written direction by an Officer.

(b) The Issuer may not issue new Notes to replace Notes it has redeemed, repurchased, converted, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Notes in place of canceled Notes other than pursuant to the terms of this Indenture.

2.15. CUSIP AND ISIN NUMBERS.

The Issuer in issuing the Notes may use "**CUSIP**" and/or "**ISIN**" numbers (if then generally in use) and, if so, the Trustee shall use "**CUSIP**" and/or "**ISIN**" numbers in notices of redemption or otherwise as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice 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.

2.16. COMPUTATION OF INTEREST.

Interest on the Notes shall be computed on the basis set forth therein.

2.17. PAYMENTS.

All payments to the Trustee and/or Holders made hereunder, on account of the Notes and/or pursuant to any of the Convertible Note Security Documents shall be made in U.S. Dollars.

III. COVENANTS AND REPRESENTATIONS AND WARRANTIES

Until the Notes issued under this Indenture are no longer outstanding, with respect to **Sections 3.01** through **3.22**, each Obligor (as to itself and each other Obligor) agrees that:

3.01. PAYMENT OF NOTES; ADDITIONAL AMOUNT.

(a) The Issuer shall pay the principal of and interest on the Notes in accordance with the terms of the Notes and the Indenture. An installment of principal or interest shall be considered paid on the date it is due if the Trustee holds on that date money designated for and sufficient to pay such installment.

(b) Notwithstanding any other provisions set forth herein or in any of the Notes, interest shall accrue at a rate equal to two percent (2%) per annum in excess of the Interest Rate (the "**Default Rate"**), at Trustee's option, without notice, (i) either (A) for the period on and after the date of termination hereof until such time as all Obligations hereunder and under the Notes are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Trustee.

3.02. MAINTENANCE OF OFFICE OR AGENCY.

(a) The Issuer shall maintain an office or agency in the United States of America (which may be an office of the Trustee or an affiliate of the Trustee or Registrar) where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and the Indenture may be served. The Issuer 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 Issuer 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, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or

rescission shall in any manner relieve the Issuer of its obligation to maintain an office in the United States of America. The Issuer 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.

(c) The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with **Section 2.06**.

3.03. LEGAL EXISTENCE.

Subject to **Articles Three, Four** and **Five**, the Issuer and each of the Obligors shall do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence, and the corporate, partnership or other existence of each Restricted Subsidiary, in accordance with the respective organizational documents (as the same may be amended from time to time) of each Restricted Subsidiary and the material rights (charter and statutory) and franchises of the Issuer and the Restricted Subsidiaries; provided that the Issuer and Obligors shall not be required to preserve any such right, franchise or the corporate, partnership or other existence of its Restricted Subsidiaries if (i) the Issuer, in good faith, shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries taken as a whole and (ii) the failure to so preserve any such right, franchise or existence could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.04. MAINTENANCE OF PROPERTIES; INSURANCE; COMPLIANCE WITH LAW.

(a) The Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, at all times cause all material properties used or useful in the conduct of their respective businesses to be maintained and kept in good condition, repair and working order (reasonable wear and tear excepted) and supplied with all necessary equipment, and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Issuer may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this **Section 3.04(a)** shall prevent the Issuer or any of its Restricted Subsidiaries from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the reasonable judgment of the Issuer, desirable in the conduct of the business of the Issuer and its Subsidiaries taken as a whole and not adverse in any material respect to the Holders.

(b) The Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, keep at all times all of their material properties which are of an insurable nature insured against such loss or damage with insurers believed by the Issuer to be responsible to the extent that Property of a similar character is usually so insured by corporations similarly situated and owning like Properties in accordance with good business practice. Subject to **Section 13.02** and the proviso in **Section 3.04(a)**, the Issuer and other Obligors shall, and Issuer shall cause each of its Restricted Subsidiaries to, use the proceeds from any such insurance policy to repair, replace or otherwise restore the Property to which such proceeds relate.

(c) The Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, comply with all statutes, laws, ordinances or government rules and regulations to which they are subject (including, but not limited to, Environmental Laws, OFAC Regulations, FAC Regulations, the USA Patriot Act of 2001, the Trading with the Enemy Act and the United States Foreign Corrupt Practices Act of 1977, as amended), except to the extent that any failure to comply therewith could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) Obligors shall perform in accordance with its terms each material contract, agreement or other arrangement to which it is a party or by which it or any material amount of Collateral is bound, except where the failure to so perform would not reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

(e) Each Obligor shall, at all times, preserve and keep in full force and effect all licenses and permits material to its business except where the failure to so preserve and keep in full force and effect such licenses and permits would not reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

3.05. WAIVER OF STAY, EXTENSION OR USURY LAWS.

Each Obligor, covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law which may affect the covenants or the performance of the Indenture; and (to the extent that it may lawfully do so) each Obligor, each, hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

3.06. COMPLIANCE CERTIFICATE AND PERFECTION CERTIFICATE.

(a) The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Issuer, commencing with the Issuer's fiscal year ending in December of 2010 an Officer's Certificate of the Issuer signed by the principal executive officer, principal accounting officer or principal financial officer of the Issuer, stating whether or not to the best knowledge of the signers thereof any Defaults or Events of Default have occurred and are continuing and, if the Issuer and/or Obligors shall be in Default (or an Event of Default has occurred), specifying all such Defaults (and/or Event(s) of Default), the nature and status thereof of which they may have knowledge and what action the Issuer and/or Obligors are taking or propose to take with respect thereto (the "**Compliance Certificate**"). Such determination shall be made without regard to notice requirements or periods of grace.

(b) The Issuer shall deliver to the Trustee, as soon as possible and in any event no later than eight (8) Business Days after the Issuer or any of the Obligors becomes aware of the occurrence of (i) a Default or an Event of Default or an event which, with notice or the lapse of time or both, would constitute a Default or Event of Default, (ii) the filing or commencement of

any action, suit or proceeding by or before any arbitrator or governmental authority against or affecting any Obligor or any Collateral that could reasonably be expected to result in a Material Adverse Effect, (iii) the occurrence of any ERISA Event related to any Plan or Foreign Plan of any Obligor or Subsidiary or actual knowledge of any ERISA Event related to a Plan or Foreign Plan of any other ERISA Affiliate that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect, (iv) any loss, damage or casualty relating to Collateral having a value of more than $2 million and (v) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect, an Officer's Certificate setting forth the details thereof, and the action which the Issuer and/or Obligors are taking or propose to take with respect to such Default or Event of Default, action, suit, proceeding, ERISA Event, loss, damage, casualty or other development.

(c) The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year commencing with the Issuer's fiscal year ending December of 2010, a written statement by the Issuer's independent public accountants stating whether, in connection with their audit of the Issuer's financial statements, any event which would constitute an Event of Default as defined herein insofar as they relate to accounting matters has come to their attention and, if such an Event of Default has come to their attention, specifying the nature and period of the existence thereof.

(d) The Issuer shall deliver to the Trustee and Collateral Agent, within 120 days after the end of each fiscal year of the Issuer, commencing with the Issuer's fiscal year ending in December of 2010, Perfection Certificates (or an updated Perfection Certificate covering all of the Obligors) updating the Perfection Certificate(s) most recently delivered to Trustee and/or Collateral Agent.

3.07. PAYMENT OF TAXES AND OTHER CLAIMS.

The Issuer and Obligors shall, and shall cause each of the Restricted Subsidiaries to, pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Issuer or any of its Subsidiaries or upon the income, profits, capital or Property of the Issuer or any of its Subsidiaries, and (ii) all material lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the Property of the Issuer or any of its Subsidiaries; provided, however, that the Issuer and its Subsidiaries shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

3.08. LIMITATION ON DEBT.

The Issuer and Obligors shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Debt unless (x) after giving effect to the application of the proceeds therefrom, no Default or Event of Default would occur as a consequence of such Incurrence or be continuing following such Incurrence and (y) such Debt is Permitted Debt.

(a) The term "**Permitted Debt**" means the following:

(i) Debt of the Issuer or a Restricted Subsidiary (x) under Credit Facilities, provided that, after giving effect to the Incurrence of any such Debt, the aggregate principal amount of all such Debt under Credit Facilities at any one time outstanding, together with the amount of Notes issued on the Issue Date (or Permitted Refinancing Debt in respect thereof) outstanding at such time shall not exceed $250 million and (y) under the Revolving Credit Agreement provided that the aggregate principal amount of all such Debt under this clause (y) shall not exceed $100 million;

(ii) Debt of the Issuer or a Restricted Subsidiary in respect of Capital Lease Obligations and Purchase Money Debt, provided that:

(A) the aggregate principal amount of such Debt does not exceed the Fair Market Value (on the date of the Incurrence thereof) of the Property acquired, constructed or leased; and

(B) the aggregate principal amount of all Debt Incurred and then outstanding pursuant to this **Section 3.08(a)(ii)** (together with all Permitted Refinancing Debt Incurred and then outstanding in respect of Debt previously Incurred pursuant to this **Section 3.08(a)(ii)**) does not exceed [15]% **[This percentage may be reduced depending upon how the Consolidated Fixed Charge definition is finalized]** of the Total Assets of the Issuer;

(iii) Debt of the Issuer owing to and held by any Restricted Subsidiary and Debt of a Restricted Subsidiary owing to and held by the Issuer or any Restricted Subsidiary; provided, that (A) if the Issuer or a Guarantor is the obligor on such Debt Incurred after the Issue Date, then such Debt is expressly subordinated by its terms to the prior payment in full in cash of all Obligations under the Notes and this Indenture; provided, however, that any subsequent issue or transfer of Capital Stock or other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Debt (except to the Issuer or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Debt by the issuer thereof and (B) the aggregate principal amount of the Debt of the Subsidiaries of the Issuer (that are not Obligors) owing to the Issuer and/or Obligors shall not exceed **[$2 million] [Bracketed amount subject to discussion and agreement]** at any time;

(iv) Debt of a Restricted Subsidiary outstanding on the date on which such Restricted Subsidiary is acquired by the Issuer or otherwise becomes a Restricted Subsidiary (other than Debt Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Subsidiary of the Issuer or was otherwise acquired by the Issuer);

(v) Debt under Interest Rate Agreements entered into by the Issuer or a Restricted Subsidiary for the purpose of managing interest rate risk in the ordinary course of the financial management of the Issuer or such Restricted Subsidiary and not for speculative purposes;

(vi) Debt under Currency Exchange Protection Agreements entered into by the Issuer or a Restricted Subsidiary for the purpose of managing currency exchange rate risks in the ordinary course of business and not for speculative purposes;

(vii) Guarantees by the Issuer or any Restricted Subsidiary of Debt or any other obligation or liability of the Issuer or any Restricted Subsidiary that the Issuer or such Restricted Subsidiary could otherwise have Incurred pursuant to this **Section 3.08** provided that the Issuer and Guarantors shall not guaranty or be jointly and severally liable with respect to the Debt of any Subsidiary of the Issuer (not constituting an Obligor) other than the Permitted Debt referenced in clauses (ii), (iii), (vi), (vii) and (ix) of this Section 3.08(a) hereof provided that to the extent that the Debt guaranteed by such Guarantees of the of the Issuer or any Restricted Subsidiary is subordinated to the Obligations hereunder, the Guarantees of such Debt shall also be subordinate (and to the same extent) to the Guarantees of the Obligations hereunder;

(viii) Debt in connection with one or more standby letters of credit or performance or surety bonds issued by the Issuer or a Restricted Subsidiary in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances or credit not to exceed 5% of the Total Assets of the Issuer;

(ix) Debt of the Issuer or a Restricted Subsidiary outstanding on the Issue Date not otherwise described in **Section 3.08(a)(i)** through **(viii)** above, as set forth on **Schedule C** attached hereto;

(x) Debt of the Issuer or a Restricted Subsidiary in an aggregate principal amount outstanding at any one time not to exceed $100 million (which amount shall not include Guarantees of Debt of Unrestricted Subsidiaries) provided that such Debt and any Lien securing such Debt is subordinated in all respects to the Obligations under this Indenture, the Notes and the Convertible Note Security Documents and the Liens securing such Obligations;

(xi) Debt of the Issuer and Obligors in an amount not to exceed $475 million evidenced by (A) this Indenture, the Notes and the Note Guaranties thereof, (B) the Senior Secured Bonds, the Senior Secured Bond Indenture and the guaranties thereof provided that the aggregate principal amount of such Debt shall not exceed $237.5 million and/or (C) the New Credit Facility provided that the aggregate principal amount of such Debt shall not exceed $275 million;

(xii) Permitted Refinancing Debt Incurred in respect of Debt Incurred pursuant to **Sections 3.08(a)(i), (ii), (iii), (v), (x)** and **(xii)** above;

(xiii) Debt of the Issuer in an aggregate principal amount of up to $85 million under that certain Credit Line Account Application and Agreement dated as of December 29, 2008, as amended, restated, modified and/or supplemented, between SLLC and UBS Bank USA provided that the UBS Auction Rate Securities and the securities account in

which the UBS Auction Rate Securities are held constitute the only collateral securing such Debt; and

(xiv) Debt of the Issuer and/or any or all of the Restricted Subsidiaries in an aggregate principal amount outstanding at any time not to exceed (i) $50 million at any time that the Consolidated Fixed Charge Coverage Ratio at such time is less than 2.0 to 1.0 and (ii) $200 million at any time that the Consolidated Fixed Charge Coverage Ratio is equal to or greater than 2.0 to 1.0 (in each case, which amount shall not include Guarantees of Debt of Unrestricted Subsidiaries).

Notwithstanding anything to the contrary in this **Section 3.08**:

(A) the Obligors shall not Incur any Debt pursuant to this **Section 3.08** if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations unless such Debt and the Liens securing such Debt shall be subordinated to the Notes and the Liens securing the Notes to at least the same extent as such Subordinated Obligations and such Debt otherwise constitutes Permitted Debt;

(B) the Issuer shall not permit any Restricted Subsidiary that is not a Guarantor to Incur any Debt pursuant to **Section 3.08** if the proceeds thereof are used, directly or indirectly, to Refinance any Debt of the Issuer; and

(C) accrual of interest, accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Debt will be deemed not to be an Incurrence of Debt for the purposes of this **Section 3.08**.

For the purposes of determining compliance with this **Section 3.08**, in the event that an item of Debt meets the criteria of more than one of the categories of Permitted Debt described in **Section 3.08(a)(i)** through **(xiv)** above, the Issuer shall, in its reasonable discretion, classify (or later reclassify in whole or in part, in its reasonable discretion) such item of Debt in any manner that complies with this **Section 3.08**.

For purposes of determining compliance with any dollar-denominated restriction on the Incurrence of Debt, with respect to any Debt which is denominated in a foreign currency, the dollar-equivalent principal amount of such Debt Incurred pursuant thereto shall be calculated based on the relevant currency exchange rate in effect on the date that such Debt was Incurred, and any such foreign-denominated Debt may be Refinanced or replaced or subsequently Refinanced or replaced in an amount equal to the dollar equivalent principal amount of such Debt on the date of such refinancing or replacement whether or not such amount is greater or less than the dollar equivalent principal amount of the Debt on the date of initial Incurrence

3.09. LIMITATION ON RESTRICTED PAYMENTS.

(a) The Issuer shall not make, and shall not permit any Restricted Subsidiary to make, directly or indirectly, any Restricted Payment on account of (i) the New Credit Facility

Obligations provided that the Issuer is permitted to pay interest accrued and outstanding on account of the New Credit Facility Obligations and principal payments in an amount not to exceed one percent (1%) per year of the original principal amount of the New Credit Facility Obligations provided that, in each case, at the time of, and after giving effect to, such proposed Restricted Payment, a Default or Event of Default shall not have occurred and be continuing, (ii) any other Subordinated Obligations provided that the Issuer and the Restricted Subsidiaries are permitted to pay interest accrued and outstanding on account of such Subordinated Obligations provided that, at the time of, and after giving effect to, such proposed Restricted Payment, a Default or Event of Default shall not have occurred and be continuing. Notwithstanding the foregoing, nothing herein shall be construed to prevent interest from being paid on account of the New Credit Facility Obligations for more than 180 days in any 365 day period, and (iii) the Subordinated Obligations for more than 180 days in any 365 day period or for any greater portion of any 365 day period to the extent consistent with what is customarily available in the market at such time with respect to Subordinated Obligations of such type.

(b) The Issuer shall not make, and shall not permit any Restricted Subsidiary to make, directly or indirectly, any Restricted Payment (other than payments permitted under **Section 3.09(a)**) if at the time of, and after giving effect to, such proposed Restricted Payment,

(i) a Default or Event of Default shall have occurred and be continuing,

(ii) the Consolidated Fixed Charge Coverage Ratio is less than 2.0 to 1.0; or

(iii) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made since the Issue Date (the amount of any Restricted Payment, if made other than in cash, to be based upon Fair Market Value at the time of such Restricted Payment) would exceed an amount equal to the sum of (such sum, the "**Restricted Payment Basket**"):

(A) 50% of the aggregate amount of Consolidated Net Income accrued during the period (treated as one accounting period) from the beginning of the fiscal quarter during which the Issue Date occurs to the end of the most recently ended fiscal quarter for which internal financial statements are available (or if the aggregate amount of Consolidated Net Income for such period shall be a deficit, minus 100% of such deficit), plus

(B) 100% of Capital Stock Sale Proceeds and 100% of the aggregate net cash proceeds received by the Issuer after the Issue Date as a contribution to its common equity, plus

(C) the aggregate net cash proceeds received by the Issuer or any Restricted Subsidiary from the issuance or sale after the Issue Date of convertible or exchangeable Debt or Disqualified Stock that has been converted into or exchanged for Capital Stock (other than Disqualified Stock) of the Issuer (to the extent that such Debt is not prohibited under **Section 3.08** hereof),

excluding:

(x) any such Debt issued or sold to a Subsidiary of the Issuer or the Issuer, and

(y) the aggregate amount of any cash or other Property (other than Capital Stock of the Issuer which is not Disqualified Stock) distributed by the Issuer or any Restricted Subsidiary upon any such conversion or exchange, plus

(D) an amount equal to the sum of:

(x) the net reduction in Investments in any Person other than the Issuer or a Restricted Subsidiary resulting from dividends, repayments of loans or advances or other transfers of Property, in each case to the Issuer or a Restricted Subsidiary from such Person; and

(y) to the extent that any Investment (other than a Permitted Investment) that was made after the Issue Date is sold for cash or otherwise liquidated or repaid for cash, the cash return of capital to the Issuer or its Restricted Subsidiaries with respect to such Investment; and

(z) the portion (proportionate to the Issuer's equity interest in such Unrestricted Subsidiary) of the Fair Market Value of the net assets of an Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary (that is an Obligor).

provided, *however*, that the amount in (D) shall not exceed, in the case of any Person, the amount of Investments previously made (and treated as a Restricted Payment) by the Issuer or any Restricted Subsidiary in such Person.

(c) Notwithstanding the foregoing limitation, the Issuer and its Restricted Subsidiaries, as applicable, may:

(i) pay dividends on its Capital Stock within 60 days of the declaration thereof if, on the declaration date, such dividends could have been paid in compliance with the Indenture; provided, however, that on the declaration date for such dividend the Restricted Payment Basket shall be reduced by the amount of such dividend;

(ii) purchase, repurchase, redeem, legally defease, acquire or retire for value Capital Stock of the Issuer or Subordinated Obligations in exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Issuer (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Issuer); provided, however, that

(x) subject to clause (y) of this clause (c)(ii), such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(ii)) to the Restricted Payment Basket), and

(y) the amount of Restricted Payments that may be paid under **Section 3.09(b)(iii)(B)** shall be reduced by the amount of the Capital Stock Sale Proceeds from such exchange or sale;

(iii) purchase, repurchase, redeem, legally defease, acquire or retire for value any Subordinated Obligations in exchange for, or out of the proceeds of the substantially concurrent sale of, Permitted Refinancing Debt; provided, however, that such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(iii)) to the Restricted Payment Basket) reduce the amount of Restricted Payments that may be paid under **Section 3.09(b)(iii)**;

(vi) repurchase shares of, or options to purchase shares of, common stock of the Issuer or any of its Subsidiaries from current or former officers, directors or employees of the Issuer or any of its Subsidiaries (or permitted transferees of such current or former officers, directors or employees), pursuant to the terms of agreements (including employment agreements) or plans (including the Equity Incentive Plan) or amendments thereto approved by the Board of Directors of the Issuer under which such individuals purchase or sell, or are granted the option to purchase or sell, shares of such common stock; provided, however that;

(x) the aggregate amount of such repurchases shall not exceed [$2 million] in any calendar year;

(y) at the time of any such repurchase, no Default or Event of Default shall have occurred and be continuing (or result therefrom); and

(z) such repurchase shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(iv)) to the Restricted Payment Basket);

(v) make payments on intercompany Debt owed to Obligors, the Incurrence of which was permitted pursuant to **Section 3.08**;

(vi) make, or make dividends or other payments to the Issuer (or to Intermediate Holdco for prompt distribution to the Issuer) to permit the Issuer to make, cash payments, in lieu of issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Capital Stock of the Issuer, Intermediate Holdco, SLLC or a Restricted Subsidiary; provided that any such payments and dividends shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(vi)) to the Restricted Payment Basket);

(vii) make dividends or other payments to the Issuer (or to Intermediate Holdco for prompt distribution to the Issuer) of (A) such amounts and at such times as are necessary for the Issuer to pay taxes, in an amount not to exceed the amount of taxes the Issuer and its Subsidiaries would pay on a stand-alone basis, plus (B) such amounts to pay general corporate and overhead expenses (including salaries and other compensation

for employees) incurred by the Issuer in the ordinary course of business as a holding company; provided that all such payments shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(vii) to the Restricted Payment Basket); and

(viii) repurchase Capital Stock to the extent such repurchase is deemed to occur upon a cashless exercise of stock options, restricted stock units or warrants; provided, however, that

(w) subject to clause (x) of this **Section 3.09(c)(viii)**, such repurchases shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(viii)) to the Restricted Payment Basket), and

(x) the Restricted Payments that may be paid under **Section 3.09(b)(iii)(B)** shall be reduced by the amount of such Capital Stock Sale Proceeds from the issuance of such Capital Stock.

3.10. LIMITATION ON LIENS.

The Issuer and the Guarantors shall not, and shall not permit any of their respective Subsidiaries to, directly or indirectly, Incur or suffer to exist, any Lien (other than Permitted Liens) upon any of their Property (including Capital Stock of a Restricted Subsidiary), whether owned on the Issue Date or thereafter acquired, or any interest therein or any income or profits therefrom.

3.11. LIMITATION ON ASSET SALES.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Sale unless:

(i) the Issuer or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the Property subject to such Asset Sale;

(ii) at least 75% of the consideration paid to the Issuer or such Restricted Subsidiary in connection with such Asset Sale is in the form of cash or Cash Equivalents; provided that to the extent that the assets disposed of in such Asset Sale were Primary Collateral, the non-cash consideration received is pledged as Primary Collateral under the Convertible Note Security Documents substantially simultaneously with such sale; and

(iii) the Issuer delivers an Officer's Certificate to the Trustee certifying that such Asset Sale complies with the foregoing **Sections 3.11(a)(i)** and **(ii)**.

Solely for the purposes of **Section 3.11(a)(ii)**, the following will be deemed to be cash:

(x) the assumption by the purchaser of liabilities of the Issuer or any Restricted Subsidiary (other than contingent liabilities or liabilities that are by

their terms subordinated to the Notes) as a result of which the Issuer and the Restricted Subsidiaries are no longer obligated with respect to such liabilities;

(y) any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such purchaser to the extent they are promptly converted or monetized by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received); and

(z) Additional Assets; provided that assets acquired in exchange for Primary Collateral are pledged as Primary Collateral under the Convertible Note Security Documents substantially simultaneously in accordance with this Indenture.

(b) The Net Available Cash (or any portion thereof) from Asset Sales may be applied by the Issuer or a Restricted Subsidiary, to the extent the Issuer or such Restricted Subsidiary elects (or is required by the terms of any Debt) to:

(a) permanently prepay or permanently Repay any (A) Revolving Credit Obligations resulting in a dollar-for-dollar reduction in the commitment to make revolving loans under the Revolving Credit Agreement, (B) Senior Secured Bond Obligations, (C) Debt which had been secured by the assets sold in the relevant Asset Sale, to the extent the assets sold were not Collateral, (D) Debt of a Restricted Subsidiary that is not a Guarantor, to the extent the assets sold were not Collateral or (E) Debt secured by Liens on the assets sold which are prior to the Liens securing the Obligations); and/or

(b) to reinvest in Additional Assets (including by means of an investment in Additional Assets by the Issuer or a Restricted Subsidiary with the Net Available Cash received by the Issuer or another Restricted Subsidiary); provided that assets acquired with the proceeds from a disposition of Primary Collateral are pledged as Primary Collateral under the Security Documents substantially simultaneously in accordance with this Indenture.

(c) Any Net Available Cash from an Asset Sale not applied in accordance with **Section 3.11(b)** within 365 days (or with respect to **Section 3.11(b)(ii)**, if a commitment to make such investment by such date has not been made or such investment has not been made promptly thereafter) after the date of the receipt of such Net Available Cash shall constitute "**Excess Proceeds**". To the extent that any Net Available Cash is from a disposition of Primary Collateral (and/or any cash proceeds from a casualty or condemnation event in respect of Primary Collateral), such Net Available Cash shall be deposited in the Cash Collateral Account and held as Primary Collateral pending application pursuant to **Section 3.11(b)** or the Prepayment Offer set forth below and released from the Cash Collateral Account to make such payment or investment in accordance with **Section 3.11(b)** hereof or released to the Issuer or the applicable Restricted Subsidiary if such amounts are remaining after consummation of such Prepayment Offer. Notwithstanding anything to the contrary in this **Section 3.11**, the Issuer's and other Obligors' right to reinvest Net Available Cash in such Additional Assets or make the payments set forth in **Section 3.11(b)(i)** hereof shall not be applicable during the continuation of an Event of Default (in which case, all of such Net Available Cash shall constitute Excess Proceeds and shall be promptly used to make a Prepayment Offer).

When the amount of Excess Proceeds exceeds $5 million, the Issuer shall be required to promptly make an offer to each of the Holders to repurchase (the "**Prepayment Offer**") the Notes, which offer to all Holders shall be in the amount of such Excess Proceeds, on a pro rata basis according to principal amount, at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, to but not including the repurchase date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures (including prorating in the event of oversubscription) set forth in the Indenture. To the extent that any portion of the amount of Net Available Cash remains after compliance with the preceding sentence and provided that all Holders of Notes have been given the opportunity to tender their Notes for repurchase in accordance with the Indenture including without limitation, **Section 3.11(d)** and **Section 3.11(e)**, the Issuer or such Obligor may use such remaining amount of Excess Proceeds for any purpose permitted by the Indenture, and the amount of Excess Proceeds will be reset to zero.

(d) Within five Business Days after the Issuer is obligated to make a Prepayment Offer under (c), the Issuer shall send a written notice, by first-class mail, to the Holders of Notes, accompanied by such information regarding the Issuer and its Subsidiaries as the Issuer in good faith believes will enable such Holders to make an informed decision with respect to such Prepayment Offer. Such notice shall state, among other things, the purchase price and the repurchase date (the "**Purchase Date"**), which shall be, subject to any contrary requirements of applicable law, a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed.

(e) Not later than the date upon which written notice of a Prepayment Offer is delivered to the Holders of the Notes as provided in **Section 3.11(d)**, the Issuer shall deliver to the Trustee an Officer's Certificate as to (i) the amount of the Prepayment Offer to Holders of Notes (the "**Offer Amount**"), (ii) the allocation of the Net Available Cash from the Asset Sales pursuant to which such Prepayment Offer is being made and (iii) the compliance of such allocation with the provisions of **Section 3.11(b)** and **(c)**. On or before the Purchase Date, the Issuer shall also irrevocably deposit with the Trustee or with the Paying Agent (or, if the Issuer or a Restricted Subsidiary is the Paying Agent, shall segregate and hold in trust for the benefit of the Holders) in Cash Equivalents (other than in those enumerated in clauses (c) or (g) of the definition of Cash Equivalents), maturing on the last day prior to the Purchase Date or on the Purchase Date if funds are immediately available by the opening of business, an amount equal to the Offer Amount to be held for payment in accordance with the provisions of this **Section 3.11**. Upon the expiration of the period for which the Prepayment Offer remains open (the "**Offer Period**"), the Issuer shall deliver to the Trustee for cancellation the Notes or portions thereof that have been properly tendered to and are to be accepted by the Issuer. The Trustee or the Paying Agent shall, on the Purchase Date, mail or deliver payment to each tendering Holder in the amount of the purchase price. In the event that the aggregate purchase price of the Notes delivered by the Issuer to the Trustee is less than the Offer Amount, the Trustee or the Paying Agent shall deliver the excess to the Issuer immediately after the expiration of the Offer Period for application in accordance with this **Section 3.11**.

(f) Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Issuer or its agent at the address specified in the notice at least three Business Days prior to the Purchase Date. Holders shall be entitled to

withdraw their election if the Trustee or the Issuer receives not later than one Business Day prior to the Purchase Date a facsimile transmission, electronic mail or letter setting forth the name of the Holder, the principal amount of the Note that was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Note purchased. If at the expiration of the Offer Period the aggregate principal of Notes surrendered by Holders exceeds the Offer Amount, the Issuer shall select the Notes to be purchased on pro rata basis for all Notes (with such adjustments as may be deemed appropriate by the Issuer so that only Notes in denominations of $1,000, or integral multiples thereof, shall be purchased). Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(g) At the time the Issuer or its agent delivers Notes to the Trustee that are to be accepted for purchase, the Issuer shall also deliver an Officer's Certificate stating that such Notes are to be accepted by the Issuer pursuant to and in accordance with the terms of this **Section 3.11**. A Note shall be deemed to have been accepted for purchase at the time the Trustee or the Paying Agent mails or delivers payment therefor to the surrendering Holder.

(h) The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other applicable securities laws or regulations in connection with the repurchase of Notes pursuant to this **Section 3.11**. To the extent that the provisions of any securities laws or regulations conflict with provisions of this **Section 3.11**, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this **Section 3.11** by virtue thereof.

3.12. LIMITATIONS ON RESTRICTIONS ON DISTRIBUTIONS FROM RESTRICTED SUBSIDIARIES.

(a) The Issuer and the Obligors shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist any consensual restriction on the right of any Restricted Subsidiary to:

(i) pay dividends, in cash or otherwise, or make any other distributions on or in respect of its Capital Stock, or pay any Debt or other obligation owed, to the Issuer or any other Restricted Subsidiary;

(ii) make any loans or advances to the Issuer or any other Restricted Subsidiary; or

(iii) transfer any of its Property to the Issuer or any other Restricted Subsidiary.

(b) The foregoing limitations will not apply:

(i) With respect to **Section 3.12(a)(i)**, **(ii)** and **(iii)**, to restrictions:

(A) in effect on the Issue Date (including, without limitation, restrictions pursuant to the Notes, the Indenture, the Senior Secured Bonds, the

Senior Secured Bond Indenture, the New Debt Documents, the Revolving Credit Agreement and any Credit Facility in existence on the Issue Date);

(B) relating to Debt of a Restricted Subsidiary and existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Issuer;

(C) that result from the Refinancing of Debt Incurred pursuant to an agreement referred to in **Section 3.12(b)(i)(A)** or **(B)** above or in **Section 3.12(b)(ii)(A)** or **(B)** below, provided such restrictions are not materially less favorable, taken as a whole, to the Holders of Notes than those under the agreement evidencing the Debt so Refinanced;

(D) relating to Debt incurred after the Issue Date, so long as such restrictions (x) are not materially less favorable, taken as whole, to the Holders of Notes than those restrictions in effect on the Issue Date pursuant to the Notes, the Indenture, the Senior Secured Bonds, the Senior Secured Bond Indenture, the Revolving Credit Agreement and the Credit Facilities in existence on the Issue Date or (y) relate to Debt incurred pursuant to **Section 3.08(a)(iii)**, so long as the respective restrictions apply only to specific Property or projects financed with the respective Incurrence of Debt and/or to any Subsidiary substantially of all whose assets consist of Property or a project financed with proceeds of such Debt;

(E) existing under or by reason of applicable law or governmental regulation; or

(F) that constitute customary restrictions contained in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in good faith and not otherwise prohibited by the Indenture; and

(ii) With respect to **Section 3.12(a)(iii)** only, to restrictions:

(A) relating to Debt that is permitted to be Incurred and secured without also securing the Notes pursuant to **Sections 3.08** and **Section 3.10** that limit the right of the debtor to dispose of the Property securing such Debt;

(B) encumbering Property at the time such Property was acquired by the Issuer or any Restricted Subsidiary, so long as such restrictions relate solely to the Property so acquired and were not created in connection with or in anticipation of such acquisition;

(C) resulting from customary provisions restricting subletting or assignment of leases or customary provisions in other agreements that restrict assignment of such agreements or rights thereunder;

(D) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; or

(E) customary restrictions contained in asset sale agreements limiting the transfer of such Property pending the closing of such sale.

3.13. ADDITIONAL NOTE GUARANTIES.

(a) If after the Issue Date, (x) the Issuer or any Subsidiary of the Issuer creates or acquires any new Domestic Subsidiary (other than an Unrestricted Subsidiary) or (y) an Unrestricted Subsidiary that is a Domestic Subsidiary becomes a Restricted Subsidiary, then within 45 days after such Domestic Subsidiary is created or acquired or becomes a Restricted Subsidiary, the Issuer shall cause such Restricted Subsidiary to (i) execute and deliver to the Trustee a supplemental indenture, in the form of Exhibit B attached hereto, pursuant to which it joins the Note Guaranty as a Guarantor hereunder for all purposes ("**Supplemental Indenture"**); (ii) deliver to the Trustee an Opinion of Counsel (other than from Trustee's counsel) addressed to the Trustee to the effect that the Supplemental Indenture has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a valid and binding obligation of such Restricted Subsidiary, enforceable against such Restricted Subsidiary in accordance with its terms (subject to customary exceptions) and that the Liens granted by such Restricted Subsidiary pursuant to Security Agreement Supplement (referenced in clause (iii) of this sentence) and the Convertible Note Security Documents are enforceable and perfected (to the extent contemplated thereunder), (iii) execute and deliver to the Trustee a Security Agreement Supplement pursuant to which such Restricted Subsidiary joins the Convertible Note Pledge and Security Agreement as a "Grantor" for all purposes (and joins and/or enters into all other applicable Convertible Note Security Documents as a grantor or mortgagor thereunder); and (iv) execute and deliver to the Trustee a Perfection Certificate that provides the information required pursuant to the Perfection Certificate provided that notwithstanding the foregoing, such Restricted Subsidiary shall be required to execute and deliver all mortgages and/or deeds of trust (if any) within 90 days after such Domestic Subsidiary is created or acquired or becomes a Restricted Subsidiary.

(b) If after the Issue Date, (x) the Issuer or any Subsidiary of the Issuer creates or acquires any new Foreign Subsidiary that is also a Material Foreign Subsidiary or (z) a Foreign Subsidiary becomes or is designated a Material Foreign Subsidiary, the Issuer shall cause such Restricted Subsidiary to (i) within 90 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, execute and deliver to the Trustee a Supplemental Indenture (and/or any other agreements, documents and/or instruments required under applicable law to evidence that such Foreign Subsidiary is a Guarantor hereunder); (ii) within 120 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, deliver to the Trustee an Opinion of Counsel (other than from Trustee's counsel) addressed to the Trustee to the effect that the Supplemental Indenture has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a valid and binding obligation of such Restricted Subsidiary, enforceable against such Restricted Subsidiary in accordance with its terms (subject to customary exceptions) and that the Liens granted by such Restricted Subsidiary pursuant to Security Agreement Supplement and/or other documents, agreements or other instruments (referenced in clause (iii) of this sentence) and/or the Convertible Note Security Documents are enforceable and perfected to the extent

contemplated thereunder, (iii) within 120 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, execute and deliver to the Trustee a Security Agreement Supplement (and/or any other agreements, documents and/or instruments required under applicable law to evidence the Liens granted by such Foreign Subsidiary in its Property and assets) pursuant to which such Restricted Subsidiary joins the Convertible Note Pledge and Security Agreement as a "Grantor" for all purposes (and/or joins and/or enters into all other applicable Convertible Note Security Documents as a grantor or mortgagor thereunder to the extent required or permitted under the laws of the jurisdictions in which such Foreign Subsidiary is organized and/or maintains its Property); and (iv) within 120 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, execute and deliver to the Trustee a Perfection Certificate that provides the information required pursuant to the Perfection Certificate. Notwithstanding the foregoing, (A) the obligation of such Foreign Subsidiary to provide a Note Guaranty shall be subject to the Legal Limitations applicable to such Foreign Subsidiary, and any such Foreign Subsidiary will endeavor in good faith to use commercially reasonable efforts to demonstrate that adequate corporate benefit accrues to it and to take other steps reasonably required to avoid or mitigate such Legal Limitations; and (B) in addition to (or, in lieu thereof, to the extent required under the laws of the jurisdictions in which such Foreign Subsidiary is organized and/or maintains its Property) the Security Agreement Supplement, such Foreign Subsidiary may be required to deliver such pledges, security agreements and other collateral documents to evidence the grant of such Lien by such Foreign Subsidiary in its Property (other than to the extent that such Liens are not required to be created and/or perfected as set forth in the Pledge and Security Agreement) as are customarily used in the jurisdiction in which such Foreign Subsidiary owns assets or is otherwise organized.

3.14. LIMITATION ON TRANSACTIONS WITH AFFILIATES.

(a) The Issuer and Obligors shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, conduct any business or enter into or suffer to exist any transaction or series of related transactions (including the purchase, sale, transfer, assignment, lease, conveyance or exchange of any Property or the rendering of any service) with, or for the benefit of, any Affiliate of the Issuer (an "**Affiliate Transaction**"), unless:

(i) the terms of such Affiliate Transaction are:

(A) set forth in writing; and

(B) no less favorable to the Issuer or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of the Issuer;

(ii) if such Affiliate Transaction involves aggregate payments or value in excess of $25 million, the Board of Directors (including at least a majority of the disinterested members of the Board of Directors) approves such Affiliate Transaction and, in its good faith judgment, believes that such Affiliate Transaction complies with **Section 3.14(a)(i)(B)** as evidenced by a Board Resolution; and

(iii) if such Affiliate Transaction involves aggregate payments or value in excess of $50 million, the Issuer obtains a written opinion from an Independent Financial Advisor to the effect that the consideration to be paid or received in connection with such Affiliate Transaction is fair, from a financial point of view, to the Issuer and any relevant Restricted Subsidiaries.

(b) Notwithstanding the foregoing paragraphs, the Issuer or any Restricted Subsidiary may enter into or suffer to exist the following:

(a) any transaction or series of transactions between (i) the Issuer and one or more Obligors or between two or more Obligors or (ii) between the Issuer and/or an Obligor and one or more Restricted Subsidiaries provided that such transaction is in the ordinary course of the Issuer's or such Obligor's, as applicable, business consistent with past practice;

(b) any transaction or series of transactions between a Restricted Subsidiary that is not an Obligor and one or more a Restricted Subsidiaries that is not an Obligor or between two or more of such Restricted Subsidiaries;

(c) any Restricted Payment permitted to be made pursuant to **Section 3.09** or any Permitted Investment;

(d) any employment, indemnification or other similar agreement or employee benefit plan entered into by the Issuer or a Restricted Subsidiary with an employee, officer or director (and payments pursuant thereto) in the ordinary course of business and consistent with past practice that is not otherwise prohibited by the Indenture;

(e) loans and advances to employees made in the ordinary course of business consistent with past practices of the Issuer or a Restricted Subsidiary, as the case may be; provided that such loans and advances do not exceed $5 million in the aggregate at any one time outstanding;

(f) payment of reasonable directors' fees to persons who are not otherwise Affiliates of the Issuer;

(g) any issuances of Capital Stock (other than Disqualified Stock) of the Issuer to Affiliates of the Issuer; and

(h) agreements (and the transactions contemplated thereunder) in effect on the Issue Date and described in the Disclosure Statement and any modifications, extension or renewals thereto that are not materially less favorable, taken as a whole, to the Issuer and its Restricted Subsidiaries than such agreement as in effect on the Issue Date.

3.15. UNRESTRICTED SUBSIDIARIES.

Simultaneously with the delivery of the financial statements required to be delivered by the Issuer for each fiscal quarter pursuant to the provisions hereof, the Issuer shall update Schedule 1 hereto to add additional Unrestricted Subsidiaries, to the extent permitted and/or remove Subsidiaries to the extent required pursuant to the definition of Unrestricted Subsidiary.

3.16. REPORTS.

(a) Notwithstanding that the Issuer may in the future not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Issuer shall at all times file with the Commission and provide the Trustee and Holders with copies thereof, without cost to Trustee or any Holder, within fifteen (15) days after it files them with the Commission, with such annual reports and such information, documents and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such information, documents and reports to be so filed with the Commission and provided at the times specified for the filing of such information, documents and reports under such Sections, subject to modification by applicable regulation and the rules promulgated by the Commission; provided, however, that the Issuer shall not be so obligated to file such information, documents and reports with the Commission if the Commission does not permit such filings but shall still provide such information, documents and reports to the Trustee and Holders. Without duplication with respect to the aforementioned items required to be delivered pursuant to this **Section 3.16(a)**, the Issuer shall also furnish to Trustee and each Holder:

(i) as soon as available and in any event upon the first to occur of (x) the date on which the Issuer files its annual report on Form 10-K with the Commission for each fiscal year of the Issuer or (y) 90 days after the end of each fiscal year of the Issuer:

(x) audited consolidated statements of operations, shareholders' equity and cash flows of the Issuer and its Subsidiaries for such fiscal year and the related consolidated balance sheets of the Issuer and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form the corresponding consolidated figures for the preceding fiscal year;

(y) an opinion of any independent certified public accountants of recognized international standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) stating that such audited consolidated financial statements fairly present in all material respects the consolidated financial condition and results of operations of the Issuer and its Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP; and

(z) a management discussion and analysis that includes a comparison of performance for that fiscal year to the prior fiscal year; and

(ii) as soon as available and in any event upon the first to occur of (x) the date on which the Issuer files its quarterly report on Form 10-Q with the Commission for each fiscal quarter or (y) 45 days after the end of each fiscal quarter (including the fourth fiscal quarter of each fiscal year):

(x) consolidated statements of operations, shareholders' equity and cash flows of the Issuer and its Subsidiaries for such fiscal quarter and for the period from the beginning of the respective fiscal year to the end of such fiscal

quarter, and the related consolidated balance sheets of the Issuer and its Subsidiaries at the end of such period, setting forth in each case in comparative form the corresponding consolidated figures for the corresponding period in the preceding fiscal year;

(y) a certificate of the Chief Financial Officer or Controller, which certificate shall state that said consolidated financial statements referred to in the preceding clause (1) fairly present in all material respects the consolidated financial condition and results of operations of the Issuer and its Subsidiaries, in each case in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to year-end audit adjustments and the omission of footnotes);

(z) a management discussion and analysis that includes a comparison of performance for that fiscal quarter to the corresponding period in the prior year.

(b) The Issuer will deliver to the Trustee, within 120 days after the end of each fiscal year, beginning with the fiscal year ending December of 2010, a written Opinion of Counsel as to the continued perfection of the liens of the Convertible Note Security Documents on the Collateral, to the extent required by Section 314(b)(2) of the Trust Indenture Act.

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

(d) Each Obligor agrees to provide at least fifteen (15) days prior written notice to the Trustee of any change (i) in its legal name, (ii) in its identity or type of organization or corporate structure, (iii) in its Federal Taxpayer Identification Number or organizational identification number or (iv) in its jurisdiction of organization. Each Obligor agrees to promptly provide the Trustee with certified organizational documents reflecting any of the changes described in the immediately preceding sentence, to the extent applicable. Each Obligor agrees not to effect or permit any change referred to in the first sentence of this paragraph (d) unless all filings have been made under the applicable Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue (without interruption) at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral subject to Permitted Liens and except as provided in **Section 3.01** of the Convertible Note Pledge and Security Agreement.

3.17. PAYMENT FOR CONSENTS.

The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or 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.

3.18. IMPAIRMENT OF SECURITY INTEREST; FURTHER ASSURANCES; COLLATERAL INSPECTIONS AND REPORTS; COSTS AND INDEMNIFICATION.

(a) Neither the Issuer nor any of its Restricted Subsidiaries will take any action, or knowingly or negligently 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 Trustee, the Collateral Agent and the Holders in contravention of the provisions of this Indenture and the Convertible Note Security Documents.

(b) Without limiting the provisions set forth in the Convertible Note Pledge and Security Agreement, the Issuer and the Obligors shall, and shall cause each of the Restricted Subsidiaries to make, execute, endorse, acknowledge, file, record, register and/or deliver such agreements, documents, instruments, and further assurances (including, without limitation, Uniform Commercial Code financing statements, mortgages, deeds of trust, vouchers, invoices, schedules, confirmatory assignments, conveyances, transfer endorsements, powers of attorney, certificates, real property surveys, reports, landlord waivers, bailee agreements and control agreements), and take such other actions, as may be required under applicable law or as the Trustee or the Collateral Agent may deem reasonably appropriate or advisable to cause the Collateral Requirements to be and remain satisfied and otherwise to create, perfect, preserve or protect the security interest in the Collateral of the secured parties under and in accordance with the Convertible Note Security Documents, all at the Issuer's expense.

(c) Upon request of the Trustee or the Collateral Agent at any time after an Event of Default has occurred and is continuing, the Issuer and the Obligors shall, and shall cause the Restricted Subsidiaries to, (i) permit the Trustee or the Collateral Agent or any advisor, auditor, consultant, attorney or representative acting for the Trustee or the Collateral Agent, upon reasonable notice to the Issuer and during normal business hours, to visit and inspect any of the property of the Issuer and its Restricted Subsidiaries, to review, make extracts from and copy the books and records of the Issuer and its Restricted Subsidiaries relating to any such property, and to discuss any matter pertaining to any such property with the officers and employees of the Issuer and its Restricted Subsidiaries, and (ii) deliver to the Trustee or the Collateral Agent such reports, including valuations, relating to any such property or any Lien thereon as the Trustee or such Collateral Agent may request.

(d) Without limiting the provisions set forth in **Section 3.18(e)** hereof, the Issuer will bear and pay all legal expenses, collateral audit and valuation costs, filing fees, insurance premiums and other costs associated with the performance of the obligations of the Issuer and its Restricted Subsidiaries set forth in this **Section 3.18** and also will pay, or promptly reimburse the Trustee and the Collateral Agent for, all costs and expenses incurred by the Trustee or the Collateral Agent in connection therewith, including all reasonable fees and charges of any advisors, auditors, consultants, attorneys or representatives acting for the Trustee or for the Collateral Agent.

(e) Obligors shall pay all reasonable fees and expenses incurred by Trustee, Collateral Agent and the members of the Ad Hoc Consortium (as defined in the Plan of Reorganization) (provided that the Obligors shall only be required to pay the reasonable attorneys' fees and expenses of one counsel for the Trustee and Collateral Agent and one counsel for the members of the Ad Hoc Consortium (together with one local counsel representing the Trustee, the Collateral Agent and the members of the Ad Hoc Consortium for each applicable jurisdiction)), in connection with the preparation, negotiation, execution, delivery and administration of the Indenture, the Notes and the Convertible Note Security Documents. Obligors shall pay all reasonable fees and expenses incurred by Trustee, Collateral Agent and the Holders, (provided that the Obligors shall only be required to pay the reasonable attorneys' fees and expenses of one counsel for the Trustee and Collateral Agent and one counsel for the Holders (together with one local counsel representing the Trustee, Collateral Agent and the Holders, for each applicable jurisdiction)), in connection with Trustee's, Collateral Agent's and Holders' exercise of their rights and remedies hereunder and/or under the Notes and/or Convertible Note Security Documents (including in connection with any workout or restructuring). Such fees and expenses shall be payable upon demand. The Issuer and Obligors shall fully reimburse and indemnify, on demand, Trustee, Collateral Agent and each Holder (and their respective directors, officers, employees and agents) (each, an "Indemnified Party") and hold each Indemnified Party harmless against any and all loss, damage, claim, liability, obligation, penalty, claim, litigation, demand, defense, judgment, suit, proceeding, costs, disbursements or expense of any kind whatsoever imposed upon, incurred by, awarded, asserted or assessed against, or otherwise impacting any of them in connection with or arising from or out of the transactions contemplated hereunder. Each applicable Holder shall notify the Issuer in writing promptly of any claim of which such Holder has actual knowledge asserted against such Holder for which it may seek indemnity; provided that the failure by such Holder to so notify the Issuer shall not relieve the Issuer or any other Obligor of its obligations hereunder except to the extent the Issuer or such Obligor is actually prejudiced thereby. Such notice shall reasonably specify the amount of such payment or liability and shall be conclusive absent manifest error.

Notwithstanding the foregoing, an Indemnified Party shall not be entitled to indemnification in respect of claims arising from acts of its own gross negligence or willful misconduct to the extent that such gross negligence or willful misconduct is determined by the final judgment of a court of competent jurisdiction, not subject to further appeal, in proceedings to which such Indemnified Party is a proper party.

3.19. RATING OF NOTES; LISTING OF STOCK.

Within forty-five (45) days of the Issue Date, the Issuer shall have met with S&P or Moody's or such other rating agency approved by the Required Holders to commence the process to rate the Notes (and thereafter shall use good faith reasonable efforts to promptly complete such process). In addition, the Issuer shall cause its Common Stock to be publicly traded on a national exchange or on an over-the-counter market within ninety (90) days after the Issue Date.

3.20. ERISA.

Except where a failure to comply with any of the following, individually or in the aggregate, would not or could not reasonably be expected to result in a Material Adverse Effect, (i) the

Obligors will maintain, and cause each ERISA Affiliate to maintain, each Plan in compliance with all applicable requirements of ERISA and of the Code and with all applicable rulings and regulations issued under the provisions of ERISA and of the Code, (ii) the Obligors will not and, to the extent authorized, will not permit any of the ERISA Affiliates to (a) engage in any transaction with respect to any Plan which would subject any Obligor to either a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Code, (b) fail to make full payment when due of all amounts which, under the provisions of any Plan, any Obligor or any ERISA Affiliate is required to pay as contributions thereto, or permit to exist any accumulated funding deficiency (as such term is defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, with respect to any Pension Plan or (c) fail to make any payments to any Multiemployer Plan that any Obligor or any of the ERISA Affiliates may be required to make under any agreement relating to such Multiemployer Plan or any law pertaining thereto and (iii) the Obligors will maintain, and will cause each Subsidiary to maintain, each Foreign Plan in compliance with the terms thereof and all requirements of applicable law.

3.21. RELATED BUSINESS.

The Obligors shall not engage in any business other than the businesses of Obligors on the date hereof and any Related Business.

3.22. RESALE OF CERTAIN NOTES.

The Issuer shall not, and shall not permit any of its Affiliates to, resell any Notes that have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Issuer's performance of its agreement in the preceding sentence.

3.23. PRESERVATION OF REPURCHASE RIGHTS.

The Obligors will not enter into any contract or financing arrangement that would restrict its ability to repurchase the Notes upon exercise of the Holders' repurchase rights pursuant to **Article Four**.

3.24. FURTHER ASSURANCES.

Upon request of the Trustee, the Obligors shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

3.25. REPRESENTATIONS AND WARRANTIES.

Each of the Obligors represents and warrants to the Trustee and the Holders, as to itself and the other Restricted Subsidiaries (as applicable), as of the Issue Date and as of each date thereafter on which any of the following representations and warranties are required to be restated or remade (whether in connection with any amendment or waiver of any of the provisions of this Indenture or otherwise), that:

(i) Each Obligor has been duly formed and is validly existing and in good standing as an organization under the laws of its jurisdiction of

(ii) This Indenture and the Convertible Note Security Documents to which each of the Obligors is a party have each been duly executed and delivered on behalf of the Obligors and this Indenture and each Convertible Note Security Document to which each of the Obligors is a party constitutes a legal, valid and binding obligation of such Obligor in accordance with its terms except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights and by general principles of equity.

(iii) No consent of, or other action by, and no notice to or filing with, any governmental authority or any other party, is required for the due execution, delivery and performance by each of the Obligors of this Indenture or any of the other Convertible Note Security Documents or for the perfection of or the exercise by the Trustee, Collateral Agent or the Holders of any of their rights or remedies thereunder or hereunder which have not been duly obtained.

(iv) The consummation of the transactions contemplated by this Indenture and the Convertible Note Security Documents and the fulfillment of the terms hereof and thereof shall not conflict with, result in any material breach of any of the terms and provisions of, nor constitute (with or without notice or lapse of time) a default under, the organizational documents of any Obligor, or any material indenture, agreement or other instrument to which any Obligor is a party or by which it is bound; nor result in the creation or imposition of any Lien upon any of its properties pursuant to the terms of any such indenture, agreement or other instrument (other than this Indenture).

(v) There is no pending or, to any Obligor's knowledge, threatened action, suit or proceeding, nor any injunction, writ, restraining order or other order of any nature against or affecting any Restricted Subsidiary, its officers or members, or the property of any Restricted Subsidiary, in any court or tribunal, or before any arbitrator of any kind or before or by any governmental authority (i) asserting the invalidity of this Indenture, the Notes or any of the Convertible Note Security Documents, (ii) seeking to prevent the issuance of any of the Notes or the consummation of any of the transactions contemplated thereby or hereby, or (iii) seeking any determination or ruling that could be reasonably expected to have a Material Adverse Effect.

(vi) Each Obligor is solvent and will not become insolvent after giving effect to the transactions contemplated by this Indenture, the Notes, and each of the Convertible Note Security Documents and the financings, if applicable, evidenced by the Revolving Credit Facility, the New Credit Facility and the Senior Secured Bond Facility.

(vii) The legal name of the Issuer and the other Obligors is as set forth in the signature page of this Indenture and, except as set forth in the Perfection Certificate, neither the Issuer nor any other Obligor has any tradenames, fictitious names, assumed names or "doing business as" names that are material to business of the Obligors taken as a whole.

(viii) Each of the Obligors has good and valid legal title to all of its assets necessary for it to conduct its business without any Liens upon such assets other than Permitted Liens. The security interests and liens granted to Collateral Agent pursuant to the Convertible Note Security Documents constitute valid and perfected (a) second priority liens and security interests in and upon the **[Priority Collateral]** and (b) third priority liens and security interest in and upon the **[Secondary Collateral]**, in each case, subject only to certain of the Permitted Liens.

(ix) No event or omission has occurred and no condition exists that would constitute a Default or an Event of Default after giving effect to this Indenture and the transactions contemplated hereunder to occur on or before the Issue Date.

(x) None of the Obligors or any of the Restricted Subsidiaries is in violation of any laws, ordinances or governmental rules or regulations to which it is subject and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its properties or to the conduct of its activities, which violation or failure could reasonably be expected to have a Material Adverse Effect.

(xi) No Obligor or other Restricted Subsidiary is engaged principally or as one of its important activities in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System). The transactions contemplated by this Indenture, the Notes and the Convertible Note Security Documents, including the issuance of the Notes, the security arrangements contemplated thereby, the execution, delivery and performance of the Convertible Note Security Documents and the consummation of all other transactions contemplated thereby, will not violate or be inconsistent with any of the provisions of Regulations T, U, or X of the Board of Governors of the Federal Reserve System.

(xii) No Obligor or Subsidiary has any liability under any Pension Plans or Foreign Plans that could reasonably be expected to cause or result in a Material Adverse Effect . No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. No Obligor or Subsidiary has a present intention to terminate any Pension Plan or Foreign Plan with respect to

which any Obligor or Subsidiary could reasonably be expected to result in a Material Adverse Effect.

(xiii) The audited consolidated financial statements provided to the Trustee and/or Holders prior to the Issue Date fairly present in all material respects the consolidated financial condition and results of operation of the Issuer and its Subsidiaries at the end of the 2008 fiscal year of the Issuer in accordance with GAAP. The unaudited consolidated financial statements provided to the Trustee and/or Holders fairly present in all material respects the consolidated financial conditions and results of operations of the Issuer and its Subsidiaries, in case in accordance with GAAP, consistently applied, as at the end of [_____, 2009], and for such period (subject to year-end audit adjustments and the omission of footnotes). Except as disclosed on **Schedule 3.27(xiii)** and in the Disclosure Statement, since [December 3__, 2008], there has been no material adverse change in the business, assets, operations or condition, financial or otherwise, of the Issuer or its Subsidiaries from that set forth in the financial statements referred to in the first sentence of this **Section 3.27(xiii)**.

(xiv) The Confirmation Order has been entered by the Bankruptcy Court, is in full force and effect, and has not been reversed, vacated, modified or stayed, and no application or motion has been filed or served on the Issuer or any other Obligor seeking leave to appeal or a stay pending appeal and the Plan of Reorganization has not been amended, supplemented or otherwise modified **[since the voting deadline with respect to the Plan of Reorganization]**.

(xv) No Obligor, nor any Subsidiary of any Obligor (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) to its knowledge engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order. The regulations and executive orders described in clauses (i) through (iii) of the preceding sentence are referred to herein as "**OFAC Regulations**".

(xvi) The Obligors and the other Restricted Subsidiaries are in compliance, in all material respects, with the (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto (collectively, the "**FAC Regulations**"), and (ii) the Uniting And Strengthening America By

Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001).

(xvii)No Obligor is (a) an "investment company" as defined in, and/or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) a "bank holding company" as defined in, or subject to regulation under, the Bank Holding Company Act of 1956, as amended.

(xviii) Each Obligor has filed, or caused to be filed, all federal and material foreign, state and local tax returns required to be filed and paid (a) all amounts of material taxes shown thereon to be due (including interest and penalties) and (b) all other material taxes, fees, assessments and other governmental charges (including all mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings. No Obligor is aware as of the Issue Date of any proposed tax assessments against any of them which, individually or in the aggregate, could reasonably be expected to have Material Adverse Effect.

(xix) Neither the Obligors nor any of their Subsidiaries have generated, used, stored, treated, transported, manufactured, handled, produced, released or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which violates any applicable Environmental Law or permit, and the operations of the Obligors and their Subsidiaries complies in all material respects with all Environmental Laws and all permits other than such actions which could not reasonably be expected to have a Material Adverse Effect.

(xx) Labor and Employment Matters.

(A) Except as could not reasonably be expected to result in a Material Adverse Effect or as disclosed in the Disclosure Statement, as of the Issue Date, (A) no employee of the Obligors is represented by a labor union, no labor union has been certified or recognized as a representative of any such employee, and the Obligors do not have any obligation under any collective bargaining agreement or other agreement with any labor union or any obligation to recognize or deal with any labor union, and there are no such contracts or other agreements pertaining to or which determine the terms or conditions of employment of any employee of the Obligors; (B) there are no pending or threatened representation campaigns, elections or proceedings; (C) the Obligors do not have knowledge of any strikes, slowdowns or work stoppages of any kind, or threats thereof, and no such activities occurred during the 24 month period preceding the date hereof; and (D) no Obligor has engaged in, admitted committing or been held to have committed any unfair labor practice.

(B) The Obligors are in compliance in all material respects with, all applicable laws, rules and regulations respecting employment, wages, hours, compensation, benefits, and payment and withholding of taxes in connection with employment except as could not reasonably be expected to have a Material Adverse Effect.

(xxi) The real property owned by any of the Obligors complies with, and shall continue to comply with, all laws, regulations and other legal requirements and any and all covenants, conditions, restrictions or other matters which materially affect such real property, and none of the Obligors has received any notice of any violation of any law, regulation of other legal requirement with respect to any such real property unless such non-compliance or violation could not reasonably be expected to have a Material Adverse Effect, individually or together with all other such noncompliance or violation(s).

IV. REPURCHASE AND REDEMPTION OF NOTES

4.01. FUNDAMENTAL CHANGE REPURCHASE RIGHT NOTICE.

(a) Within twenty (20) days following the occurrence of a Fundamental Change, the Issuer shall provide to all Holders and the Trustee and the Paying Agent a notice (the "**Fundamental Change Repurchase Right Notice**") of the occurrence of such Fundamental Change and of the repurchase right, if any, at the option of the Holders arising as a result thereof.

(b) A Fundamental Change Repurchase Right Notice shall specify (if applicable):

(i) the events causing a Fundamental Change;

(ii) the date of the Fundamental Change and whether such Fundamental Change is a Make-Whole Fundamental Change;

(iii) the Fundamental Change Repurchase Date and the last date by which the Fundamental Change Repurchase Notice must be delivered to elect the repurchase option pursuant to Section 4.02;

(iv) the Fundamental Change Repurchase Price;

(v) the name and address of the Paying Agent and the Conversion Agent;

(vi) the Conversion Rate and any adjustments to the Conversion Rate resulting from the Fundamental Change;

(vii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture;

(viii) that the Holder must exercise the repurchase right on or prior to the Fundamental Change Expiration Time;

(ix) that the Holder shall have the right to withdraw any Notes surrendered for repurchase prior to the Fundamental Change Expiration Time; and

(x) the procedures that Holders must follow to require the Issuer to repurchase their Notes.

(c) No failure of the Issuer to give a Fundamental Change Repurchase Right Notice and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this **Article Four**.

4.02. RIGHT TO REQUIRE REPURCHASE UPON FUNDAMENTAL CHANGE.

(a) If a Fundamental Change occurs prior to the Stated Maturity Date, each Holder shall have the right, at such Holder's option, to require the Issuer to repurchase all of such Holder's Notes or any portion thereof that is an integral multiple of $1,000 principal amount, for cash on the date (the "**Fundamental Change Repurchase Date**") specified by the Issuer that is not less than twenty 20 days and not more than forty-five (45) days after the date of the Fundamental Change Repurchase Right Notice at a repurchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"). However, if such Fundamental Change Repurchase Date falls after a Record Date for the payment of interest and on or prior to the corresponding Interest Payment Date, the Issuer shall pay the full amount of accrued and unpaid interest payable on such Interest Payment Date to the holder of record at 5:00 p.m., New York City time, on such Record Date and the Fundamental Change Repurchase Price shall not include such accrued and unpaid interest.

(b) In order to exercise the repurchase right, a Holder shall:

(i) deliver to the Trustee (or other Paying Agent appointed by the Issuer) a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note prior to 5:00 p.m., New York City time, on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date (the "**Fundamental Change Expiration Time**"); and

(ii) deliver or effect a book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Issuer) at any time after delivery of the Fundamental Change Repurchase Notice and prior to the Fundamental Change Expiration Time (together with all necessary endorsements) at the office of the Paying Agent, such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; provided that such Fundamental Change Repurchase Price shall be so paid pursuant to this **Section 4.02** only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

(c) A Fundamental Change Repurchase Notice shall state:

(i) if certificated, the certificate numbers of Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased, which must be $1,000 or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Issuer pursuant to the applicable provisions of the Notes and this Indenture.

(d) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal, delivered to the Paying Agent in accordance with the Fundamental Change Repurchase Right Notice at any time prior to the Fundamental Change Expiration Time, specifying:

(i) if certificated Notes have been issued, the certificate numbers of the withdrawn Notes;

(ii) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted; and

(iii) the principal amount, if any, of such Notes that remain subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000.

(e) If the Notes to be repurchased are represented by a Global Note, any Fundamental Change Repurchase Notice or notice of withdrawal thereof in respect of such Notes must comply, to the extent required by law, with appropriate procedures of the Depositary.

(f) The Paying Agent shall promptly notify the Issuer of the receipt by it of any Fundamental Change Repurchase Notice or notice of withdrawal thereof in accordance with the provisions of this **Section 4.02**.

4.03. SETTLEMENT OF FUNDAMENTAL CHANGE REPURCHASES.

(a) Any repurchase by the Issuer pursuant to **Section 4.01** shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Note.

(b) Any Note that is to be repurchased in part only shall be surrendered to the Trustee (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Note so surrendered.

(c) On or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Issuer shall deposit with the Paying Agent (or if the Issuer is acting as its own Paying Agent, set aside, segregate and hold in trust) an amount of money sufficient to

repurchase on the Fundamental Change Repurchase Date all of the Notes to be repurchased on such date at the Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Issuer), payment for Notes surrendered for repurchase (and not withdrawn) prior to the Fundamental Change Expiration Time shall be made promptly after the later of:

(i) the Fundamental Change Repurchase Date with respect to such Note; *provided* that the Holder has satisfied the conditions to the payment of the Fundamental Change Repurchase Price in this **Section 4.03**; and

(ii) the time of book-entry transfer or the delivery of such Note to the Paying Agent by the Holder thereof in the manner required by this **Section 4.03**.

The Trustee shall, promptly after such payment and upon written demand by the Issuer, return to the Issuer any funds in excess of the Fundamental Change Repurchase Price.

(d) If the Paying Agent holds money sufficient to repurchase on the Fundamental Change Repurchase Date all the Notes or portions thereof that are to be purchased as of the Business Day following the Fundamental Change Repurchase Date, then on and after the Fundamental Change Repurchase Date (i) such Notes shall cease to be outstanding, (ii) interest shall cease to accrue on such Notes, and (iii) all other rights of the Holders of such Notes shall terminate (other than the right to receive the Fundamental Change Repurchase Price in respect of such Notes), in each case, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Paying Agent.

(e) In connection with any repurchase of Notes pursuant to this **Article Four**, the Issuer hereby agrees to:

(i) comply with the provisions of Rule 13e-1, Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable; and

(ii) otherwise comply with all applicable federal and state securities laws.

To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.03, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.03 by virtue thereof.

(f) The Issuer shall not be required to make an offer to repurchase the Notes pursuant to this **Article Four** as a result of a Fundamental Change (a "**Fundamental Change Offer**") if a third party makes the Fundamental Change Offer in the manner, at the times and otherwise in compliance with the requirements set forth in **Article Four** applicable to a Fundamental Change Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Fundamental Change Offer.

4.04. RESTRICTIONS ON REPURCHASES.

No Notes may be repurchased at the option of Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date.

4.05. PUT RIGHT.

(a) On or after **[INSERT DATE THAT IS 6 YEARS AFTER ISSUE DATE]**, each Holder shall have the right (the "**Put Right**"), at such Holder's option, to require the Issuer to repurchase all of such Holder's Notes or any portion thereof that is an integral multiple of $1,000 principal amount, for cash at a repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to, but excluding, the Put Right Repurchase Date (the "**Put Right Repurchase Price**"). However, if such Put Right Repurchase Date falls after a Record Date for the payment of interest and on or prior to the corresponding Interest Payment Date, the Issuer shall pay the full amount of accrued and unpaid interest payable on such Interest Payment Date to the holder of record at 5:00 p.m., New York City time, on such Record Date and the Put Right Repurchase Price shall not include such accrued and unpaid interest.

(b) In order to exercise a Put Right, a Holder shall:

(i) deliver to the Trustee (or other Paying Agent appointed by the Issuer) a duly completed notice (the "**Put Right Repurchase Notice**") in the form set forth on the reverse of the Note; and

(ii) deliver or effect a book-entry transfer of the Notes to be repurchased pursuant to the exercise of the Holder's Put Right to the Trustee (or other Paying Agent appointed by the Issuer) (together with all necessary endorsements) at the office of the Paying Agent, such delivery being a condition to receipt by the Holder of the Put Right Repurchase Price therefor; provided that such Put Right Repurchase Price shall be so paid pursuant to this **Section 4.05** only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Put Right Notice.

(c) A Put Right Repurchase Notice shall state:

(i) if certificated, the certificate numbers of Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased, which must be $1,000 or an integral multiple thereof;

(iii) that the Notes are to be repurchased by the Issuer pursuant to the applicable provisions of the Notes and this Indenture; and

(iv) the date upon which the Issuer will be required to deliver the Put Right Repurchase Price to the Holder which shall be such date selected by the Holder and set forth in the Put Right Repurchase Notice which date shall be no sooner than 10 Business Days following the delivery of such Put Right Repurchase Notice and no later than 30 days following the delivery of such Put Right Repurchase Notice (such date, the "**Put Right Repurchase Date**").

(d) If the Notes to be repurchased are represented by a Global Note, any Put Right Repurchase Notice in respect of such Notes must comply, to the extent required by law, with appropriate procedures of the Depositary.

(e) The Paying Agent shall promptly notify the Issuer of the receipt by it of any Put Right Repurchase Notice or notice of withdrawal thereof in accordance with the provisions of this **Section 4.05**.

4.06. SETTLEMENT OF PUT RIGHT REPURCHASES.

(a) Any repurchase by the Issuer pursuant to **Section 4.05** shall be consummated by the delivery of the consideration to be received by the Holder on the later of the Put Right Repurchase Date and the time of the book-entry transfer or delivery of the Notes to be repurchased.

(b) Any Note that is to be repurchased in part only shall be surrendered to the Trustee (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Note so surrendered.

(c) On or prior to 11:00 a.m., New York City time, on the Put Right Repurchase Date, the Issuer shall deposit with the Paying Agent (or if the Issuer is acting as its own Paying Agent, set aside, segregate and hold in trust) an amount of money sufficient to repurchase on the applicable Put Right Repurchase Date all of the Notes tendered for repurchase on such date. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Issuer), payment for Notes surrendered for repurchase shall be made promptly after the later of:

(i) The Put Right Repurchase Date with respect to such Note; provided that the Holder has satisfied the conditions to the payment of the Put Right Repurchase Price in this **Section 4.06**; and

(ii) the time of book-entry transfer or the delivery of such Note to the Paying Agent by the Holder thereof in the manner required by this **Section 4.06**.

The Trustee shall, promptly after such payment and upon written demand by the Issuer, return to the Issuer any funds in excess of the Put Right Repurchase Price to be paid on the applicable Put Right Repurchase Date.

(d) If the Paying Agent holds money sufficient to repurchase on the Put Right Repurchase Date all the Notes or portions thereof that are to be purchased as of the applicable Put Right Repurchase Date, then on and after the Put Right Repurchase Date (i) such Notes shall cease to be outstanding, (ii) interest (including any Interest accruing at the Default Rate, if any) shall cease to accrue on such Notes, and (iii) all other rights of the Holders of such Notes shall terminate (other than the right to receive the Put Right Repurchase Price in respect of such

Notes), in each case, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Paying Agent.

(e) In connection with any repurchase of Notes pursuant to this **Section 4.07**, the Issuer hereby agrees to:

(i) comply with the applicable provisions of Rule 13e-1, Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable; and

(ii) otherwise comply with all applicable federal and state securities laws, and the provisions of this Indenture are subject to the Issuer's compliance, to the extent required by law, with such rules and laws.

To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.06, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.06 by virtue thereof.

4.07. CALL RIGHT.

(a) The Notes shall be redeemable at par at the Issuer's option (the "**Call Right**") in accordance with this **Section 4.07** in whole or in part, at any time on or after **[INSERT DATE THAT IS 6 YEARS AFTER ISSUE DATE]**.

(b) Notwithstanding the foregoing, the Issuer may only exercise its Call Right, if as evidenced by an Officer's Certificate, all of the conditions listed below (the "**Equity Conditions**") are satisfied on each day during the period (x) commencing ten days prior to the date a Call Right Repurchase Notice is delivered to the Trustee and (y) ending on the Call Right Repurchase Date (the "**Equity Conditions Measuring Period**"). The Equity Conditions are as follows:

(i) all shares of Common Stock issuable upon conversion of the Notes and held by a non-affiliate of the Issuer shall be freely transferrable without the need for registration under any applicable federal or state securities laws;

(ii) the Issuer shall have no knowledge of any fact that would cause any shares of Common Stock issuable upon conversion of the Notes not to be eligible for sale without restriction pursuant to Rule 144 and any applicable state securities laws (other than restrictions due to the Holder of such Common Stock being an Affiliate of the Issuer);

(iii) during the Equity Conditions Measuring Period, the Common Stock is listed or traded on The Nasdaq Global Market, The Nasdaq Global Select Market, The Nasdaq Capital Market, the New York Stock Exchange or the American Stock Exchange, or any of their respective successors (each an "**Eligible Market**") and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two trading days and occurring prior to the applicable date of determination due to business announcements by the Issuer) nor shall delisting or suspension by such

exchange or market been threatened or pending either (A) in writing by such exchange or market or (B) by falling below the then effective minimum listing maintenance requirements of such exchange or market;

(iv) during the Equity Conditions Measuring Period, to the extent any Notes have been delivered to the Issuer for conversion in accordance with the terms of the Notes, the Issuer shall have delivered shares of Common Stock upon conversion of the Notes to the Holders on a timely basis;

(v) any applicable shares of Common Stock to be issued upon conversion may be issued in full without violating the rules or regulations of The Nasdaq Global Market or any applicable Eligible Market on which the Common Stock delivered upon conversion are then listed or trading;

(vi) during the Equity Conditions Measuring Period, the Issuer shall not have failed to make any payments within five (5) Business Days of when such payment is due pursuant to the Notes, this Indenture, the Convertible Note Pledge and Security Agreement or the other Convertible Note Security Documents;

(vii) during the Equity Conditions Measuring Period, there shall not have occurred the public announcement of a pending, proposed or intended transaction or event that will constitute a Fundamental Change, pursuant to **clause (a)** or **(b)** of the definition thereof (other than, for the avoidance of doubt, any such transaction or event that is not a Fundamental Change as a result of the last paragraph of the definition thereof), which has not been abandoned, terminated or consummated; and

(viii) no Default or Event of Default under this Indenture shall have occurred and be continuing.

(c) The Issuer may elect to redeem any Notes pursuant to this **Section 4.07** by providing notice to each Holder of such Notes in accordance with **Section 4.09** not less than 25 Scheduled Trading Days nor more than 60 days prior to the Call Right Repurchase Date for such Notes.

(d) The "**Call Right Repurchase Price**" for any Notes redeemed pursuant to the exercise of the Issuer's Call Right shall be an amount in cash equal to 100% of the principal amount of the Notes being redeemed, *plus* any accrued and unpaid interest to (but excluding) the Call Right Repurchase Date.

4.08. SELECTION OF NOTES TO BE REPURCHASED PURSUANT TO EXERCISE OF CALL RIGHT.

(a) If less than all the Notes are to be redeemed, the particular Notes to be redeemed shall be selected not more than 60 days prior to the Call Right Repurchase Date by the Trustee, from the Outstanding Notes not previously called for redemption, by lot, on a pro rata basis or in accordance with such other method as the Trustee shall deem fair and appropriate; provided that the unredeemed portion of the principal amount of any Note shall be in a denomination not less than the minimum authorized denomination for such Note.

(b) The Trustee shall promptly notify the Issuer in writing of the Notes selected for partial redemption and the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of such Note that has been or is to be redeemed.

(c) If the Trustee selects a portion of a Holder's Note for partial redemption and such Holder converts a portion of the same Note, the converted portion shall be deemed to be from the portion selected for redemption.

4.09. CALL RIGHT REPURCHASE NOTICE.

(a) Notice of redemption (a "**Call Right Repurchase Notice**") shall be given by first-class mail, postage prepaid, to each Holder of Notes to be redeemed, at the address of such Holder as it appears in the Notes Register.

(b) The Call Right Repurchase Notice for any Notes to be redeemed shall state:

(i) the Call Right Repurchase Date;

(ii) the Call Right Repurchase Price;

(iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Notes to be redeemed;

(iv) that on the Call Right Repurchase Date, the Call Right Repurchase Price will become due and payable upon each such Note or portion thereof, and that interest thereon, if any, shall cease to accrue on and after said date;

(v) the place or places where such Notes are to be surrendered for payment of the Call Right Repurchase Price; and

(vi) the CUSIP number for the Notes redeemed.

(c) A Call Right Repurchase Notice shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer; provided that the Issuer shall have delivered to the Trustee, at least five Business Days before the Call Right Repurchase Notice is required to be mailed (or such shorter period agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the complete form of such notice and the information to be stated in such notice.

(d) A Call Right Repurchase Notice shall be irrevocable.

(e) A Call Right Repurchase Notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such Call Right Repurchase Notice by mail or any defect in the Call

Right Repurchase Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

4.10. PAYMENT OF NOTES CALLED FOR REDEMPTION.

(a) If any Call Right Repurchase Notice has been given in respect of any Notes in accordance with **Section 4.09**, such Notes or portion of such Notes shall become due and payable on the Call Right Repurchase Date at the place or places stated in the Call Right Repurchase Notice and at the applicable Call Right Repurchase Price. On presentation and surrender of such Notes at the place or places stated in the Call Right Repurchase Notice, such Notes or the portions thereof specified in the Call Right Repurchase Notice shall be paid and redeemed by the Issuer at the applicable Call Right Repurchase Price.

(b) On or prior to 11:00 a.m., New York City time, on the Call Right Repurchase Date, the Issuer shall deposit with the Paying Agent (or, if the Issuer is acting as its own Paying Agent, set aside, segregate and hold in trust) an amount of money sufficient to pay the Call Right Repurchase Price of all of the Notes to be redeemed on such Call Right Repurchase Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made promptly after the later of:

(i) the Call Right Repurchase Date for such Notes; and

(ii) the time of presentation of such Note to the Trustee (or other Paying Agent appointed by the Issuer) by the Holder thereof in the manner required by this **Section 4.10**.

The Paying Agent shall, promptly after such payment and upon written demand by the Issuer, return to the Issuer any funds in excess of the Call Right Repurchase Price.

(c) If the Paying Agent holds money and, if applicable, shares of Common Stock sufficient to pay the Call Right Repurchase Price for all the Notes or portions thereof that are to be redeemed as of the Business Day immediately following the Call Right Repurchase Date, then on and after the Call Right Repurchase Date (i) such Notes shall cease to be outstanding and interest, if any, will cease to accrue, whether or not book-entry transfer of the Notes is made or whether or not the Note is delivered to the Paying Agent, and (ii) all other rights of the Holder will terminate as of the Call Right Repurchase Date, other than the right to receive the Call Right Repurchase Price and previously accrued and unpaid interest, if any, upon delivery or transfer of the Notes.

(d) Cash amounts due upon redemption in respect of Notes presented for redemption shall be paid by the Issuer to such Holder, or such Holder's nominee or nominees.

(e) Upon presentation of any Note redeemed in part only, the Issuer shall not be required to issue, register the transfer of or exchange any Physical Note.

4.11. OFFICER'S CERTIFICATE TO TRUSTEE.

In connection with any repurchase of Notes effected pursuant to the exercise of the Issuer's Call Right, the Issuer shall deliver to the Trustee an Officer's Certificate dated as of the Call Right Repurchase Date to the effect that all conditions precedent to the redemption of such Notes have been satisfied.

V. CONVERSION

5.01. CONVERSION RIGHTS.

At any time prior to the close of business on the Business Day immediately preceding the Maturity of the Notes, a Holder shall have the right, at such Holder's option, to convert all its Notes or any portion thereof that is an integral multiple of $1,000 principal amount at the Conversion Rate.

5.02. MAKE-WHOLE FUNDAMENTAL CHANGES.

(a) If a Holder elects to convert Notes in connection with a Make-Whole Fundamental Change that occurs prior to the Stated Maturity Date, the Conversion Rate applicable to each $1,000 principal amount of Notes so converted shall, to the extent applicable, be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described below. For purposes of this **Section 5.02**, a conversion shall be deemed to be "in connection with" a Make-Whole Fundamental Change if the Conversion Date for such conversion occurs at any time from, and including, the Fundamental Change Effective Date with respect to such Make-Whole Fundamental Change to, and including, the Business Day prior to the related Fundamental Change Repurchase Date.

(b) Intentionally omitted.

(c) The number of Additional Shares shall be determined by the Issuer by reference to the table set forth in **Schedule A**, based on the date on which the Make-Whole Fundamental Change becomes effective (the "**Fundamental Change Effective Date**") and the Stock Price. If the exact Stock Price and the Fundamental Change Effective Date are not set forth in such table, then:

(i) if the actual Stock Price is between two Stock Prices in the table or the Fundamental Change Effective Date is between two Fundamental Change Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the next higher and next lower Stock Prices and the two nearest Fundamental Change Effective Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than $_____ per share of Common Stock (subject to adjustment in the same manner and at the same time as the Stock Prices as set forth in **clause (d)** of this **Section 5.03**), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $_____ per share (subject to adjustment in the same manner and at the same time as the Stock Prices as set forth in **clause (d)** of this **Section 5.02**), no Additional Shares shall be added to the Conversion Rate.

(d) The Stock Prices set forth in the first column of the table in **Schedule A** shall be adjusted by the Issuer as of any date on which the Conversion Rate of the Notes is adjusted (other than pursuant to this **Section 5.02**). The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares within the table shall be adjusted in the same manner as the Conversion Rate is adjusted (other than pursuant to this **Section 5.03**).

(e) Notwithstanding the foregoing, in no event shall the Conversion Rate exceed _____ per $1,000 principal amount of Notes (subject to adjustment in the same manner as the Conversion Rate is adjusted pursuant to **Section 5.06(b)**, **(c)**, **(d)**, **(e)** and **(f)**) as a result of any increase under this **Section 5.02**, nor will any Additional Shares of Common Stock be issued or issuable to the extent that such issuance would not be in compliance with the rules of The Nasdaq Global Market or other Eligible Market on which the Common Stock is then traded.

5.03. EXERCISE OF CONVERSION PRIVILEGE.

(a) Before any Holder shall be entitled to convert its Notes as forth above, such Holder shall:

(i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required under **Section 5.04(d)**, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in **Section 5.04(d)** and, if required under **Section 5.03(g)**, pay any taxes or duties such Holder is required to pay as set forth in **Section 5.03(g)**; and

(ii) in the case of a Physical Note, (A) complete and manually sign and deliver an irrevocable written notice to the Conversion Agent in the form attached to such Physical Note as set forth in Exhibit A (or a facsimile thereof) (a "**Conversion Notice**") at the office of the Conversion Agent and shall state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the Conversion Obligation to be registered, (B) surrender such Notes, duly endorsed to the Issuer or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (C) if required under **Section 5.04(d)**, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in **Section 5.04(d)** and, (D) if required under **Section 5.03(g)**, pay any taxes or duties such Holder is required to pay as set forth in **Section 5.03(g)**.

(b) The date on which the Holder has complied with the requirements set forth in **Section 5.03(a)** in respect of a Note shall be deemed to be the "**Conversion Date**" for such Note.

(c) No Conversion Notice with respect to any Notes may be tendered by a Holder thereof if such Holder has also tendered a Fundamental Change Repurchase Notice or a Put Right Repurchase Notice and not validly withdrawn such Fundamental Change Repurchase Notice or Put Right Repurchase Notice, as the case may be, in accordance with the applicable provisions of **Article Four**.

(d) If the Issuer calls Notes for redemption pursuant to **Section 4.07**, a Holder may convert its Notes only until the close of business on the Business Day prior to the applicable Call Right Repurchase Date.

(e) If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes, if any, that shall be payable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(f) In case any Note shall be surrendered for partial conversion, the Issuer shall execute and the Trustee shall, as provided in an Officer's' Certificate, authenticate and deliver to or upon the written order of the Holder of the Note so surrendered, without charge to such Holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

(g) If a Holder submits a Note for conversion, the Issuer shall pay all stamp and other duties, if any, which may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests any shares of Common Stock to be issued in a name other than the Holder's name. The Issuer may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Issuer receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

(h) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Issuer shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

5.04. SETTLEMENT OF CONVERSION OBLIGATION.

(a) Subject to **clause (d)** of this **Section 5.04**, upon conversion of any Notes in accordance with this **Article Five**, the Issuer shall satisfy the Conversion Obligation by delivering, with respect to each $1,000 principal amount of Notes converted, no later than the third Trading Day immediately following the Conversion Date, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date, and, if applicable, cash in lieu of fractional shares (the "**Conversion Obligation**").

(b) Notwithstanding **clause (a)** above, if, following a Make-Whole Fundamental Change, Notes are surrendered for conversion following the related Fundamental Change

Effective Date and the Reference Property into which the Notes are convertible consists solely of cash as set forth in **Section 5.11**, then the Issuer shall satisfy the related Conversion Obligations by delivering, no later than the third Trading Day following the Conversion Date, cash in an amount equal to the Stock Price *multiplied* by the Conversion Rate then in effect.

(c) The Issuer shall make the delivery required by **Section 5.02(a)** or **Section 5.04(b)**, as applicable, by issuing, or causing to be issued, and delivering to the Conversion Agent or the applicable Holder, or such Holder's nominee or nominees, certificates or, to the extent permissible, a book-entry transfer through the Depositary for the number of full shares of Common Stock to which such Holder shall be entitled as part of such Conversion Obligation (together with any cash in lieu of fractional shares and any cash payable pursuant to **Section 5.04(d)**).

(d) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest except as set forth in this **clause (d)**. The Issuer's settlement of the Conversion Obligation as described above shall be deemed to satisfy its obligation to pay the principal amount of the Note and accrued and unpaid interest to, but not including, the Conversion Date. As a result, accrued and unpaid interest to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the preceding sentence, if Notes are converted after 5:00 p.m., New York City time, on a Record Date for the payment of interest and prior to the Interest Payment Date with respect to such Record Date, Holders of such Notes as of 5:00 p.m., New York City time, on the Record Date shall receive the interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from 5:00 p.m., New York City time, on any Record Date to 9:00 a.m., New York City time, on the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest payable on the Notes so converted; *provided* that no such payment need be made with respect to any Note:

(i) if the Issuer has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date;

(ii) if the Issuer has called such Note for redemption and specified a Call Right Repurchase Date for such Note that is after a Record Date and on or prior to the corresponding Interest Payment Date;

(iii) to the extent of any overdue interest on such Note which remains unpaid at the time of conversion with respect to such Note; or

(iv) if the Conversion Date for such Note occurs after the close of business on the Record Date immediately preceding the Stated Maturity Date.

Except as described above, no payment or adjustment shall be made for accrued interest on converted Notes.

(e) Upon conversion of any Notes pursuant to this **Article Five**, (i) any such Notes shall be deemed to have been converted and shall cease to be outstanding immediately prior to the close of business on the Conversion Date and, (ii) as of the close of business on the last

Trading Day prior to the Conversion Date the Holder of such Notes shall be deemed to be a holder of record of any shares of the Common Stock issuable as a result of the conversion of such Notes.

5.05. FRACTIONS OF SHARES.

(a) No fractional shares of Common Stock shall be issued upon conversion of any Note.

(b) Intentionally Omitted.

(c) Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any Notes (or specified portions thereof), the Issuer shall calculate and pay a cash adjustment in respect of such fraction (calculated to the nearest 1/100th of a share) in an amount equal to the Last Reported Sale Price of the Common Stock on the last Trading Day prior to the Conversion Date.

5.06. ADJUSTMENT OF CONVERSION RATE.

(a) The Conversion Rate shall be adjusted from time to time by the Issuer as set forth in this **Section 5.06**; *provided* that the Issuer shall not make any adjustments to the Conversion Rate pursuant to **clauses (b)** through **(f)** hereunder if Holders of the Notes participate (as a result of holding the Notes, and at the same time as holders of the Common Stock participate) in any of the transactions described below as if such Holders held a number of shares of Common Stock equal to the Conversion Rate, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holders, without having to convert their Notes.

(b) In case the Issuer shall issue shares of Common Stock as a dividend or distribution on outstanding shares of Common Stock, or shall effect a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_1= the Conversion Rate in effect immediately after the open of business on the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be;

CR_0= the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be;

OS_1= the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution or the effective date of such share split or combination, in each case, after giving effect to such dividend, distribution or share split or combination, as the case may be; and

OS_0= the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution or the effective date of such share split or combination, as the case may be.

Such adjustment shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this **Section 5.06(b)** is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Issuer determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared.

(c) In case the Issuer shall distribute to all or substantially all holders of its outstanding shares of Common Stock any rights or warrants entitling them for a period of not more than 60 days from the issuance date for such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date of such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_1 = the Conversion Rate in effect immediately after the open of business on the Ex-Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights or warrants, divided by the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution.

Such adjustment shall be successively made whenever any such rights or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent such rights or warrants are not exercised prior to their expiration or shares of the Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the

adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Date for such distribution had not been fixed.

In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Last Reported Sale Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Issuer for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined in the good faith judgment of the Board of Directors.

(d) In case the Issuer shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock of the Issuer, evidences of its indebtedness or other assets or property of the Issuer, excluding:

(i) dividends or distributions as to which an adjustment was effected pursuant to **Section 5.06(b)** or **Section 5.06(c)**;

(ii) dividends or distributions paid exclusively in cash; and

(iii) distributions described below in this **clause (d)** with respect to Spin-Offs,

(any of such shares of Capital Stock, indebtedness, or other asset or property hereinafter in this **clause (d)** called the "**Distributed Property**"), then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_1 = the Conversion Rate in effect immediately after the open of business on the Ex-Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

FMV = the fair market value as determined by the Board of Directors of the Distributed Property distributed with respect to each outstanding share of Common Stock as of the open of business on the Ex-Date for such distribution.

Such adjustment shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution. If any such dividend or distribution is not paid or made the Conversion Rate shall be immediately readjusted, effective as of the date the Issuer determines not to pay or make such dividend or distribution to the Conversion Rate that would then be in effect if such dividend, distribution had not been declared. If the Board of Directors determines "**FMV**" for purposes of this **Section 5.06(d)** by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution. If the then fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP_0 as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive, for each $1,000 principal amount of Notes upon conversion, the amount of Distributed Property such Holder would have received had such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date.

With respect to an adjustment pursuant to this **clause (d)** where there has been a payment of a dividend or other distribution on the Common Stock or shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Issuer (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR_1 = the Conversion Rate in effect immediately after the open of business on the last Trading Day of the Valuation Period;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the last Trading Day of the Valuation Period;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the Ex-Date for the Spin-Off (such period, the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

Such adjustment to the Conversion Rate under the foregoing provisions of this **clause (d)** shall be made immediately after the open of business on the day after the last Trading Day of the Valuation Period, but shall be given effect as of the open of business on the Ex-Date for the Spin-Off.

(e) In case the Issuer shall pay cash dividends or make cash distributions to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_1 = the Conversion Rate in effect immediately after the open of business on the Ex-Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

C= the amount in cash per share the Issuer distributes to holders of Common Stock in such distribution.

Such adjustment shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution; provided that if the portion of the cash so distributed applicable to one share of the Common Stock is equal to or greater than "**SP0**" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of Notes shall have the right to receive upon conversion of the Notes, for each $1,000 principal amount of Notes, the amount of cash such holder would have received had such Holder owned a number of shares equal to the Conversion Rate on the Ex-Date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(f) In case the Issuer or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for all or any portion of the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{SP_1 \times OS_0}$$

where,

CR_1 = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the date such tender or exchange offer expires;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer;

SP_1 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires (the "**Averaging Period**");

OS_1 = the number of shares of Common Stock outstanding immediately after the close of business on the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer).

Such adjustment shall be made immediately prior to the open of business on the day following the last day of the Averaging Period, but shall be given effect as of the open of business on the Trading Day next succeeding the date such tender or exchange offer expires.

If the Issuer or any of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer, but the Issuer or such Subsidiary is permanently prevented by applicable law from effecting all or any such purchases or all or any portion of such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had only been made in respect of the purchases that had been effected.

(g) For purposes of this **Section 5.06** the term "record date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of shareholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) For the avoidance of doubt, for purposes of **clauses (b)**, **(c)**, **(d)**, **(e)** and **(f)** of this **Section 5.06** in the event of any reclassification of the Common Stock, as a result of which the Notes become convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to any of **clauses (b)**, **(c)**, **(d)**, **(e)** and **(f)**, references in those clauses to one share of Common Stock or Last Reported Sale Price of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which the Notes are then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such

reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(i) In addition to those required by **clauses (b)**, **(c)**, **(d)**, **(e)** and **(f)** of this **Section 5.06**, and to the extent permitted by applicable law and the rules of The Nasdaq Global Market or any other securities exchange or market on which the Common Stock is then listed, the Issuer from time to time may, in its sole discretion, increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Issuer's Board of Directors determines that such increase would be in the Issuer's best interest. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Issuer shall mail to the Holder of each Note at his last address appearing on the Note Register an irrevocable notice of the increase at least 20 Business Days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect. In addition, the Issuer may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event.

(j) Without limiting the foregoing, no adjustment to the Conversion Rate need be made

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase shares of Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security not described in **clause (ii)** above and outstanding as of the date the Notes were first issued;

(iv) except as provided under **clause (c)** above or **clause (n)** below, upon the issuance of any shares of Common Stock or any options, warrants, rights or any exchangeable or convertible security;

(v) for a change in the par value of the Common Stock; or

(vi) for accrued and unpaid interest (including any interest at the Default Rate).

To the extent the Notes become convertible into cash, assets or property (other than Capital Stock of the Company or securities to which **Section 5.02** applies), no adjustment shall be made thereafter as to the cash, assets or property. Interest shall not accrue on such cash, assets or property.

(k) The Issuer shall not make any adjustment to the Conversion Rate under **clauses (b)**, **(c)**, **(d)**, **(e)**, **(f)** or **(n)** of this **Section 5.06** unless the adjustments would result in a change of at least 1% in the Conversion Rate. However, the Issuer will carry forward any adjustment that it would otherwise have to make and take that adjustment into account in any subsequent adjustment. In addition, regardless of whether the aggregate adjustment is less than 1%, the Issuer will make such carried-forward adjustments not otherwise effected with respect to any Note on the earlier of (i) the date of the conversion of such Note, and (ii) the one-year anniversary of the first date upon which an adjustment would otherwise have been made, except to the extent such adjustment has already been made.

(l) All calculations and other determinations under this **Article Five** shall be made by the Issuer and shall be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be.

(i) Intentionally omitted

(m) If the Issuer sets a record date of the holders of Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, options or in convertible securities or (ii) to subscribe for or purchase Common Stock, options or convertible securities, then such record date will be deemed to be the date of the issue or sale of the Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(n) For purposes of this **Section 5.06**, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Issuer but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

5.07. NOTICE OF ADJUSTMENTS OF CONVERSION RATE.

(a) Whenever the Conversion Rate is adjusted as herein provided:

(i) the Issuer shall compute the adjusted Conversion Rate in accordance with **Section 5.06** and shall prepare a certificate signed by an Officer setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall promptly be filed with the Trustee and with each Conversion Agent (if other than the Trustee); and

(ii) as soon as reasonably practicable after each such adjustment, the Issuer shall provide a notice to all Holders stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate.

(b) Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein, except to exhibit the same to any Holder of Notes desiring inspection thereof at its office during normal business hours.

5.08. COMPANY TO RESERVE COMMON STOCK.

The Issuer shall initially reserve out of its authorized and unissued Common Stock a number of shares of Common Stock per $1,000 principal amount of Notes equal to 100% of the Initial Conversion Rate. So long as any Notes are outstanding, the Issuer shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Notes, 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved by the previous sentence (without regard to any limitations on conversions) (the "**Required Reserve Amount**").

If at any time while any of the Notes remain outstanding the Issuer does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Issuer shall immediately take all action necessary to increase the Issuer's authorized shares of Common Stock to an amount sufficient to allow the Issuer to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than 60 days after the occurrence of such Authorized Share Failure, the Issuer shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock and the Issuer shall be required to increase the number of authorized shares no later than 90 days after the occurrence of the Authorized Share Failure (the "**Authorized Share Failure Deadline**"). In connection with such meeting, the Issuer shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the stockholders that they approve such proposal.

5.09. CERTAIN COVENANTS.

Before taking any action which would cause an adjustment reducing the Conversion Rate below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Issuer shall take all corporate action which it reasonably determines may be necessary in order that the Issuer may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

5.10. CANCELLATION OF CONVERTED NOTES.

All Notes delivered for conversion shall be delivered to the Trustee or its agent and canceled by the Trustee as provided in **Section 2.15**.

5.11. EFFECT OF RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE.

(a) If there shall be:

(i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination);

(ii) a consolidation, binding share exchange, recapitalization, reclassification, merger, combination or other similar event; or

(iii) any sale or conveyance to another Person of all or substantially all of the property and assets of the Issuer (excluding a pledge of securities issued by any of the Issuer's subsidiaries),

in any case as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock (any such event described in **clauses (i)** through **(iii)**, a "**Reorganization Event**"), then at the effective time of such Reorganization Event, the right to convert each $1,000 principal amount of Notes shall be changed to a right to convert such Notes by reference to the kind and amount of cash, securities or other property or assets that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the "**Reference Property**").

(b) From and after the effective time of a Reorganization Event, upon conversion of a Note, the Last Reported Sale Price shall be calculated with respect to a unit of Reference Property corresponding to the amount of Reference Property that a holder of one share of the Common Stock would have received in the Reorganization Event.

(c) For purposes of determining the constitution of Reference Property, the type and amount of consideration that a holder of Common Stock would have been entitled to in the case of reclassifications, consolidations, mergers, sales or conveyance of assets or other transactions that cause the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election) shall be deemed to be the (i) weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (ii) if no holders of Common Stock affirmatively make such election, the types and amounts of consideration actually received by such holders.

(d) The Issuer or the successor or purchasing Person, as the case may be, and if the Reference Property includes shares of stock or other securities or assets of another Person, such other Person, shall execute with the Trustee a supplemental indenture permitted under **Article Eleven** providing for the conversion and settlement of the Notes as set forth in this Indenture. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this **Article Five** and the Trustee may conclusively rely on the determination by the Issuer of the equivalency of such adjustments.

(e) In the event a supplemental indenture is executed pursuant to this **Section 5.11**, the Issuer shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or assets that will constitute the Reference Property after any such Reorganization Event, any adjustment to be made with respect

thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(f) The Issuer shall not become a party to any such transaction unless its terms are consistent with this **Section 5.11**. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes in accordance with the provisions of this **Article Five** prior to the effective date of a Reorganization Event.

(g) The provisions of this **Section 5.11** shall similarly apply to successive Reorganization Events.

5.12. RESPONSIBILITY OF TRUSTEE FOR CONVERSION PROVISIONS.

(a) The Trustee, subject to the provisions of **Article Eight**, and any Conversion Agent, shall not at any time be under any duty or responsibility to any Holder of Notes or to the Issuer to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, herein or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into.

(b) Neither the Trustee, subject to the provisions of **Article Eight**, nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any Notes, and it or they do not make any representation with respect thereto nor shall the Trustee or any Conversion Agent be responsible for monitoring the price of any Common Stock. Neither the Trustee, subject to the provisions of **Article Eight**, nor any Conversion Agent shall be responsible for making calculations under this **Article Five**, nor any failure of the Issuer to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion; and the Trustee, subject to the provisions of **Article Eight**, and any Conversion Agent shall not be responsible for any failure of the Issuer to comply with any of the covenants of the Issuer contained in this **Article Five**.

5.13. STOCKHOLDER RIGHTS PLAN.

To the extent shares of Common Stock traded on the Relevant Exchange trade with rights, if any, as may be provided by the terms of any stockholder rights plan adopted by the Issuer, as the same may be amended from time to time, each share of Common Stock issued upon conversion of Notes pursuant to this **Article Five** shall be entitled to receive the appropriate number of such rights and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan adopted by the Issuer, as the same may be amended from time to time. If prior to any conversion, however, such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the Conversion Rate shall be adjusted at the time of separation as if the Issuer distributed to all holders of the

Common Stock, shares of the Issuer's Capital Stock, evidences of indebtedness, assets, property, rights or warrants as described in **Section 5.06(d)**, subject to readjustment in the event of the expiration, termination or redemption of such rights.

5.14. COMPANY DETERMINATION FINAL.

Any determination that the Issuer or the Board of Directors must make pursuant to this **Article Five** shall be conclusive if made in good faith, absent manifest error.

VI. CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

6.01. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

(a) The Issuer shall not merge or consolidate with or into any other Person (other than a merger of a Wholly Owned Restricted Subsidiary and the Issuer) or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all its Property (other than sales, transfers, assignments, leases, conveyances or dispositions to a Wholly Owned Restricted Subsidiary that is a Guarantor) in any one transaction or series of transactions unless:

(i) the Issuer shall be the Surviving Person in such merger or consolidation, or the Surviving Person (if other than the Issuer) formed by such merger or consolidation or to which such sale, transfer, assignment, lease, conveyance or disposition is made shall be a corporation or limited liability company organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(ii) the Surviving Person (if other than the Issuer) expressly assumes, by Supplemental Indenture (and thereby becomes the "Issuer" for all purposes hereunder) and Security Agreement Supplement (and thereby becomes a "Grantor" for all purposes hereunder) in form reasonably satisfactory to the Trustee, executed and delivered to the Trustee by such Surviving Person, the due and punctual payment of the principal of, and premium, if any, and interest on, all the Notes, according to their tenor, and the due and punctual performance and observance of all the covenants, conditions and all other obligations of the Issuer under the Indenture, the Notes and the Convertible Note Security Documents to be performed by the Issuer;

(iii) immediately before and after giving effect to such transaction or series of transactions on a pro forma basis (and treating, for purposes of this **Section 6.01(a)(iii)** and **Section 6.01(a)(iv)** below, any Debt that becomes, or is anticipated to become, an obligation of the Surviving Person or any Restricted Subsidiary as a result of such transaction or series of transactions as having been Incurred by the Surviving Person or such Restricted Subsidiary at the time of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing;

(iv) immediately after giving effect to such transaction or series of transactions on a pro forma basis, (x) the Consolidated Fixed Charge Coverage Ratio would be at least 2.0 to 1.0, or (y) the Consolidated Fixed Charge Coverage Ratio for the Issuer or the Surviving Person (as applicable) would be equal to or greater than such ratio immediately prior to such transaction or series of transactions;

(v) the Issuer shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officer's Certificate and an Opinion of Counsel, each stating that such transaction or series of transactions and the supplemental indenture and Security Agreement Supplement, if any, in respect thereto comply with this **Section 6.01** and that all conditions precedent herein provided for relating to such transaction or series of transactions have been satisfied and that the Liens in the Collateral of the Surviving Person are enforceable (for the benefit of the Collateral Agent) and perfected; and

(vi) if the Notes become convertible into Common Stock or other securities issued by a Person other than the Surviving Person as a result of such transaction, such Person shall fully and unconditionally guarantee all obligations of the Surviving Person under the Notes and this Indenture.

(b) The Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of the Issuer under the Indenture, the Notes and the Convertible Note Security Documents with the same effect as if such successor Person had been named as the Issuer in this Indenture; provided that the predecessor company in the case of:

(i) a sale, transfer, assignment, conveyance or other disposition of all or substantially all of its Property (unless such sale, transfer, assignment, conveyance or other disposition is of all the Property of the Issuer as an entirety or virtually as an entirety), or

(ii) a lease,

shall not be released from any of the obligations or covenants under the Indenture, the Notes and the Convertible Note Security Documents, including with respect to the payment of the Notes.

6.02. MERGER, CONSOLIDATION AND SALE OF PROPERTY OF THE GUARANTORS.

No Guarantor may merge or consolidate with or into any Person, or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all its Property, to any Person unless:

(a) in the case of Intermediate Holdco, the other Person is the Issuer;

(b) in the case of any Guarantor, the other Person is the Issuer or a Guarantor or becomes a Guarantor for all purposes hereunder and the Surviving Person becomes a "Guarantor" for all purposes hereunder and a "Grantor" for all purposes under the Security Documents concurrently with the transaction;

(c) (i) either (x) the Guarantor is the Surviving Person or (y) the resulting, surviving or transferee Person expressly assumes by Supplemental Indenture and Security Agreement Supplement all of the obligations of the Guarantor under its Note Guaranty (in such Person's capacity as a "Guarantor" thereunder) and the Convertible Note Security Documents (in such Person's capacity as a "Grantor" thereunder); and (ii) immediately after giving effect to the transaction, no Default or Event of Default has occurred and is continuing; or

(d) in the case of any Guarantor, the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the Property of the Guarantor (in each case other than to the Issuer and/or to another Guarantor), in each case, which is otherwise permitted by the Indenture.

Any Surviving Person that is not already a Guarantor shall comply with the provisions of Section 3.13 hereof.

VII. EVENTS OF DEFAULT; REMEDIES

7.01. EVENTS OF DEFAULT.

(a) The following events shall be "**Events of Default**":

(i) the Issuer defaults in any payment of interest, fees, costs or expenses on any Note when the same becomes due and payable and such default continues for a period of twenty (20) Business Days;

(ii) the Issuer defaults in the payment of the principal or premium amount of any Note when the same becomes due and payable at its Stated Maturity, upon acceleration, required repurchase/redemption or otherwise;

(iii) a breach of **Section 6.01** or **Section 6.02**;

(iv) a breach of any covenant or agreement in the Notes, the Convertible Note Security Documents or in this Indenture (other than a failure that is the subject of the foregoing **Sections 7.01(a)(i), (a)(ii) or (a)(iii)**) and such failure continues unremedied for a period of forty-five (45) days after the written notice demanding that such default be remedied is given to the Issuer as specified in the last paragraph of this **Section 7.01**;

(v) (x) a default by any Obligor or any other Restricted Subsidiary under any Debt (including, without limitation, the Debt under the Revolving Credit Facility, the New Credit Facility and/or the Senior Secured Bond Facility to the extent applicable under this clause (v)) of such Obligor and/or Restricted Subsidiary that results in acceleration of the final stated maturity of such Debt, or (y) the failure to pay any such Debt (including, without limitation, the Debt under the Revolving Credit Facility, the New Credit Facility and/or the Senior Secured Note Facility to the extent applicable under this clause (v)) when due, whether at final stated maturity or otherwise (after giving effect to any applicable grace periods and any extensions thereof), in each case, with respect to Debt in an aggregate principal amount in excess of $25 million (or its foreign equivalent at the time);

(vi) a final judgment or judgments for the payment of money in excess of $20 million in the aggregate (exclusive of judgment amounts fully covered by insurance where the insurer has not denied liability in respect of such judgment) shall be rendered by one or more courts, administrative tribunals or other bodies having jurisdiction against any Obligor or any Restricted Subsidiary and the same shall not be waived or discharged

(or provision shall not be made for such discharge), bonded, or a stay for any period of 60 consecutive days after the date of entry thereof;

(vii) the Issuer, SLLC or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary insolvency proceeding or gives notice of intention to make a proposal under any Bankruptcy Law;

(B) consents to the entry of an order for relief against it in an involuntary insolvency proceeding or consents to its dissolution or winding-up;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(D) makes a general assignment for the benefit of its creditors;

or takes any comparable action under any foreign laws relating to insolvency; provided, however, that the liquidation of any Restricted Subsidiary into any Obligor or the liquidation of any Restricted Subsidiary (that is not an Obligor) into any Restricted Subsidiary, in each case, other than as part of a credit reorganization, shall not constitute an Event of Default under this **Section 7.01(vii)**;

(viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Issuer, SLLC or any Significant Subsidiary in an involuntary insolvency proceeding;

(B) appoints a Custodian of the Issuer, SLLC or any Significant Subsidiary or for any substantial part of its property;

(C) orders the winding up, liquidation or dissolution of the Issuer, SLLC or any Significant Subsidiary;

(D) orders the presentation of any plan or arrangement, compromise reorganization of the Issuer, SLLC or any Significant Subsidiary; or

(E) grants any similar relief under any Bankruptcy Law or foreign laws; and in the case of (A), (B), (C), (D) and (E), the order or decree remains unstayed and in effect for 90 days;

(ix) any Note Guaranty ceases to be in full force and effect, other than in accordance with the terms of the Indenture, or a Guarantor denies or disaffirms its obligations under its Note Guaranty, other than in accordance with the terms of the Indenture or a Guarantor fails to timely make any payment or to timely perform any obligation set forth herein and/or in the Convertible Note Security Documents (after any

cure periods set forth herein have expired with respect to such payment by Issuer and/or obligations to be performed by Issuer);

(x) the Liens created by the Convertible Note Security Documents shall at any time not constitute a valid and perfected Lien on any material portion of the Collateral intended to be covered thereby (to the extent perfection is required by the Indenture or the Convertible Note Security Documents), or, except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture, any of the Convertible Note Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Obligor or any other Subsidiary of an Obligor;

(xi) any representation or warranty made or deemed made by or on behalf of any Obligor in or in connection with this Indenture or any Convertible Note Security Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Indenture, any of the other Convertible Note Security Documents or any amendment or modification hereof or thereof, shall prove to have been incorrect in any material respect when made or deemed made;

(xii) payment by the Issuer or any Restricted Subsidiary of any Subordinated Obligation unless expressly permitted under the Indenture, the Notes and/or the Intercreditor Agreement [or other subordination agreement between the Trustee and the Holders of (or agents with respect to) such Subordinated Obligations];

(xiii) any of the Issuer, SLLC or any Significant Subsidiary shall become unable, admit in writing or fail generally to pay its debts as they become due;

(xiv) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, if any, could reasonably be expected to result in a Material Adverse Effect;

(xv) the Issuer's (A) failure to comply with its obligation to convert the Notes into shares of Common Stock and, if applicable, cash upon exercise of a Holder's conversion right and that failure continues for five days; or (B) written notice to any Holder of the Notes, including by way of public announcement or through any of its agents, at any time, of its intention not to comply with a request for conversion of any Notes that are tendered in accordance with the provisions of the Notes;

(xvi) at any time following an Authorized Share Failure Deadline if there has been an Authorized Share Failure; or

(xvii) from and after November 1, 2010, the suspension from trading or failure of the Common Stock to be listed on The Nasdaq Global Market or on an Eligible Market for a period of five consecutive days or for more than an aggregate of 15 days in any 365-day period.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or otherwise.

The Issuer shall deliver to the Trustee, as soon as reasonably possible and, in any case, within twenty (20) days after the Issuer or any Obligor becomes aware thereof, written notice in the form of an Officer's Certificate of any Event of Default and any event that with the giving of notice or the lapse of time would become an Event of Default, its status and what action the Issuer is taking or proposes to take with respect thereto. The Issuer shall immediately notify the Trustee if a meeting of the Board of Directors of the Issuer is convened to consider any action mandated by a petition for debt settlement proceedings or bankruptcy proceedings. The Issuer shall also promptly advise the Trustee of the approval of the filing of a debt settlement or bankruptcy petition prior to the filing of such petition.

A Default under **Section 7.01(a)(iv)** is not an Event of Default until the Trustee or the Notifying Holders notify the Issuer of the Default and such Default is not cured within forty-five (45) days after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "**Notice of Default**." In the event that a Default under **Section 7.01(a)(iv)** has occurred with respect to the covenant described in **Section 3.19** and is continuing, provided that the Issuer has used commercially reasonable good faith efforts to satisfy the requirements of **Section 3.19** and such Default was caused by events, acts or omissions out of the control of the Issuer and/or its Subsidiaries, the sole remedy of the Trustee and Holders of the Notes shall be to impose the Default Rate with respect to all Obligations outstanding under this Indenture and the Notes, effective automatically as of the date of such Default (without notice) (absent the Issuer's use of commercially reasonable good faith efforts to satisfy the requirements of **Section 3.19** or if such Default was caused by events, acts or omissions in the control of the Issuer and/or its Subsidiaries, the Trustee and Holders shall have all of the rights and remedies that are otherwise available to them in the event that such Default ripens to an Event of Default).

7.02. ACCELERATION OF MATURITY; RESCISSION.

(a) If an Event of Default with respect to the Notes (other than an Event of Default specified in **Section 7.01(vii)** or **Section 7.01(viii)** with respect to the applicable Obligor) shall have occurred and be continuing, the Trustee or the Notifying Holders may (i) impose the Default Rate of interest (which shall become effective as of the initial occurrence of the initial Event of Default irrespective of when Issuer is notified that the Default Rate has been imposed) with respect to all Obligations outstanding under this Indenture and the Notes and (ii) declare the principal of and accrued interest on all the Notes to be due and payable by notice in writing to the Issuer and the Trustee specifying the applicable Event of Default and that it is a "**notice of acceleration**", and the same shall become immediately due and payable.

(b) In case an Event of Default resulting from **Section 7.01(vii)** or **Section 7.01(viii)** with respect to the applicable Obligor shall occur, all Obligations outstanding under this Indenture and the Notes shall become due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Notes. After any such acceleration, but

before a judgment or decree based on acceleration is obtained by the Trustee, the Required Holders may, under certain circumstances, rescind and annul such acceleration if (i) the rescission would not conflict with any judgment or decree, (ii) all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration, (iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest which has become due otherwise than by such declaration of acceleration, and all other interest accruing at the Default Rate has been paid in full in cash, (iv) the Issuer and/or any other Obligor has paid the Trustee its agreed upon compensation and reimbursed the Trustee for its expenses, disbursements and advances and all other amounts due to the Trustee under **Section 8.07** and (v) in the event of the cure or waiver of an Event of Default of the type described in either **Section 7.01(vii)** or **Section 7.01(viii)**, the Trustee shall have received an Officer's Certificate to the effect that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(c) In the event of a declaration of acceleration of the Notes because an Event of Default described in **Section 7.01(v)** has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the payment Default or other Default triggering such Event of Default pursuant to **Section 7.01(v)** shall be remedied or cured or waived by the holders of the relevant Debt pursuant to the documentation governing such Debt and if (i) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction, (ii) 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 and (iii) all the other amounts due to the Trustee have been paid.

(d) Subject to the provisions of **Section 7.01**, in case an Event of Default shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the Holders of the Notes, unless such Holders shall have offered to the Trustee indemnity reasonably satisfactory to the Trustee. Subject to **Article 8**, the Required Holders will have the right to direct the exercise of rights and remedies and the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes.

7.03. OTHER REMEDIES.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture and may take any necessary action requested of it as Trustee to settle, compromise, adjust or otherwise conclude any proceedings to which it is a party. 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. Any such proceeding instituted by the Trustee may be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provisions for the payment of the reasonable compensation, expenses, disbursements of the Trustee and its counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered. A delay or omission by the Trustee or any Holder in exercising any right or remedy

accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative, to the extent permitted by law. Any costs associated with actions taken by the Trustee under this **Section 7.03** shall be reimbursed to the Trustee by the Issuer.

7.04. WAIVER OF PAST DEFAULTS AND EVENTS OF DEFAULT.

Provided the Notes are not then due and payable by reason of a declaration of acceleration, the Required Holders may on behalf of the Holders of all the Notes waive any past Default or Event of Default with respect to such Notes and this Indenture and its consequences by providing written notice thereof to the Issuer and the Trustee, except a Default or Event of Default (i) in the payment of interest on or the principal of any Note or (ii) in respect of a covenant or provision hereof which under the Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected. In the case of any such waiver, the Obligors, the Trustee and the Holders of the Notes will be restored to their former positions and rights under the Indenture, respectively; provided that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto.

7.05. CONTROL BY MAJORITY.

Subject to **Section 8.08** hereof, the Required Holders may direct the exercise of rights and remedies by Trustee and the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders of the Notes not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from requisite Holders of the Notes.

7.06. LIMITATION ON SUITS.

(a) No Holder of Notes will have any right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any remedy hereunder unless:

(i) such Holder has previously given to the Trustee written notice of a continuing Event of Default;

(ii) the Notifying Holders have made written request and offered the Trustee indemnity reasonably satisfactory to the Trustee to institute such proceeding as Trustee;

(iii) the Trustee shall have failed to institute such proceeding, within 60 days after such notice, request and offer; and

(iv) during such 60 day period, the Trustee shall not have received from the Required Holders a direction inconsistent with such request.

However, such limitations do not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of, and premium, if any, or interest on, such Note on or after the respective due dates expressed in such Note.

7.07. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

No director, officer, employee, incorporator or stockholder (solely in its capacity as a stockholder and not in its capacity as an Obligor) of any Guarantor or the Issuer, as such, will have any liability for any obligations of any Guarantor or the Issuer under the Notes, any Note Guaranty or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

7.08. RIGHTS OF HOLDERS TO RECEIVE PAYMENT.

Notwithstanding any other provision of the Indenture, the right of any Holder of a Note to receive payment of the principal of or premium, if any, or interest, if any, on such Note or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes shall not be impaired or affected without the consent of such Holder.

7.09. COLLECTION SUIT BY TRUSTEE.

If an Event of Default in payment of principal, premium or interest specified in **Section 7.01(i)** or (ii) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any Guarantor (or any other obligor on the Notes) for the whole amount of unpaid principal, premium and accrued interest remaining unpaid.

7.10. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under **Section 8.07**) and the Holders allowed in any judicial proceedings relative to the Issuer and/or any Guarantor (or any other obligor upon the Notes), its creditors or its Property and, unless prohibited by law, shall be entitled and empowered to collect and receive any monies or other Property payable or deliverable on any such claims and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings 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 shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under **Section 8.07**.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to

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

7.11. PRIORITIES.

If the Trustee collects any money pursuant to this **Article Seven** or receives any money from the Collateral Agent upon foreclosure and sale of any Collateral, it shall pay out the money in the following order (subject to the Intercreditor Agreement):

FIRST: to the Trustee for all amounts due under **Section 8.07**;

SECOND: to the Collateral Agent for all amounts due under the Convertible Note Security Documents;

THIRD: to Holders for amounts due and unpaid on the Notes for principal, Purchase Price, Fundamental Change Repurchase Price, Put Right Repurchase Price, Call Right Repurchase Price, premium, if any, and interest as to each (and any other amounts outstanding thereunder), ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes; and

FOURTH: **[as required under the Intercreditor Agreement and then]** to the Issuer or as a court of competent jurisdiction may direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this **Section 7.11**.

7.12. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This **Section 7.12** does not apply to a suit by the Trustee and/or Collateral Agent, a suit by a Holder pursuant to **Section 7.06** and **Section 7.08** or a suit by Holders of more than 10% in principal amount of the Notes then outstanding.

VIII. THE TRUSTEE

8.01. DUTIES AND RESPONSIBILITIES OF TRUSTEE.

(a) If an Event of Default actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it

by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such Person's own affairs.

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

(i) The Trustee need perform only such duties as are specifically set forth in the Indenture.

(ii) In the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Indenture but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of the Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). Whenever in the administration of the Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officer's Certificate, subject to the requirement in the preceding sentence, if applicable.

(c) The Trustee shall not be relieved from liability for its own action or inaction (if constituting negligence),or its own willful misconduct, except that:

(i) This paragraph does not limit the effect of **Section 8.01(b)**.

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

(iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it from the requisite Holders pursuant to the terms hereof.

(iv) No provision of the Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights, powers or duties if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity reasonably satisfactory to it against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, **Section 8.01(a)**, **(b)**, **(c)** and **(e)** shall govern every provision of the Indenture that in any way relates to the Trustee.

(e) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders pursuant to the Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably

satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request.

(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 Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by the law.

8.02. RIGHTS OF TRUSTEE.

Subject to **Section 8.01**:

(a) The Trustee may conclusively rely on any document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may request an Officer's Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of **Section 1.03**. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed by it with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers; provided that the Trustee's conduct does not constitute willful misconduct, negligence or bad faith.

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

(f) 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.

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

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

(i) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to the Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not suspended.

(j) The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (i) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been given to the Trustee by the Issuer or by any Holder of the Notes and such notice references the Notes and the Indenture.

(k) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(l) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

8.03. INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may make loans to, accept deposits from, perform services for or otherwise deal with the Issuer, or any Affiliate thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to **Section 8.10** and **Section 8.11**.

8.04. TRUSTEE'S DISCLAIMER.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of the Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the sale of Notes or any money paid to the Issuer pursuant to the terms of the Indenture and it shall not be responsible for any statement in the Notes or the Indenture other than its certificate of authentication, except that the Trustee represents that it is duly authorized to execute and deliver the Indenture, authenticate the Notes and perform its obligations hereunder and that the statements made by it in any Statement of Eligibility and Qualification on Form T-1 to be supplied to the Issuer will be true and accurate subject to the qualifications set forth therein.

8.05. NOTICE OF DEFAULTS.

If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall give to each Holder a notice of the Default within 90 days after it occurs in the manner and to the extent

provided in the TIA and otherwise as provided in the Indenture. Except in the case of a Default in payment of the principal of or interest on any Note (including payments pursuant to a redemption or repurchase of the Notes pursuant to the provisions of the Indenture), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Holders.

8.06. REPORTS BY TRUSTEE TO HOLDERS.

If required by TIA §313(a), within 60 days after July 15 of any year, commencing in 2010, the Trustee shall mail to each Holder a brief report dated as of such date that complies with TIA §313(a). The Trustee also shall comply with TIA §313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA §13(c) and TIA §313(d).

Reports pursuant to this **Section 8.06** shall be transmitted by mail:

(i) to all Holders of Notes, as the names and addresses of such Holders appear on the Registrar's books; and

(ii) to such Holders of Notes as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose.

A copy of each report at the time of its mailing to Holders shall be filed with the Commission and each stock exchange on which the Notes are listed. The Issuer shall promptly notify the Trustee in writing when the Notes are listed on any stock exchange or delisted therefrom.

8.07. COMPENSATION AND INDEMNITY.

(a) The Issuer shall annually pay to the Trustee and Agents, in advance, such compensation for their services hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as shall be agreed upon in writing, and such annual fee shall, unless otherwise agreed by the Trustee or the applicable Agent in writing, be non-refundable and non-proratable and fully earned upon payment. The Issuer shall reimburse the Trustee and Agents upon request for all reasonable disbursements, expenses and advances incurred or made by them in connection with the Trustee's duties under the Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and external counsel, except any expense disbursement or advance as may be attributable to its willful misconduct, negligence or bad faith.

(b) The Issuer shall fully indemnify each of the Trustee, Agent and any predecessor Trustee for, and hold each of them harmless against, any and all loss, damage, claim, liability or expense, including without limitation taxes (other than taxes based on the income of the Trustee or such Agent) and reasonable attorneys' fees and expenses incurred by each of them in connection with the acceptance or performance of its duties under the Indenture including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder (including, without limitation, settlement costs). The Trustee or Agent shall notify the Issuer in writing promptly of any claim (a "**Claim**") (whether asserted by the Issuer, a Guarantor, a holder or any other Person) of which a Responsible Officer of the Trustee has actual knowledge asserted against the

Trustee or Agent for which it may seek indemnity; provided that the failure by the Trustee or Agent to so notify the Issuer shall not relieve the Issuer of its obligations hereunder except to the extent the Issuer is actually prejudiced thereby. In the event that a conflict of interest exists, the Trustee may have separate counsel, which counsel (to the extent that no Events of Default are continuing) must be reasonably acceptable to the Issuer, and the Issuer shall pay the reasonable fees and expenses of such counsel.

(c) Notwithstanding the foregoing, the Issuer need not reimburse the Trustee for any expense or indemnify it against any loss or liability to have been incurred by the Trustee through its own willful misconduct, negligence or bad faith.

(d) To secure the payment obligations of the Issuer in this **Section 8.07**, the Trustee shall have a lien prior to the lien of the Notes on all money or Property held or collected by the Trustee and such money or Property held in trust to pay principal of and interest on particular Notes.

(e) The obligations of the Issuer under this **Section 8.07** to compensate and indemnify the Trustee, Agents and each predecessor Trustee and to pay or reimburse the Trustee, Agents and each predecessor Trustee for expenses, disbursements and advances shall be the liability of the Issuer and shall survive the resignation or removal of the Trustee and the satisfaction, discharge or other termination of the Indenture, including any termination or rejection hereof under any Bankruptcy Law.

(f) When the Trustee incurs expenses or renders services after an Event of Default specified in **Section 7.01(vii)** or **Section 7.01(viii)** occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

(g) For purposes of this **Section 8.07**, the term "Trustee" shall include any trustee appointed pursuant to this **Article Eight**.

8.08. REPLACEMENT OF TRUSTEE.

(a) The Trustee shall comply with Section 313(b) of the TIA, to the extent applicable.

(b) The Trustee may resign by so notifying the Issuer in writing no later than 15 Business Days prior to the date of the proposed resignation. The Required Holders may remove the Trustee by notifying the Issuer and the removed Trustee in writing and may appoint a successor Trustee with, to the extent that no Defaults or Events of Default are continuing, the Issuer's prior written consent, which consent shall not be unreasonably withheld or delayed. The Issuer may remove the Trustee at its election if:

(i) the Trustee fails to comply with **Section 8.10** or Section 310 of the TIA;

(ii) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a receiver or other public officer takes charge of the Trustee or its Property; or

(iv) the Trustee otherwise becomes incapable of acting.

(c) If the Trustee resigns or is removed by the Issuer or by the Required Holders or if a vacancy exists in the office of Trustee for any other reason and the Required Holders do not reasonably promptly appoint a successor Trustee, and, to the extent that no Default or Event of Default is continuing, obtain the Issuer's prior reasonable consent, if required, the Issuer shall promptly appoint a successor Trustee.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Required Holders may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with **Section 8.10**, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately following such delivery, the retiring Trustee shall, subject to its rights under **Section 8.07**, transfer all Property held by it as Trustee to the successor Trustee, 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 the Indenture. A successor Trustee shall promptly mail notice of its succession to each Holder. Notwithstanding replacement of the Trustee pursuant to this **Section 8.08**, the Issuer's obligations under **Section 8.07** shall continue for the benefit of the retiring Trustee.

8.09. SUCCESSOR TRUSTEE BY CONSOLIDATION, MERGER, ETC.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another corporation, subject to **Section 8.10,** the successor corporation without any further act shall be the successor Trustee; provided such entity shall be otherwise qualified and eligible under this **Article Eight**.

8.10. ELIGIBILITY; DISQUALIFICATION.

The Indenture shall always have a Trustee who satisfies the requirements of TIA §310(a)(1), (2) and (5) in every respect. The Trustee (together with its corporate parent) shall have a combined capital and surplus of at least $50 million as set forth in the most recent applicable published annual report of condition. The Trustee shall comply with TIA §310(b), including the provision in §310(b)(i).

8.11. PREFERENTIAL COLLECTION OF CLAIMS AGAINST THE ISSUER.

The Trustee shall comply with TIA §311(a), excluding any creditor relationship listed in TIA §311(b). A Trustee who has resigned or been removed shall be subject to TIA §311(a) to the extent indicated therein.

8.12. PAYING AGENTS.

The Issuer shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this **Section 8.12**:

(i) that it will hold all sums held by it as agent for the payment of principal of, or premium, if any, or interest on, the Notes (whether such sums have been paid to it by the Issuer or by any obligor on the Notes) in trust for the benefit of Holders of the Notes or the Trustee;

(ii) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and

(iii) that it will give the Trustee written notice within three (3) Business Days of any failure of the Issuer or Obligor (or by any obligor on the Notes) in the payment of any installment of the principal of, premium, if any, or interest on, the Notes or Note Guarantees (as applicable) when the same shall be due and payable (including, without limitation any failure to pay the Purchase Price, the Fundamental Change Repurchase Price, the Put Right Repurchase Price or the Call Right Repurchase Price when due).

The Paying Agent shall comply with all U.S. withholding tax, backup withholding tax and information reporting requirements under the U.S. Internal Revenue Code of 1986, as amended, and the Treasury Regulations issued thereunder, with respect to any payments under the Notes or hereunder (including the collection of U.S. Internal Revenue Service Forms W-8 and W-9 and the filing of U.S. Internal Revenue Service Forms 1042, 1042-S and 1099.

8.13. COLLATERAL AGENT.

(a) Trustee is hereby appointed to act as the Collateral Agent under the Convertible Note Security Documents, with such powers, rights and obligations as are expressly delegated to the Collateral Agent by the terms of this Indenture and by the Convertible Note Security Documents. The Trustee may, from time to time, appoint another financial institution to act as Collateral Agent so long as such institution meets the requirements of **Section 8.10**. The Collateral Agent, acting in its capacity as such, shall have only such duties with respect to the Collateral as are set forth in the Convertible Note Security Documents.

(b) Subject to the appointment and acceptance of a successor Collateral Agent as provided in this subsection, the Collateral Agent (if other than the Trustee) may resign at any time by notifying the Trustee and the Issuer. Upon any such resignation, the Trustee shall have the right to appoint a successor Collateral Agent. If no successor shall have been so appointed by the Trustee and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of its resignation, then the Required Holders shall appoint a successor Collateral Agent which shall meet the eligibility requirements of **Section 8.10** and shall accept and comply in all material respects with the Convertible Note Security Documents. Upon a successor's acceptance of its appointment as Collateral Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent hereunder and under the Convertible Note Security Documents, and the

retiring Collateral Agent shall be discharged from its duties and obligations hereunder and under the Convertible Note Security Documents. If the Trustee shall be acting at any time as the Collateral Agent, then it will be deemed to have resigned as Collateral Agent upon its replacement as Trustee pursuant to **Section 8.08**, and the successor Trustee shall select (or may act as) the replacement Collateral Agent.

(c) At all times when the Trustee is not itself the Collateral Agent, the Issuer will deliver to the Trustee copies of all Convertible Note Security Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Convertible Note Security Documents.

(d) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

8.14. TRUSTEE, NOTE REGISTRAR AND AGENTS MAY OWN NOTES.

The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee,

8.15. CONFLICTING INTERESTS OF TRUSTEE.

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

8.16. FORCE MAJEURE.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

8.17. TRUSTEE, NOTE REGISTRAR AND AGENTS MAY OWN NOTES.

The Trustee, the Collateral Agent, any Paying Agent or any other Agent, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee.

8.18. CONFLICTING INTERESTS OF TRUSTEE.

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

8.19. CALCULATIONS.

Except as otherwise provided herein, the Issuer will be responsible for making all calculations called for under this Indenture and the Notes. The Issuer will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Issuer will provide a schedule of its calculations to the Trustee and the Trustee is entitled to rely conclusively upon the accuracy of the Issuer's calculations without independent verification. The Trustee shall deliver a copy of such schedule to any Holder upon the written request of such Holder.

IX. HOLDERS' LISTS AND REPORTS

9.01. ISSUER TO FURNISH NAMES AND ADDRESSES OF HOLDERS.

Upon request from the Trustee in writing, the Issuer shall furnish or cause to be furnished to the Trustee, within 30 days after the receipt by the Issuer of any such request, a list of the names and addresses of the Holders as of a date not more than 15 days prior to the time such list is furnished, in such form as the Trustee may reasonably require; provided that no such list need be furnished so long as the Trustee is acting as Note Registrar.

9.02. PRESERVATION OF INFORMATION; COMMUNICATIONS TO HOLDERS.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in **Section 9.01** and the names and addresses of Holders received by the Trustee in its capacity as Note Registrar. The Trustee may destroy any list furnished to it as provided in **Section 9.01** upon receipt of a new list so furnished.

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

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

9.03. REPORTS BY ISSUER.

(a) The Issuer shall file with the Trustee any information, documents or reports that the Issuer is required to file with the Commission pursuant to **Section 13** or **15(d)** of the Exchange Act within 15 days after the same are required to be filed with the Commission (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). To the extent any

such information, documents and reports are filed by the Issuer with the Commission electronically via the Commission's Electronic Data Gathering and Retrieval System (or any successor system), such information, documents and reports shall be deemed filed with the Trustee as at such time they are filed by the Issuer electronically.

(b) Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on an Officer's Certificate). It is expressly understood that materials transmitted electronically by the Issuer to the Trustee shall be deemed filed with the Trustee for purposes of this **Section 9.03**.

X. SATISFACTION AND DISCHARGE

10.01. DISCHARGE OF LIABILITY ON NOTES

The Indenture will be discharged and will cease to be of further effect as to all Notes, issued hereunder when:

(i) either (x) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid by the Issuer, have been delivered to the Trustee for cancellation, or (y) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. Government Obligations, or a combination of cash in U.S. dollars and U.S. Government Obligations, in amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes (not theretofore delivered to the Trustee for cancellation) for principal, premium, if any, and accrued interest to the date of maturity;

(ii) no Default or Event of Default has occurred and is continuing on the date of such deposit or will occur as a result of the deposit and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer is a party or by which the Issuer is bound;

(iii) the Issuer has paid or caused to be paid all sums payable by them under the Indenture;

(iv) in the event of a deposit as provided in clause (i)(y) set forth in this **Section 10.01**, the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity; and

(v) Trustee receives an opinion from a nationally recognized firm of independent public accountants (upon which the Trustee may conclusively rely) which indicates that such amounts on deposit and in trust with Trustee are sufficient, without

consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes (not delivered to the Trustee for cancellation) for principal, premium, if any, and accrued interest to the date of maturity.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

10.02. DEPOSITED MONEY AND GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS.

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to **Section 10.01(i)** in respect of the outstanding Notes shall be held in trust, for the sole benefit of the Holders of the Notes, and applied by the Trustee, in accordance with the provisions of such Notes and the Indenture, to the payment, either directly or through any Paying Agent, to the Holders of such Notes, of all sums due and to become due thereon in respect of principal, premium, if any, and accrued interest (and all other amounts outstanding with respect thereto), but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to **Section 10.01(i)** or the principal, premium, if any, 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.

10.03. REINSTATEMENT.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with **Section 10.01** 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 Issuer's obligations under the Indenture and the Notes (and the Convertible Note Pledge and Security Agreement and the Liens thereunder and under the other Convertible Note Security Documents) shall be revived and reinstated as though no deposit had occurred pursuant to this **Article Ten** until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with **Section 10.01**; provided that if the Issuer has made any payment of principal of, premium, if any, or accrued interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

10.04. MONEYS HELD BY PAYING AGENT.

Upon the satisfaction and discharge of the Indenture, all moneys then held by any Paying Agent under the provisions of the Indenture shall, upon written demand of the Issuer, be paid to the Trustee, or if sufficient moneys have been deposited pursuant to **Section 10.01**, to the Issuer upon a request of the Issuer, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

10.05. MONEYS HELD BY TRUSTEE.

Any moneys deposited with the Trustee or any Paying Agent or then held by the Issuer in trust for the payment of the principal of or premium, if any, or interest on any Note that are not applied but remain unclaimed by the Holder of such Note for two years after the date upon which the principal of or premium, if any, or interest on such Note shall have respectively become due and payable shall be repaid to the Issuer upon a request of the Issuer, or if such moneys are then held by the Issuer in trust, such moneys shall be released from such trust and the Holder of such Note entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Issuer for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; provided that the Trustee or any such Paying Agent, before being required to make any such repayment, shall, at the expense of the Issuer, either mail to each Holder affected, at the address shown in the Note Register maintained by the Registrar pursuant to **Section 2.06**, or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in the City of New York, New York, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such moneys then remaining will be repaid to the Issuer provided further that such time periods shall be tolled during any period in which the Trustee is prohibited from releasing the funds held by Trustee by operation of law, court order or other legal impediment. After payment to the Issuer or the release of any money held in trust by the Issuer, Holders entitled to the money must look only to the Issuer for payment as general creditors unless applicable abandoned property law designates another Person.

XI. MODIFICATION AND WAIVER

11.01. WITHOUT CONSENT OF HOLDERS.

Notwithstanding **Section 11.02**, without the consent of any Holder of the Notes, the Issuer and the Trustee (and in the case of the Convertible Note Security Documents, the Collateral Agent) may amend or supplement the Indenture, the Notes and/or the Convertible Note Security Documents to:

(a) cure any ambiguity, omission, defect or inconsistency in any manner that is not adverse in any material respect to any Holder of the Notes;

(b) provide for the assumption by a Surviving Person of the obligations of the Issuer under the Indenture and the Convertible Note Security Documents in accordance with **Section 6.01** hereof;

(c) provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(ii)(B) of the Code);

(d) add Guarantees with respect to the Notes and release any Guarantees as expressly permitted in accordance with the Indenture;

(e) further secure the Notes;

(f) add to the covenants of the Issuer and/or Restricted Subsidiaries for the benefit of the Holders of the Notes or to surrender any right or power conferred upon the Issuer;

(g) comply with any requirement of the Commission in connection with the qualification of the Indenture under the TIA;

(h) make any change that does not adversely effect, in any respect, the rights of any Holder of the Notes or Trustee;

(i) evidence and provide for the acceptance of the appointment of a successor Trustee under the Indenture and/or to evidence and provide for the acceptance of the appointment of a successor Collateral Agent under the Convertible Note Security Documents;

(j) provide for the conversion of the Notes into cash and Reference Property in accordance with the terms of this Indenture; or

(k) provide for the conversion rights of Holders of Notes and the Issuer's repurchase obligation in connection with a Fundamental Change in accordance with the terms of this Indenture in the event of any reclassification of the Common Stock, merger or consolidation, or sale, conveyance, transfer or lease of the Issuer's property and assets substantially as an entirety.

11.02. WITH CONSENT OF HOLDERS.

(a) Subject to **Section 11.02(b)** hereof, the Indenture, the Notes and/or the Convertible Note Security Documents may be amended or supplemented by the Issuer and the Trustee (and in the case of the Convertible Note Security Documents, the Collateral Agent) with the consent of the Required Holders (including consents obtained in connection with a tender offer or exchange offer for the Notes) and any past default or compliance with any provisions may also be waived (except a default in the payment of principal, premium, interest, fees, costs or expenses and any default with respect to any provision referenced in **Section 11.02(b)** below, in which case, the consent of all Holders shall be required) with the consent of the Required Holders.

(b) Without the consent of each Holder of an outstanding Note, no amendment may:

(i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of, or change the time for, payment of interest on any Note;

(iii) reduce the principal of or fees under the Notes, or extend the Stated Maturity of, any Note;

(iv) make any change that adversely affects the conversion rights of any Notes;

(v) make any Note payable in money other than that stated in the Note;

(vi) impair the right of any Holder of the Notes to receive payment of principal of, premium and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(vii) release any Guarantor's Note Guaranty (other than as permitted herein);

(viii) release any security interest that may have been granted in favor of the Collateral Agent and/or Holders of the Notes other than in accordance with the provisions hereof and/or the Convertible Note Security Documents;

(ix) subordinate the Notes in right of payment to any other Obligation of the Issuer and/or Obligors or subordinate the Liens securing the Notes to any other Liens (other than as expressly permitted herein or in the Intercreditor Agreement);

(x) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Issuer's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(xi) at any time after the Issuer is obligated to make a Prepayment Offer with Excess Proceeds, change the time at which such Prepayment Offer must be made or at which the Notes must be repurchased pursuant thereto;

(xii) effect a release of all or substantially all of the Collateral;

(xiii) reduce the amount payable upon exercise of a Holder's Put Right or the Issuer's Call Right or otherwise modify the redemption provisions of the Notes in any manner adverse to the Holders;

(xiv) revise **Section 7.11** hereof or make any change in the provisions of the Convertible Note Security Documents dealing with the application of the proceeds of Collateral that would adversely affect the Holders of the Notes; or

(xv) adversely affect the ranking of the Notes.

(c) The consent of the Holders of the Notes shall not be necessary to approve the particular form of any proposed amendment. It shall be sufficient if such consent approves the substance of the proposed amendment.

(d) After an amendment that requires the consent of the Holders of Notes becomes effective, the Issuer is required to mail to each registered Holder of the Notes at such Holder's address appearing in the Note register a notice briefly describing such amendment. However, the failure to give such notice to all Holders of the Notes, or any defect therein, shall not impair or affect the validity of the amendment.

(e) Upon the written request of the Issuer accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the receipt by the

Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders as aforesaid and upon receipt by the Trustee of the documents described in **Section 11.06**, the Trustee shall join with the Issuer in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under the Indenture, in which case the Trustee may, but shall not be obligated to, enter into such supplemental indenture.

11.03. COMPLIANCE WITH TRUST INDENTURE ACT.

Every amendment or supplement to the Indenture, the Note Guarantees or the Notes shall comply with the TIA as then in effect.

11.04. REVOCATION AND EFFECT OF CONSENTS.

(a) After an amendment, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Note is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Note or portion thereof, and of any Note issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Note.

(b) The Issuer 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 90 days after such record date unless the consent of the requisite number of Holders has been obtained by such time.

11.05. NOTATION ON OR EXCHANGE OF NOTES.

If an amendment, supplement or waiver changes the terms of a Note, the Trustee (in accordance with the specific written direction of the Issuer) shall request the Holder of the Note (in accordance with the specific written direction of the Issuer) to deliver it to the Trustee. In such case, the Trustee shall place an appropriate notation on the Note about the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

11.06. TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this **Article Eleven** if the amendment, supplement or waiver does not affect the rights, duties, liabilities or immunities of the Trustee. If it does affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may, but need not, sign such amendment, supplement or waiver. In signing or refusing to sign such amendment, supplement or waiver the Trustee shall be entitled to receive and, subject to **Section 8.01**, shall be fully protected in relying upon an Officer's Certificate and

an Opinion of Counsel (from other than Trustee's counsel) stating, in addition to the documents required by **Section 1.03**, that such amendment, supplement or waiver is authorized or permitted by the Indenture and is a legal, valid and binding obligation of the Issuer and the Guarantors, enforceable against the Issuer and the Guarantors in accordance with its terms (subject to customary exceptions).

11.07. EXECUTION OF SUPPLEMENTAL INDENTURES.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this **Article Eleven** or the modifications thereby of the trusts created by this Indenture, the Trustee shall be provided with, and (subject to **Section 8.01**) shall be fully protected and indemnified by the Issuer in relying upon, in addition to the documents required by **Section 1.03**, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Subject to the preceding sentence, the Trustee shall sign such supplemental indenture if the same does not adversely affect the Trustee's own rights, duties or immunities under this Indenture or otherwise or adversely affect the rights, duties or immunities of the Holders under this Indenture or otherwise. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

11.08. EFFECT OF SUPPLEMENTAL INDENTURES.

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

11.09. REFERENCE IN NOTES TO SUPPLEMENTAL INDENTURES.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this **Article Eleven** shall bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

11.10. NOTICE TO HOLDERS OF SUPPLEMENTAL INDENTURES.

The Issuer shall cause notice of the execution of any supplemental indenture to be mailed promptly to each Holder, at such Holder's address appearing on the Note Register, briefly describing such supplemental indenture. Failure to deliver such notice, or any defect in such notes, shall not affect the legality or validity of such supplemental indenture.

XII. NOTE GUARANTIES

12.01. THE NOTE GUARANTIES.

Subject to the provisions of this **Article Twelve**, each Guarantor hereby irrevocably and unconditionally guarantees, jointly and severally, on a senior secured basis, to the Holders and to the Trustee (i) the full and punctual payment (whether at Stated Maturity, purchase pursuant to a Prepayment Offer, Fundamental Change Repurchase Offer, or Put Right Purchase Offer upon acceleration, upon a scheduled interest payment due date or otherwise) of the principal of, premium, if any, and interest on, and all other amounts payable (including any interest accruing at the Default Rate) under, the Notes, (ii) the full and punctual payment of all other amounts payable by the Issuer under the Indenture, the Notes and the Convertible Note Security Documents, and (iii) the full and prompt performance of each of the Issuer's obligations and covenants under this Indenture, the Notes and the other Convertible Note Security Documents. Upon failure by the Issuer to pay punctually any such amount, each Guarantor shall forthwith on demand pay the amount not so paid at the place and in the manner specified in the Indenture. Upon the failure by the Issuer to perform punctually any such obligation or covenant specified in the Indenture, the Note or the other Convertible Note Security Documents, each Guarantor forthwith on demand shall perform such obligation or comply with such covenant at the place in the manner specified in the Indenture, the Note or other Convertible Note Security Document, as applicable.

12.02. GUARANTY UNCONDITIONAL.

The obligations of each Guarantor hereunder are unconditional and absolute and, without limiting the generality of the foregoing, will not be released, discharged or otherwise affected by

(i) any extension, renewal, settlement, compromise, waiver, concession, release or any other indulgence in respect of any obligation of the Issuer under the Indenture, any Convertible Note Security Document or any Note, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to the Indenture, any Convertible Note Security Document or any Note;

(iii) any change in the corporate existence, structure or ownership of the Issuer, or any insolvency, bankruptcy, reorganization, liquidation or other similar proceeding affecting the Issuer or its assets or any resulting release or discharge of any obligation of the Issuer contained in the Indenture, any Convertible Note Security Document or any Note;

(iv) the existence of any valid defenses, claim, set-off or other rights which the Guarantor may have at any time against the Issuer, the Trustee or any other Person, whether in connection with the Indenture or any unrelated transactions, provided that nothing herein prevents the assertion of any such claim by separate suit or compulsory counterclaim;

(v) any invalidity or unenforceability relating to or against the Issuer for any reason of the Indenture, any Convertible Note Security Document or any Note, or any provision of applicable law or regulation purporting to prohibit the payment by the Issuer

(vi) any limitation of status or power or other circumstance relating to the Issuer or any other Person;

(vii) any failure by the Issuer or any Guarantor, whether or not the fault of the Issuer or such Guarantor, to perform or comply with any of the provisions of the Indenture, any Convertible Note Security Document or any Note;

(viii) the taking or enforcing or exercising or the refusal to neglect to take or enforce or exercise any right or remedy from or against the Issuer or any other Person or their respective assets or the release or discharge of such right or remedy;

(ix) the occurrence of any change in laws, rules, regulations, ordinances of any jurisdiction by any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting or purporting to amend, vary, reduce, or otherwise affect any of the obligations of the Issuer or Guarantor(s);

(x) the recovery of any judgment against the Issuer;

(xi) the failure to perfect any security interest of the Collateral Agent and/or the Holders or record any Convertible Note Security Document;

(xii) the accuracy or inaccuracy of any representations, warranties or covenants made by the Issuer or any other Person in the Indenture, Convertible Note Security Documents and/or Notes;

(xiii) any of the Convertible Note Security Documents, Notes or Indenture being irregular or not genuine or authentic; or

(xiv) any other act or omission to act or delay of any kind by the Issuer, the Trustee or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to such Guarantor's obligations hereunder.

12.03. DISCHARGE; REINSTATEMENT.

Each Guarantor's obligations hereunder will remain in full force and effect until the principal of, premium, if any, and interest on (and all other amounts outstanding with respect to) the Notes and all other amounts payable by the Issuer under the Indenture and the Convertible Note Security Documents have been paid in full. If at any time any payment of the principal of, premium, if any, or interest on any Note or any other amount payable by the Issuer under the Indenture is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Issuer or otherwise, each Guarantor's obligations hereunder with respect to such payment (as well as the Guarantor's obligations with respect to the performance of each of the Issuer's obligations and covenants under this Indenture, the Note and the other Convertible Note Security Documents) will be reinstated as though such payment had been due but not made

at such time (or such performance of such obligation or covenant had been due but not made at such time).

12.04. WAIVER BY THE GUARANTORS.

Each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken (whether first or otherwise) by any Person against the Issuer or any other Person.

12.05. SUBROGATION AND CONTRIBUTION.

Upon making any payment with respect to any obligation of the Issuer under this **Article Twelve**, the Guarantor making such payment will be subrogated to the rights of the payee against the Issuer with respect to such obligation, provided that such Guarantor may not enforce either any right of subrogation, or any right to receive payment in the nature of contribution, or otherwise, from any other Guarantor or the Issuer, with respect to such payment so long as any amount payable by the Issuer hereunder or under the Notes remains unpaid.

12.06. STAY OF ACCELERATION.

If any payment or acceleration of the time for payment of any amount payable by the Issuer under the Indenture or the Notes is stayed upon the insolvency, bankruptcy or reorganization of the Issuer, all such amounts and all other amounts otherwise subject to acceleration under the terms of the Indenture are nonetheless payable by the Guarantors hereunder forthwith on demand by the Trustee or the Holders.

12.07. LIMITATION ON AMOUNT OF GUARANTY.

Notwithstanding anything to the contrary in this **Article Twelve** (but subject to **Section 12.10** hereof), each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guaranty of such Guarantor not constitute a fraudulent conveyance under applicable fraudulent conveyance provisions of the Bankruptcy Law or any comparable provision of state law. To effectuate that intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor under its Note Guaranty are limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the Bankruptcy Law or any comparable provision of state law.

12.08. EXECUTION AND DELIVERY OF GUARANTY.

The execution by each Guarantor of the Indenture (or a Supplemental Indenture substantially in the form of **Exhibit B**) evidences the Note Guaranty of such Guarantor, whether or not the person signing as an officer of the Guarantor still holds that office at the time of authentication of any Note. The delivery of any Note by the Trustee after authentication constitutes due delivery of the Note Guaranty set forth in the Indenture on behalf of each Guarantor.

12.09. RELEASE OF GUARANTY.

The Note Guaranty of a Guarantor will terminate upon

(i) in the case of a Restricted Subsidiary of the Issuer, a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor, in each case, permitted by the Indenture;

(ii) in the case of a Foreign Subsidiary of the Issuer that ceases to be a Material Foreign Subsidiary, the cessation of such Foreign Subsidiary to be a Material Foreign Subsidiary;

(iii) in the case of a Restricted Subsidiary of the Issuer, the designation in accordance with the Indenture of the Guarantor as an Unrestricted Subsidiary; or

(iv) discharge of the Notes, as provided in **Article Ten** hereto.

Upon delivery by the Issuer to the Trustee of an Officer's Certificate and an Opinion of Counsel to the foregoing effect, the Trustee will execute any documents reasonably required in order to evidence the release of the Guarantor from its obligations under its Note Guaranty.

12.10. CONTRIBUTION BY GUARANTORS.

All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under the Note Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under the Note Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under the Note Guaranty in respect of the obligations guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under the Note Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this **Section 12.10**, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of Note Guaranty (including in respect of this **Section 12.10**), minus (2) the aggregate

amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this **Section 12.10**. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this **Section 12.10** shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this **Section 12.10**.

XIII. SECURITY ARRANGEMENTS

13.01. SECURITY.

(a) In order to secure the Obligations of the Issuer under this Indenture and the Notes, the Issuer will execute and deliver to the Trustee and Collateral Agent on or prior to the Issue Date each Convertible Note Security Document to which it is or is to be a party that is intended to be effective upon the Issue Date and create the Liens intended to be created thereunder, with the priority set forth therein and in the Intercreditor Agreement **[and the Subordination Agreement]**, on the Collateral. In order to secure the Obligations of each Guarantor under its Note Guaranty, this Indenture and the Notes, each Guarantor will execute and deliver to the Collateral Agent and Trustee on or prior to the Issue Date each Convertible Note Security Document to which it is or is to be a party that is intended to be effective upon the Issue Date and create the Liens intended to be created thereunder, perfected and with the priority set forth therein and in the Intercreditor Agreement **[and the Subordination Agreement]**, on the Collateral.

(b) Within forty five (45) days after the Issuer or any Guarantor acquires any property in which Collateral Agent is entitled to a perfected security interest pursuant to the Convertible Note Security Documents that is not automatically subject to a perfected security interest under the Convertible Note Security Documents, the Issuer or Guarantor shall notify the Collateral Agent thereof and, in each case at the sole cost and expense of the Issuer or Guarantor, within forty-five (45) days (or, in the case of real property, Foreign Intellectual Property (as defined in the Convertible Note Pledge and Security Agreement) and Foreign Assets (as defined in the Convertible Note Pledge and Security Agreement), **[ninety (90)]** days) after obtaining such property, execute and deliver to the Collateral Agent such mortgages, security agreement supplements and other documentation (in form and scope, and covering such Collateral on such terms, in each case consistent with the mortgages, security agreements and other security documents in effect on the Issue Date), and take such additional actions (including any of the actions described in Section 3.18(b)), as may be reasonably appropriate or advisable to create and fully perfect in favor of the secured parties under the Convertible Note Security Documents a valid and enforceable security interest in (and in the case of real property, mortgage lien on) such Collateral, which shall be free of any other Liens except for Permitted Liens (including, in the case of the Secondary Collateral, the first-priority Lien of the holders of Bank Obligations). Any security interest provided pursuant to this Section 13.01(b) shall be accompanied with such Opinions of Counsel to the Issuer and/or Guarantors (as applicable) as customarily given by Issuer's and/or Guarantors' (as applicable) counsel in the relevant jurisdiction, in form and substance customary for such jurisdiction. In addition, the Issuer shall deliver an Officer's

Certificate to the Collateral Agent certifying that the necessary measures have been taken to perfect the security interest in such property.

(c) The Issuer and the Guarantors shall comply in all material respects with all covenants and agreements contained in the Convertible Note Security Documents.

(d) Notwithstanding any other provisions set forth herein or in the Convertible Note Security Documents, the Obligors shall not be required to grant or perfect any Liens in Excluded Property.

(e) Each Holder, by accepting a Note, agrees to all of the terms and provisions of the Convertible Note Security Documents, as the same may be amended from time to time pursuant to the provisions of the Indenture and the Convertible Note Security Documents.

(f) As among the Holders, the Collateral as now or hereafter constituted shall be held for the equal and ratable benefit of the Holders without preference, priority or distinction of any kind over any other by reason of differences in time of issuance, sale or otherwise, as security for the Obligations under this Indenture and the Notes.

(g) To the extent applicable, the Issuer will comply with Section 313(b) of the Trust Indenture Act, relating to reports, and Section 314(d) of the Trust Indenture Act, relating to the release of property and to the substitution therefor of any property to be pledged as Collateral for the Notes. Any certificate or opinion required by Section 314(d) of the Trust Indenture Act may be made by an Officer of the Issuer except in cases where Section 314(d) of the Trust Indenture Act requires that such certificate or opinion be made by an independent engineer, appraiser or other expert, who shall be reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary herein, the Issuer and its Subsidiaries will not be required to comply with all or any portion of Section 314(d) of the Trust Indenture Act if they determine, in good faith based on advice of outside counsel, that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the Commission and its staff, including “no action” letters or exemptive orders, all or any portion of Section 314(d) of the Trust Indenture Act is inapplicable to the released Collateral.

(h) Notwithstanding any other provisions set forth herein, solely to the extent that any Obligor owns, as of the Issue Date, any real property, fixtures or other property at any location (or series of adjacent, contiguous or related locations, and regardless of the number of parcels) that has a fair market value in an amount equal to or greater than $500,000, such Obligor shall execute and deliver to Collateral Agent, on or before the Issue Date, a mortgage or deed of trust for the benefit of Collateral Agent, in form and substance satisfactory to Required Holders, encumbering such real property, fixtures and other property ("**Closing Date Mortgages**"). Notwithstanding any other provisions set forth herein, solely to the extent that any Obligor hereafter acquires any real property, fixtures or any other related property that is adjacent to, contiguous with or necessary or related to or used in connection with any property subject to any of the Closing Date Mortgages (or any other mortgages or deeds of trust entered into for the benefit of Collateral Agent), or if such real property is not adjacent to, contiguous with or related to or used in connection with property subject to any of the Closing Date Mortgages (or any other mortgages or deeds of trust entered into for the benefit of Collateral Agent), then if such

real property, fixtures or other property at any location (or series of adjacent, contiguous or related locations, and regardless of the number of parcels) has a fair market value in an amount equal to or greater than $500,000, within ninety (90) days after acquiring such real property, fixtures and/or other related property, such Obligor shall execute and deliver to Collateral Agent a mortgage or deed of trust, in form and substance substantially similar to the Closing Date Mortgages and as to any provisions relating to specific state laws satisfactory to required Holders and in form appropriate for recording in the real estate records of the jurisdiction in which such real property or other property is located granting to Collateral Agent a first lien and mortgage on and security interest in such real property, fixtures or other property (except as such Obligor would otherwise be permitted to incur hereunder or under the Closing Date Mortgages) and such other agreements, documents and instruments as Collateral Agent may require in connection therewith.

13.02. CASH COLLATERAL ACCOUNT.

(a) All Casualty Proceeds received by the Trustee, the Collateral Agent, the Issuer or any Guarantor in respect of Primary Collateral shall be deposited and held in the Cash Collateral Account and be released from that account as provided in **Section 13.02(b)** below.

(b) Amounts held in the Cash Collateral Account may only be released to the Issuer or the applicable Guarantor for use as permitted by **Section 3.11(b)** or **Section 3.11(c)** (as if such amounts consisted of Net Available Cash from an Asset Sale) and, in the case of **Section 3.11(c)**, will be released to the Issuer or the applicable Guarantor if remaining after the consummation of the Prepayment Offer.

(c) Notwithstanding the foregoing, the Issuer will not be required to so deposit any Casualty Proceeds to the extent that it furnishes the Collateral Agent and the Trustee with an Officer's Certificate certifying that it has invested an amount in compliance with **Section 3.11(b)** or **Section 3.11(c)** equal to, or in excess of, the amount of such proceeds in anticipation of receipt of such funds.

(d) The Issuer and Guarantors will be required to comply with the requirements of **Section 13.05** before any Collateral held in the Cash Collateral Account may be released from the Lien of the Convertible Note Security Documents.

13.03. AUTHORIZATION OF ACTIONS TO BE TAKEN.

(a) Each Holder of a Note, by its acceptance thereof, is deemed to have authorized and empowered the Trustee to enter into the Convertible Note Security Documents, whether as Trustee or Collateral Agent, and to receive for the benefit of the Holders of Notes any funds collected or distributed under the Convertible Note Security Documents to which the Trustee and/or Collateral Agent is a party and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

(b) Subject to the provisions of **Article Eight** and the [Intercreditor Agreement], the Trustee, in its sole discretion and without the consent of the Holders of Notes, may, or at the

direction of the Required Holders, the Trustee shall, direct on behalf of the Holders of Notes, the Collateral Agent to take all actions it deems necessary or appropriate in order to:

(i) during the existence of an Event of Default, foreclose upon and take possession of all Collateral pursuant to, or take any other action to enforce, the provisions of the Convertible Note Security Documents;

(ii) enforce any of the terms of the Intercreditor Agreement, the Subordination Agreement and the Convertible Note Security Documents to which the Trustee or the Collateral Agent is a party; or

(iii) collect and receive payment of all obligations in respect of the Notes, the Note Guaranties and this Indenture.

Subject to the Intercreditor Agreement and **Article Eight**, the Trustee is authorized and empowered to institute and maintain such suits and proceedings as it may deem expedient to protect or enforce the Liens on the Collateral or the other rights under the Convertible Note Security Documents to which the Trustee or the Collateral Agent is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of such Convertible Note Security Documents or this Indenture, and such suits and proceedings as the Trustee or the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral, including 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 Liens or other rights under such Convertible Note Security Documents or hereunder or be prejudicial to the interests of Holders or the Trustee.

13.04. DETERMINATIONS RELATING TO COLLATERAL.

In the event (i) the Trustee shall receive any written request from the Issuer, a Guarantor or the Collateral Agent under any Convertible Note Security Document for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's or such Guarantor's obligations with respect thereto, (ii) there shall be due to or from the Trustee or the Collateral Agent under the provisions of any Convertible Note Security Document any material performance or the delivery of any material instrument or (iii) the Trustee shall become aware of any nonperformance by the Issuer or a Guarantor of any covenant or any breach of any representation or warranty of the Issuer or such Guarantor set forth in any Convertible Note Security Document, any Notes or this Indenture, then, in each such event, the Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Trustee on the manner in which the Trustee should respond, or direct the Collateral Agent to respond, to such request or render any requested performance or respond, or direct the Collateral Agent to respond, to such nonperformance or breach; provided that the Trustee's right to direct the Collateral Agent to respond shall be subject to the terms of the Convertible Note Security Documents. The Trustee shall be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney or agreed to by the Required Holders or the Notifying Holders, as applicable.

13.05. RELEASE OF LIENS.

(a) The Liens on the Collateral securing the Notes will be released:

(i) upon payment in full in cash of principal, interest and all other Obligations on the Notes issued under the Indenture or discharge or defeasance thereof (in accordance with **Article Ten**);

(ii) upon release of a Note Guaranty in accordance with this Indenture (with respect to the Liens securing such Note Guaranty granted by such Guarantor); and

(iii) in connection with any disposition of Collateral to any Person other than the Issuer or any of its Restricted Subsidiaries (and also excluding any transaction subject to **Section 6.01** or **Section 6.02** where the recipient is required to become an Obligor) that is permitted by the Indenture (solely with respect to the Lien on such Collateral); and

(iv) in the case of Secondary Collateral, **[as described in Section ___ of the Intercreditor Agreement.]**

(b) Upon delivery to the Trustee of an Officer's Certificate requesting execution of an instrument confirming the release of the Liens pursuant to **Section 13.05(a)**, accompanied by:

(i) an Opinion of Counsel confirming that such release is permitted by **Section 13.05(a)**;

(ii) all instruments requested by the Issuer to effectuate or confirm such release; and

(iii) such other certificates and documents as the Trustee may reasonably request to confirm the matters set forth in **Section 13.05(a)**, the Trustee will, if such instruments and confirmation are reasonably satisfactory to the Trustee, promptly execute and deliver, such instruments.

(c) All instruments effectuating or confirming any release of any Liens will have the effect solely of releasing such Liens as to the Collateral described therein, on customary terms and without any recourse, representation, warranty or liability whatsoever.

(d) The Issuer will bear and pay all reasonable costs and expenses associated with any release of Liens pursuant to this **Section 13.05**, including all reasonable fees and disbursements of any attorneys or representatives acting for the Trustee and/or for the Collateral Agent.

(e) Any release of Collateral in accordance with the provisions of this Indenture, the Convertible Note Security Documents and the Trust Indenture Act will not be deemed to impair the security under this Indenture, and any engineer or appraiser may rely on this **Section 13.05(e)** in delivering a certificate requesting release so long as all other provisions of this Indenture and the Trust Indenture Act with respect to such release have been complied with.

13.06. REPLACEMENT OF REVOLVING CREDIT AGREEMENT.

If the Issuer at any time discharges its obligations under the Revolving Credit Agreement or the lenders thereunder release all Liens thereunder, and then the Issuer subsequently enters into a new Credit Facility, the Obligations under which are secured by Liens on assets of the Issuer and the Guarantors that do not (in whole or in part) constitute Permitted Liens (excluding for this purpose Permitted Liens under clauses (b) or (p) of the definition thereof), then (i) the new Credit Facility will be afforded the same priorities vis-à-vis the holders of the Notes with respect to the Liens as set forth in the existing Intercreditor Agreement (subject to compliance with the limits otherwise set forth in this Indenture (including **Section 3.10**) and the Intercreditor Agreement) and (ii) each Holder of a Note, by its acceptance thereof, is deemed to have authorized and empowered the Collateral Agent to enter into a new intercreditor agreement with such new creditors on terms and conditions substantially similar to the Intercreditor Agreement.

13.07. AGREEMENT FOR THE BENEFIT OF HOLDERS OF FIRST PRIORITY LIENS.

The Trustee and each Holder of Notes by accepting a Note agrees, that:

(a) The Liens on the Secondary Collateral securing the Obligations under this Indenture and the Notes are, to the extent and in the manner provided in the Intercreditor Agreement, subject to and subordinate in ranking to all present and future Liens on the Secondary Collateral securing the Senior Secured Bond Obligations and the Revolving Credit Obligations; and the Intercreditor Agreement will be enforceable by the holders of the Liens securing the Senior Secured Bond Obligations and the Revolving Credit Obligations, until the satisfaction pursuant to the terms thereof of all such Obligations outstanding at the time of such release.

(b) Without the necessity of any consent of the Trustee or any Holder of the Notes, the holders of the Bank Obligations may change, waive, modify or vary any Revolving Credit Security Document relating to Secondary Collateral with respect to which such holders have a first priority Lien, subject to the limitations set forth in the Intercreditor Agreement; provided, that the Trustee shall be given notice of any such change, waiver, modification or variance.

(c) Without the necessity of any consent of the Trustee or any Holder of the Notes, the holders of the Senior Secured Bond Obligations may change, waive, modify or vary any Senior Secured Bond Security Document relating to Secondary Collateral with respect to which such holders have a first priority Lien, subject to the limitations set forth in the Intercreditor Agreement; provided, that the Trustee shall be given notice of any such change, waiver, modification or variance.

(d) As among the agent under the Revolving Credit Agreement, the Trustee and the Holders of the Notes and the holders of the Bank Obligations, the holders of the Bank Obligations and the agent under the Revolving Credit Agreement will have the sole ability to control and obtain remedies with respect to all Secondary Collateral without the necessity of any consent or of any notice to the Trustee, or any such Holder, subject to the limitations set forth in the Intercreditor Agreement.

(e) As among the Senior Secured Bond Agent, the Trustee and the Holders of the Notes and the holders of the Senior Secured Bond Obligations, the holders of the Senior Secured Bond Obligations and the Senior Secured Bond Agent will have the sole ability to control and obtain remedies with respect to all Secondary Collateral without the necessity of any consent or of any notice to the Trustee, or any such Holder, subject to the limitations set forth in the Intercreditor Agreement.

(f) Any or all Liens as set forth in, and granted under the Convertible Note Security Documents relating to the Secondary Collateral (but not the proceeds thereof) for the benefit of the Holders will be automatically (to the extent permitted by law) and simultaneously released, without the necessity of any consent of the Trustee or any Holders, upon a release of the first priority Liens on such Collateral, subject to the exceptions and limitations set forth in the Intercreditor Agreement including without limitation any release of the first priority Liens from the Secondary Collateral upon payment in full of the Bank Obligations or the Senior Secured Bond Obligations (in which case, the Liens granted under the Convertible Note Security Documents in the Secondary Collateral shall not be released pursuant to this **Section 13.07(f)** or otherwise).

13.08. NOTES AND NOTE GUARANTIES NOT SUBORDINATED.

The provisions of **Sections 13.06** and **13.07** are intended solely to set forth the relative ranking, as Liens, of the Liens on the Secondary Collateral as against the Liens on the Primary Collateral. The Notes and the Note Guaranties are general secured senior obligations of the Issuer and the Guarantors subordinate to the Bank Obligations and the Senior Secured Bond Obligations. Neither the Notes and the Note Guaranties nor the exercise or enforcement of any right or remedy for the payment or collection thereof (other than the exercise of rights and remedies in respect of the Collateral, which are subject to the Intercreditor Agreement) are intended to be, or will ever be by reason of the provisions of **Sections 13.06** and **13.07**, in any respect subordinated, deferred, postponed, restricted or prejudiced.

XIV. MISCELLANEOUS

14.01. TRUST INDENTURE ACT CONTROLS.

If any provision of the Indenture limits, qualifies or conflicts with another provision which is required to be included in the Indenture by the TIA, the required provision shall control. If any provision of the Indenture modifies any TIA provision that may be so modified, such TIA provision shall be deemed to apply to the Indenture as so modified. If any provision of the Indenture excludes any TIA provision that may be so excluded, such TIA provision shall be excluded from the Indenture.

The provisions of TIA §§310 through 317 that impose duties on any Person (including the provisions automatically deemed included unless expressly excluded by the Indenture) are a part of and govern the Indenture, whether or not physically contained herein.

14.02. NOTICES.

Except for notice or communications to Holders, any notice or communication shall be given in writing and when received if delivered in person, when receipt is acknowledged if sent by facsimile, on the next Business Day if timely delivered by a nationally recognized courier service that guarantees overnight delivery or two Business Days after deposit if mailed by first-class mail, postage prepaid, addressed as follows:

If to the Issuer:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Fax: (408)774-7443
Attn: Chief Financial Officer

With a copy to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Fax: (650) 463-2600
Telephone: (650) 328-4600
Attn: Tad J. Freese, Esq.

If to the Trustee, Registrar (to the extent that Trustee is acting as Registrar) or Paying Agent (to the extent that Trustee is acting as Paying Agent):

Law Debenture Trust Company of New York
400 Madison Avenue, 4th Floor
New York, New York 10017
Fax: (212) 750-1361
Attn: Corporate Trust Administration

All notices or communications delivered by means other than provided in this **Section 14.02** shall be effective when received.

Notices or communications to a Guarantor will be deemed given if given to the Issuer.

The Issuer or the Trustee by written 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 it by first-class mail, postage prepaid, at his address shown on the Note 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 to a Holder is mailed in the manner provided above, it shall be deemed duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by the Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

14.03. COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS.

Holders may communicate pursuant to TIA §312(b) with other Holders with respect to their rights under the Indenture or the Notes. The Issuer, the Trustee, the Registrar and anyone else shall have the protection of TIA §312(c).

14.04. RULES BY TRUSTEE AND AGENTS.

The Trustee may make reasonable rules for action by or meetings of Holders. The Registrar and Paying Agent may make reasonable rules for their functions.

14.05. LEGAL HOLIDAYS.

A "Legal Holiday" is a Saturday, a Sunday or other day on which (i) commercial banks in the City of New York are authorized or required by law to close or (ii) the New York Stock Exchange is not open for trading. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, provided that interest shall accrue for the intervening period.

14.06. GOVERNING LAW; SUBMISSION TO JURISDICTION, WAIVER OF TRIAL BY JURY, ETC.

(a) THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES ARE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW, SECTION 5-1401).

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF SUCH STATE, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER

PROVIDED BY LAW. NOTHING IN THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES SHALL AFFECT ANY RIGHT THAT THE TRUSTEE OR ANY HOLDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES AGAINST THE ISSUER OR ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) THE PARTIES HERETO AND EACH HOLDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS INDENTURE, THE NOTE GUARANTEES AND THE NOTES. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY HERETO AND EACH HOLDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE OR EXIST. EACH OF THE PARTIES TO THIS INDENTURE AND EACH HOLDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE PARTIES HERETO AND THE HOLDERS.

(d) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(e) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 14.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(f) THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES OR BY PRIOR OR CONTEMPORANEOUS WRITTEN AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF.

14.07. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

The Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Issuer or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

14.08. SUCCESSORS.

All agreements of the Issuer or any Guarantors in the Indenture and the Notes shall bind their respective successors. All agreements of the Trustee, any additional trustee and any Paying Agents in the Indenture shall bind its successor.

14.09. MULTIPLE COUNTERPARTS.

The parties may sign multiple counterparts of the Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and 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.

14.10. SEPARABILITY.

Each provision of the Indenture shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purpose of the Indenture or 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.

14.11. TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents, cross-reference sheet and headings of the Articles and Sections of the Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

14.12. CALCULATIONS.

Except as otherwise provided herein, the Issuer will be responsible for making all calculations called for under the Indenture and the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of Common Stock, accrued interest payable on the Notes, any make-whole calculations and the Conversion Rate of the Notes. The Issuer will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Issuer will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent is entitled to rely conclusively upon the accuracy of the Issuer's calculations without independent verification. The Trustee will deliver a copy of such schedule to any Holder upon the request of such Holder.

14.13. 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 in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

SPANSION INC.,
as Issuer

By: _____
Name:
Title:

SPANSION LLC,
as Guarantor

By: _____
Name:
Title:

SPANSION TECHNOLOGY LLC,
as Guarantor

By: _____
Name:
Title:

SPANSION INTERNATIONAL, INC.,
as Guarantor

By: _____
Name:
Title:

CERIUM LABORATORIES LLC,
as Guarantor

By: _____
Name:
Title:

LAW DEBENTURE TRUST COMPANY OF NEW YORK,
as Trustee

By: _____
Name:
Title:

SCHEDULE A

Make-Whole Table

The following table sets forth the number of Additional Shares to be added to the Conversion Rate, per $1,000 principal amount of Notes, pursuant to **Section 5.02** of this Indenture:

Additional Make-Whole Shares Per $1,000 Bond

[TO BE COMPLETED]

SCHEDULE B

List of Unrestricted Subsidiaries

[TO BE COMPLETED]

SCHEDULE C

Outstanding Indebtedness

[TO BE COMPLETED]

SCHEDULE D

Existing Liens

[TO BE COMPLETED]

EXHIBIT A

[FACE OF NOTE]

[GLOBAL NOTE LEGEND]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("**DTC**"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS NOTE MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A NOTE REGISTERED, AND NO TRANSFER OF THIS NOTE IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

SPANSION INC.

4.75% Convertible Senior Secured Note due 2017

No. 1 $_____

CUSIP No.: _____
ISIN Number:_____

Spansion Inc., a Delaware corporation, promises to pay to Cede & Co., or its registered assigns, the principal sum of $_____ as revised by the Schedule of Increases or Decreases in Global Note attached hereto, on _____.

Interest Payment Dates: January 31 and July 31, commencing July 31, 2010.

Interest Record Dates: January 15 and July 15.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into Common Stock, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed.

SPANSION INC.,
as the Issuer

By: _____
Name: Dario Sacomani
Title: Chief Financial Officer

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Senior Secured Notes Due 2014 referred to in the within-mentioned Indenture.

LAW DEBENTURE TRUST COMPANY OF NEW YORK,
as Trustee

By: _____
Authorized Signatory

Dated: _____

Signature Page to Global Note

[REVERSE OF NOTE]

SPANSION INC.

4.75% Convertible Senior Secured Convertible Note due 2017

1. Interest

SPANSION INC., a Delaware corporation, as issuer (the "**Issuer**"), promises to pay, until the principal hereof is paid in full in cash, interest on the principal amount then outstanding at a rate of 4.75% per annum. Interest hereon will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid or, if no interest has been paid, from and including [ ], 20__ to but excluding the date on which interest is paid. Interest shall be payable semi-annually in arrears on each July 31 and January 31, commencing July 31, 2010. Interest on this Note will be computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding any other provisions set forth herein or in the Indenture, interest shall accrue at 6.75% per annum, at Trustee's option or at the direction of the Notifying Holders, without notice, (i) either (A) for the period on and after the date of termination hereof until such time as all Obligations hereunder and under the Indenture and the Convertible Note Security Documents are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Trustee. If a payment date is not a Business Day, payment will be made on the next succeeding Business Day, and no additional interest will accrue in respect of such payment by virtue of the payment being made on such later date.

All dollar amounts used in or resulting from any calculations set forth herein shall be rounded to the nearest cent (with one half cent being rounded upwards).

The interest rate on the Notes will in no event be higher than the maximum rate permitted by New York law as the same may be modified by United States law of general application.

2. Paying Agent, Registrar and Conversion Agent

Initially, Law Debenture Trust Company of New York (the "**Trustee**"), will act as Paying Agent, Note Registrar and Conversion Agent. The Issuer may appoint and change any Paying Agent, Note Registrar or co-registrar or Conversion Agent without notice. The Issuer or any of its domestically organized Wholly Owned Subsidiaries may act as Paying Agent, Note Registrar or co-registrar, or Conversion Agent.

3. Indenture and Guaranty

The Issuer issued the Notes under an Indenture dated as of [ ], 2010 (the "**Indenture**"), among the Issuer, Spansion LLC, a Delaware limited liability company, as guarantor, Spansion Technology LLC, a Delaware limited liability company, as guarantor, Spansion International, Inc., a Delaware corporation, as guarantor, Cerium Laboratories LLC, a Delaware limited liability company, as guarantor, the other guarantors party hereto, and the Trustee. This is one of

an issue of Notes of the Issuer issued, or to be issued, under the Indenture. The terms of the Notes include those stated in the Indenture those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§77aaa-77bbbb), as amended from time to time. The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of them. Each Holder of a Note agrees to and shall be bound by such provisions. Capitalized and certain other terms herein and not otherwise defined herein have the meanings set forth in the Indenture.

The Notes are general obligations of the Issuer, secured by Liens on the Collateral pursuant to the Convertible Note Security Documents. The Indenture limits the original aggregate principal amount of the Notes to **[$237,500,000]**. This Note is guaranteed as set forth in the Indenture.

4. Conversion

In compliance with the provisions of the Indenture, at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Stated Maturity Date of this Note, the Holder hereof has the right, at its option, to convert each $1,000 principal amount of this Note into shares of Common Stock, determined as set forth in the Indenture, based on an initial Conversion Rate of 83.333333 shares of Common Stock per $1,000 principal amount of Notes, as the same may be adjusted pursuant to the terms of the Indenture.

5. Offers To Purchase

The Indenture provides that upon the occurrence of a Fundamental Change or an Asset Sale and subject to further limitations contained therein, the Issuer shall make an offer to purchase outstanding Notes in accordance with the procedures set forth in the Indenture, (i) in the case of a Fundamental Change, at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the date of repurchase and (ii) in the case of an Asset Sale, at a purchase price equal to the lesser of (a) 100% of their principal amount, plus accrued and unpaid interest and any other amounts outstanding under the Notes, if any, to the date of repurchase and (b) the Net Available Cash from such Asset Sale (with the balance of the Obligations under the Indenture and the Notes after giving effect to such Asset Sale (and the subsequent purchase of Notes, if any), if any, remaining outstanding and payable by Obligors under the Indenture and the Notes).

6. Put Right

On or after **[INSERT DATE THAT IS 6 YEARS AFTER ISSUE DATE]**, each Holder shall have the right, at such Holder's option, to require the Issuer to repurchase all of such Holder's Notes or any portion thereof in accordance with the provisions of **Section 4.05** of the Indenture.

7. Call Right

The Notes are redeemable at the option of the Issuer at any time **[INSERT DATE THAT IS SIX YEARS AFTER ISSUE DATE]** in accordance with the provisions of **Section 4.07** of the Indenture.

8. Denominations, Transfer, Exchange

The Notes are in registered form without coupons in denominations of $1,000 and whole multiples of $1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. Upon any transfer or exchange, the Note Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes required by law or permitted by the Indenture.

9. Persons Deemed Owners

The registered Holder of this Note may be treated as the owner of it for all purposes.

10. Defaults and Remedies

Events of Default are set forth in the Indenture. Subject to certain limitations in the Indenture, if an Event of Default (other than an Event of Default specified in **Section 7.01(vii)** or **7.01(viii)** of the Indenture with respect to the Issuer, SLLC or any Significant Subsidiary) occurs and is continuing, the Trustee or the Notifying Holders may, and the Trustee at the written request of such Holders shall, declare due and payable, if not already due and payable, the principal of and any accrued and unpaid interest on (and all other amounts outstanding with respect to) all of the Notes by notice in writing to the Issuer and Trustee specifying the applicable Event of Default and that it is a "notice of acceleration", and the same shall immediately become due and payable. If an Event of Default specified in **Section 7.01(vii)** and **7.01(viii)** of the Indenture occurs with respect to any Issuer, SLLC or any Significant Subsidiaries then the principal of and any accrued and unpaid interest on all of the Notes (and all other amounts outstanding on account of the Notes) shall immediately become due and payable without any declaration or other act on the part of the Trustee or any Holder. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnification satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Required Holders may direct the Trustee in its exercise of any trust or power. Subject to the applicable provisions of the Indenture, the Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal of, or interest on, the Notes) if it determines that withholding notice is in their best interests.

11. No Recourse Against Others

No past, present or future director, officer, employee, member or stockholder of the Issuer in its capacity as such, shall have any liability for any obligations of the Issuer under the Notes, the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liabilities. The waiver and release are part of the consideration for issuance of the Notes.

12. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Note.

13. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

14. Discharge

The Issuer's obligations pursuant to the Indenture will be discharged, except for obligations that survive pursuant to certain sections thereof, subject to the terms of the Indenture, upon the payment of all the Notes or upon defeasance in accordance with **Article Ten** of the Indenture.

15. Trustee Dealings with the Issuer

Subject to certain limitations imposed by the Trust Indenture Act, the Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Issuer or its Affiliates, may otherwise deal with the Issuer or its Affiliates, as if it were not Trustee.

16. Restrictive Covenants

The Indenture imposes certain limitations on the ability of the Issuer and its Restricted Subsidiaries to, among other things, incur additional Debt, pay dividends on, redeem or repurchase its Capital Stock, make certain investments, sell assets, create restrictions on the payment of dividends or other amounts to the Issuer from any Restricted Subsidiaries, enter into transactions with Affiliates, expand into unrelated businesses, create liens or consolidate or merge or sell all substantially all of the assets of the Issuer and its Restricted Subsidiaries and requires the Issuer to provide certain reports to Holders of the Notes. Such limitations are subject to a number of important qualifications and exceptions. Pursuant to the Indenture, the Issuer must annually report to the Trustee on compliance with such limitations.

17. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Issuer at its written request. After that, Holders entitled to the money must look to the Issuer for payment as general creditors unless an "abandoned property" law designates another Person.

18. Amendment, Supplement, Waiver, Etc.

All amendments, supplements and waivers with respect to the Notes shall be made in accordance with the provisions of the Indenture.

19. Successor Obligor

When a Surviving Person assumes all the obligations of its predecessor under the Notes and Indenture and the transaction complies with the terms of **Article Six** of the Indenture, the predecessor will, except as provided in **Article Six**, be released from those obligations.

20. Governing Law

Section 14.06 of the Indenture is hereby incorporated herein by reference.

21. CUSIP and ISIN Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Securities Identification Procedures, the Issuer has caused CUSIP and ISIN numbers to be printed on the Notes and has directed the Trustee to use CUSIP and 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 Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be to:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Fax: (408) 774-7443
Telephone: (408) 749-4000
Attn: Legal Department

With a copy to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Fax: (650) 463-2600
Telephone: (650) 328-4600
Attn: Tad J. Freese, Esq.

SCHEDULE OF INCREASES OR DECREASES
IN THE PRINCIPAL AMOUNT OF THIS GLOBAL NOTE

The following increases or decreases in the principal amount of this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such increase or decrease	Signature of authorized signatory of Trustee

[FORM OF CONVERSION NOTICE]

To: SPANSION INC.

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion thereof (which is $1,000 or a multiple thereof) below designated, into, shares of Common Stock of Spansion Inc. in accordance with the terms of the Indenture referred to in this Note, and directs that the shares issuable and deliverable upon such conversion, any cash in lieu of fractional shares or otherwise payable upon conversion hereof and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If shares or any portion of this Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated: _____ _____

_____

Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____

Signature Guarantee

Fill in the registration of shares of Common Stock to be issued, and Notes, if any, to be delivered, and the person to whom payment for fractional shares or any other cash payment, if any, is to be made, if, other than to and in the name of the registered Holder.

Please print name and address

(Name)

(Street Address)

(City, State and Zip Code)

Principal amount to be converted (if less than all, must be $1,000 or whole multiples thereof):

$

Social Security or Other
Taxpayer Identification Number:

NOTICE: The signature on this Conversion Notice must correspond with the name as written upon the face of the Notes in every particular without alteration or enlargement or any change whatever.

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: SPANSION INC.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Spansion Inc. (the "**Issuer**") as to the occurrence of a Fundamental Change with respect to the Issuer and specifying the Fundamental Change Repurchase Date and requests and instructs the Issuer to repay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated:_____ _____

_____
Signature(s)

Social Security or Other
Taxpayer Identification Number

Principal amount to be repaid (if less than all):
$,000

NOTICE: The signature on the Fundamental Change Repurchase must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF PUT RIGHT REPURCHASE NOTICE]

To: SPANSION INC.

The undersigned registered owner of this Note hereby requests and instructs Spansion Inc. to repay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note on [ ], 20[ ] (the applicable "**Put Right Repurchase Date**") (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Put Right Repurchase Date does not fall during the period after a Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Put Right Repurchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____ _____

_____
Signature(s)

Social Security or Other
Taxpayer Identification Number

Principal amount to be repaid (if less than all):
$,000

NOTICE: The signature on the Put Right Repurchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF OPTION OF HOLDER TO ELECT PURCHASE]

If you want to have only part of the Note purchased by the Issuer pursuant to **Section 3.11** of the Indenture, state the amount you elect to have purchased:

$ _____
(multiple of $1,000)

Date:_____ Your signature: _____
(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee: _____

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

[FORM OF ASSIGNMENT AND TRANSFER]

For value received hereby sell(s), assign(s) and transfer(s) unto (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints attorney to transfer the said Note on the books of the Issuer, with full power of substitution in the premises.

Dated:_____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

(i) The Securities Transfer Agent Medallion Program (STAMP);

(ii) The New York Stock Exchange Medallion Program (MNSP);

(iii) The Stock Exchange Medallion Program (SEMP) or

(iv) another guarantee program acceptable to the Trustee.

_____

_____

Signature Guarantee(s)

EXHIBIT B

FORM OF SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE (the "Supplemental Indenture") dated as of [ ], among [insert name of each Guarantor executing this Supplemental Indenture and its jurisdiction of incorporation] (each an "Undersigned"), SPANSION INC., a Delaware corporation (the "Issuer"), and LAW DEBENTURE TRUST COMPANY OF NEW YORK, as trustee under the indenture referred to below (the "Trustee").

W I T N E S S E T H :

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an indenture (as amended, restated, supplemented and/or otherwise modified, the "Indenture") dated as of [ ], 2010, providing for the issuance of the Issuer's Convertible Senior Secured Notes due 2017 (the "Notes"), initially in the aggregate principal amount of $237,500,000;

WHEREAS, **Section 3.13** of the Indenture provides that under certain circumstances the Issuer is required to cause the Undersigned to execute and deliver to the Trustee a supplemental indenture pursuant to which the Undersigned shall unconditionally guarantee all the Issuer's Obligations under the Notes and the Indenture pursuant to a Note Guaranty on the terms and conditions set forth herein; and

WHEREAS, pursuant to **Article Eleven** of the Indenture, the Trustee and the Issuer are 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 Undersigned, the Issuer and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined.

2. Agreement to Guarantee. The Undersigned hereby agrees, jointly and severally with all existing guarantors, to unconditionally guarantee the Issuer's Obligations under the Notes and the Indenture on the terms and subject to the conditions set forth in **Article Twelve** of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a guarantor under the Indenture.

3. Notices. All notices or other communications to the Undersigned shall be given as provided in **Section 14.02** of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture and Convertible Note Security Documents are in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture and Convertible Note Security Documents for all purposes, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby.

5. Governing Law. **Section 14.06** of the Indenture is hereby incorporated herein by reference.

6. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

7. 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.

8. Effect of Headings. The section headings herein are for convenience only and shall not effect the construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

[GUARANTOR]

By: _____
Name:
Title:

LAW DEBENTURE TRUST
COMPANY OF NEW YORK, as Trustee

By: _____
Name:
Title:

SPANSION INC.,
as Issuer

By: _____
Name:
Title:

Exhibit 7

Indenture and Form of Note for New Senior Notes

SPANSION INC.,

as Issuer,

the Guarantors party hereto,

and

LAW DEBENTURE TRUST COMPANY OF NEW YORK,

as Trustee

INDENTURE

Dated as of [ ], 2010

$[237,500,000]

Senior Secured Notes Due 2015

CROSS-REFERENCE TABLE

TIA Section		Indenture Section
310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	N.A.
	(a)(4)	N.A.
	(a)(5)	7.10
	(b)	7.08; 7.10
	(b)(i)	7.08; 7.10
	(c)	N.A.
311	(a)	7.11
	(b)	7.11
	(c)	N.A.
312	(a)	2.06
	(b)	12.03
	(c)	12.03
313	(a)	7.06
	(b)	7.08
	(b)(1)	N.A.
	(b)(2)	7.06
	(c)	7.06
	(d)	7.06
314	(a)	4.17
	(b)	N.A.
	(c)(1)	12.04
	(c)(2)	12.04
	(c)(3)	N.A.
	(d)	N.A.
	(e)	12.05
	(f)	N.A.
315	(a)	7.01(b)
	(b)	7.05
	(c)	7.01(a)
	(d)	7.01(c)
	(e)	6.12
316	(a) (last sentence)	2.10
	(a)(1)(A)	6.05
	(a)(1)(B)	6.04
	(a)(2)	N.A.
	(b)	6.08
	(c)	8.04(b)
317	(a)(1)	6.09
	(a)(2)	6.10
	(b)	2.05; 7.12
318	(a)	12.01

NOTE: This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture.

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SCHEDULES

INDENTURE, dated as of [], 2010, among SPANSION INC., a Delaware corporation, as issuer (the "**Issuer**"), SPANSION LLC, a Delaware limited liability company, as guarantor ("**SLLC**"), SPANSION TECHNOLOGY LLC, a Delaware limited liability company, as guarantor ("**Intermediate Holdco**"), SPANSION INTERNATIONAL, INC., a Delaware corporation, as guarantor ("**SI**"), and CERIUM LABORATORIES LLC, a Delaware limited liability company, as guarantor ("**CL**" and together with SLLC, Intermediate Holdco, SI and any other Person that Guarantees the Notes from time to time, the "**Guarantors**"), the other Guarantors party hereto from time to time and LAW DEBENTURE TRUST COMPANY OF NEW YORK, as trustee (the "**Trustee**").

WHEREAS, SLLC (as issuer), the Issuer (as guarantor), Intermediate Holdco (as guarantor), certain other guarantors and Wells Fargo Bank, National Association, in its capacity as trustee, entered into that certain Indenture dated as of March 18, 2007 (as amended, restated, supplemented and/or modified prior to the date hereof, the "**Prepetition Indenture**") pursuant to which SLLC issued $625,000,000 of Senior Secured Floating Rate Notes due 2013 (the "**Prepetition FRN Notes**");

WHEREAS, on March 1, 2009, the Issuer, SLLC, Intermediate Holdco and certain of the Issuer's domestic subsidiaries (together with the Issuer, SLLC and Intermediate Holdco, the "**Debtors**") each filed voluntary petitions for relief under Title 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (such cases, the "**Cases**");

WHEREAS, in conjunction with the Debtors' emergence from bankruptcy protection, the Debtors and certain of their creditors have agreed to restructure certain of their liabilities, including without limitation, the Debtors' liabilities under the Prepetition FRN Notes and the Prepetition Indenture;

WHEREAS, as part of such restructuring of the liabilities under the Prepetition FRN Notes and the Prepetition Indenture, the holders of the Prepetition FRN Notes have agreed to cancel $**[237,500,000]** of the Prepetition FRN Notes (and the corresponding guarantees) provided that as consideration for such cancellation, $**[237,500,000]** of Senior Secured Notes due 2015 are issued by the Issuer to such holders pursuant to the terms and conditions hereof (the "**Notes**"; as further defined in Section 1.01 below);

WHEREAS, the Issuer has authorized the issuance of the Notes; and

WHEREAS, the Issuer and each of the Guarantors have duly authorized the execution and delivery of this Indenture.

NOW, THEREFORE, in consideration of the premises and for the exchange of **[$237,500,000]** of the Prepetition FRN Notes for **[$237,500,000]** of the Notes by the Holders thereof, each party to this Indenture agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1.
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions*.

"**Additional Assets**" means:

(a) any Property (other than cash, Cash Equivalents and securities) to be owned by the Issuer or any Obligor and used in a Related Business;

(b) Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Issuer or another Restricted Subsidiary from any Person other than the Issuer or an Affiliate of the Issuer; *provided*, *however*, that such Restricted Subsidiary is primarily engaged in a Related Business; or

(c) Capital Stock of a Permitted Joint Venture; *provided however*, that the acquisition of such Capital Stock is permitted by Section 4.10.

"**Affiliate**" of any specified Person means:

(a) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; or

(b) any other Person who is a director or executive officer of:

(i) such specified Person;

(ii) any Subsidiary of such specified Person; or

(iii) any Person described in clause (a) above.

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

"**Affiliate Transaction**" has the meaning set forth in Section 4.15(a).

"**Agent**" means any Registrar, Paying Agent, Collateral Agent or agent for service or notices and demands.

"**Agent Member**" means a member of, or a participant in, the Depositary.

"**Aggregate Payments**" has the meaning set forth in Section 10.10.

"**Amend**" means amend, modify, supplement, restate or amend and restate, including successively; and "**Amending**" and "**Amended**" have correlative meanings.

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

"**Asset Sale**" means any sale, lease, transfer, issuance or other disposition (or series of related sales, leases, transfers, issuances or dispositions) by the Issuer or any Restricted

Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "**disposition**"), of

(a) any shares of Capital Stock of a Restricted Subsidiary (other than the directors' qualifying shares), or

(b) any other Property of the Issuer or any Restricted Subsidiary outside of the ordinary course of business of the Issuer or such Restricted Subsidiary,

other than, in the case of clause (a) or (b) above,

(i) any disposition by a Restricted Subsidiary to an Obligor or by a Restricted Subsidiary that is not an Obligor to another Restricted Subsidiary,

(ii) any disposition that constitutes a Permitted Investment or Restricted Payment permitted by Section 4.10,

(iii) any disposition effected in compliance with Section 5.01,

(iv) the sale or other disposition of cash, Cash Equivalents or the UBS Auction Rate Securities,

(v) the exchange of assets held by the Issuer or a Restricted Subsidiary of the Issuer for assets held by any Person (including Capital Stock of such Person), provided that (A) the assets received by the Issuer or such Restricted Subsidiary of the Issuer in any such exchange will immediately constitute, be part of or used in a Related Business, and (B) any such assets received are of a comparable Fair Market Value to the assets exchanged,

(vi) any disposition of surplus, discontinued, damaged or worn-out equipment or other immaterial assets no longer used in the ongoing business of the Issuer and its Restricted Subsidiaries in an aggregate amount not to exceed $1 million per year;

(vii) the sale of Capital Stock and/or other equity interests of Spansion Holdings (Singapore) Pte. Ltd. ("**Spansion Singapore**") by SLLC to Powertech Technology Inc. or the sale of the inventory, equipment or otherwise, in each case of Spansion Singapore by Spansion Singapore to Powertech Technology Inc. provided that, in each case, the sale proceeds are (A) reinvested in the Obligors to be used as working capital, (B) applied to the outstanding Revolving Credit Obligations, (C) used to fund capital expenditures of the Obligors and/or (D) used by the Obligors for any other permitted purposes under this Indenture; and

(viii) any disposition of the assets of the Issuer and/or the Restricted Subsidiaries in a single transaction or series of related transactions provided that the aggregate consideration with respect to all of such transactions does not exceed $5 million per year.

"**Attributable Debt**" in respect of a Sale and Leaseback Transaction means, at any date of determination, (a) if such Sale and Leaseback Transaction is a Capital Lease Obligation, the amount of Debt represented thereby according to the definition of "**Capital Lease Obligation**s," and (b) in all other instances, the present value (discounted at the interest rate implicit in such transaction, determined in accordance with GAAP) of the total obligations of the lessee for 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).

"**Average Life**" means, as of any date of determination, with respect to any Debt or Preferred Stock, the quotient obtained by dividing:

(a) the sum of the product of the number of years (rounded to the nearest one-twelfth of one year) from the date of determination to the dates of each successive scheduled principal payment of such Debt or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by

(b) the sum of all such payments.

"**Bank Collateral Agent**" means the administrative agent under the Revolving Credit Agreement.

"**Bank Obligations**" means all Revolving Credit Obligations secured by Liens on the Collateral that rank senior to the Liens securing the Notes with respect to the Secondary Collateral and junior to the Liens securing the Notes with respect to the Primary Collateral; provided that the amount of Debt in respect of such Revolving Credit Obligations does not exceed the applicable Revolver Cap Amount.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar U.S. Federal or state law or law of any other jurisdiction relating to bankruptcy, insolvency, winding-up, liquidation, reorganization or relief of debtors.

"**Board of Directors**" means the board of directors or board of managers of the referent person. Unless the context otherwise requires, "Board of Directors" shall refer to the managing member or Board of Directors, as applicable, of the Issuer.

"**Board Resolution**" means a copy of a resolution of the Board of Directors, certified by the Secretary or an Assistant Secretary, or an equivalent officer, to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

"**Bond Facility**" shall mean the credit facility evidenced by this Indenture, the Notes and the Security Documents (other than the Intercreditor Agreement).

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banking institutions in New York City are authorized or required by law to close.

"**Capital Expenditures**" means all liabilities incurred, expenditures made or payments due (whether or not made) by the Issuer or any of its Subsidiaries for the acquisition of any fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year, including the principal portion of Capital Lease Obligations.

"**Capital Lease Obligations**" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined 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 prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of Section 4.11, a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

"**Capital Stock**" means, with respect to any Person, any shares or other equivalents (however designated) of any class of corporate stock or partnership interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest in such Person, including Preferred Stock, but excluding any debt security convertible or exchangeable into such equity interest.

"**Capital Stock Sale Proceeds**" means the aggregate cash proceeds received by the Issuer from the issuance or sale (other than to a Guarantor or with respect to any Issuer Common Stock issued (i) pursuant to the Equity Incentive Plan, (ii) as Unsecured Creditors' Common Stock, (iii) as part of the Rights Offering or (iv) upon conversion of the Convertible Senior Secured Notes due 2017 to Issuer Common Stock in accordance with the provisions thereof) by the Issuer of its Capital Stock (other than Disqualified Stock) after the Issue Date, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

"**Cases**" shall have the meaning given to such term in the Recitals hereto.

"**Cash Collateral Account**" means the account to be established under the Pledge and Security Agreement to hold proceeds of Primary Collateral to the extent required hereby, which account will be secured by a perfected first priority lien for the benefit of the holders of the Notes.

"**Cash Equivalents**" means any of the following:

(a) United States dollars, Japanese yen or euros;

(b) Investments in U.S. Government Obligations maturing within 365 days of the date of acquisition thereof;

(c) certificates of deposit and eurodollar time deposits with maturities of 12 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 12 months and overnight bank deposits, in each case with any domestic commercial bank or any commercial bank in Japan or a member state of the European Union having capital and surplus in excess of $500 million;

(d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;

(e) commercial paper, having the highest rating obtainable from Moody's or S&P and in each case maturing within one year after the date of acquisition;

(f) money market funds at least 90% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (e) of this definition; and

(g) in the case of a Foreign Restricted Subsidiary, substantially similar investments, of comparable credit quality, denominated in the currency of any jurisdiction in which such person conducts business.

"**Casualty Event**" means any damage to, or destruction of, any real or personal property or improvements that constitute Collateral.

"**Casualty Proceeds"** means (i) with respect to any Condemnation Event, all awards or payments received by the Issuer or any Guarantor by reason of such Condemnation Event, including all amounts received with respect to any transfer in lieu or anticipation of such Condemnation Event or in settlement of any proceeding relating to such Condemnation Event, and (ii) with respect to any Casualty Event, all insurance proceeds or payments with respect to Collateral which the Issuer or any Guarantor receives under any insurance policy by reason of such Casualty Event, plus the amounts of any deductibles under insurance policies with respect to Collateral and, if the Issuer or any Guarantor fails to maintain any insurance policy with respect to Collateral, the amounts which would have been available thereunder with respect to such Casualty Event had the Issuer or such Guarantor maintained an insurance policy.

"**Change of Control**" means the occurrence of any of the following events at any time after the Issue Date:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, whether as part of one transaction or a series of related transactions, of more than 50% of the total voting power of the Voting Stock of the Issuer; or

(b) the sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, whether as one transaction or a series of related transactions, of all or substantially all the Property of Issuer, SLLC or the Obligors taken as a whole, (other than a disposition of such Property (other than by Issuer) as an entirety or virtually as an entirety to a Wholly Owned Restricted Subsidiary that is an Obligor), shall have occurred or the Issuer or SLLC merges or consolidates with or into any other Person or any other Person merges or consolidates with or into the Issuer or SLLC, in any such event pursuant to a transaction in which the outstanding

Voting Stock of the Issuer or SLLC is reclassified into or exchanged for cash, securities or other Property, other than any such transaction where:

(i) the outstanding Voting Stock of the Issuer or SLLC (as applicable) is reclassified into or exchanged for other Voting Stock of the Issuer or SLLC (as applicable) or for Voting Stock of the Surviving Person; and

(ii) the holders of the Voting Stock of the Issuer or SLLC (as applicable) immediately prior to such transaction own, directly or indirectly, not less than a majority of the Voting Stock of the Issuer or SLLC (as applicable) or the Surviving Person immediately after such transaction and in substantially the same proportion as before the transaction; or

(c) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Issuer or SLLC (as applicable) (together with any new directors whose election or appointment by such Board or whose nomination for election by the stockholders of the Issuer or SLLC (as applicable) was approved by a vote of not less than a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute at least a majority of the Board of Directors of the Issuer or SLLC (as applicable) then in office;

(d) The Issuer ceases to directly or indirectly own 100% of the Capital Stock of SLLC; or

(e) the stockholders of the Issuer or any Obligors shall have approved any plan of liquidation or dissolution of the Issuer and/or SLLC, except, in the case of the liquidation or dissolution of SLLC, in connection with the merger of SLLC into the Issuer.

Notwithstanding any other provisions set forth in this definition, the merger of SLLC into the Issuer shall not constitute a Change of Control.

"**Change of Control Offer**" has the meaning set forth in Section 4.08(a).

"**Change of Control Payment Date**" has the meaning set forth in Section 4.08(b).

"**Change of Control Purchase Price**" has the meaning set forth in Section 4.08(a).

"**Claim**" has the meaning set forth in Section 7.06.

"**Closing Date Cash Payment"** means the cash payment made to the **[Trustee][trustee under the Prepetition Indenture]** for the benefit of the Prepetition FRN Noteholders on the Issue Date in partial payment of the indebtedness evidenced by the Prepetition FRN Notes in an amount equal to (i) $**[158.3]** million plus (ii) the amount of all accrued and unpaid interest accruing with respect to the FRN Claims (as defined in the Plan of Reorganization) from the Petition Date to the Issue Date.

"**Closing Date Mortgages**" shall have the meaning set forth in Section 11.01(g) of this Indenture and shall include that certain (i) Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement dated as of the date hereof between SLLC and [_____], for the benefit of Trustee, encumbering certain real property located in Travis County, Texas and (ii) Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement dated as of the date hereof by SLLC to [_____], for the benefit of Trustee, encumbering certain real property located in the City of Sunnyvale, Santa Clara County, California.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Collateral**" means all "Collateral" as defined in the Pledge and Security Agreement, including, without limitation, the Primary Collateral and the Secondary Collateral, but in all cases shall exclude the Excluded Property.

"**Collateral Agent**" means the Trustee in its capacity as the collateral agent or any collateral agent appointed by the Trustee pursuant to the Indenture and the Security Documents.

"**Collateral Requirement**" means the requirement that:

(1) all documents and instruments, including Uniform Commercial Code financing statements, mortgages and intellectual property security agreements and other recordings, required by law to be executed and/or filed, registered or recorded to create the Liens intended to be created by the Security Documents and perfect or record such Liens as valid Liens with priority set forth in the Security Documents free of any other Liens except for Permitted Liens, shall have been executed and/or filed, registered or recorded (as applicable); and

(2) the Collateral Agent shall have received, with respect to each property subject to a mortgage, counterparts of a mortgage duly executed and delivered by the record owner of such mortgaged property, a lender's title insurance policy insuring the lien of each mortgage, an existing survey of the mortgaged property and the Opinions of Counsel required pursuant to Section 4.17(b).

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Compliance Certificate**" shall have the meaning given to such term in Section 4.06(a) hereof.

"**Condemnation Event**" means any condemnation or other taking or temporary or permanent requisition of any Collateral, any interest therein or right appurtenant thereto, or any change of grade affecting any Collateral, as the result of the exercise of any right of condemnation or eminent domain. A transfer to a governmental authority in lieu or anticipation of condemnation shall be deemed to be a Condemnation Event.

"**Condition Precedent Letter Agreement**" shall mean that certain Letter Agreement dated as of _____ __, 2010 by and between the Issuer and the Ad Hoc Consortium (as defined in the Plan of Reorganization).

"**Confirmation Order"** that certain final order entered by the Bankruptcy Court approving the Plan of Reorganization (which is not subject to appeal, stay, injunction or contest).

"**Consolidated Cash Flow**" means, for any period, an amount equal to, for the Issuer and its Consolidated Restricted Subsidiaries:

(a) the sum of Consolidated Net Income for such period, plus the following to the extent reducing Consolidated Net Income for such period:

(i) the provision for taxes based on income or profits or utilized in computing net loss;

(ii) Consolidated Fixed Charges;

(iii) depreciation and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) of the Issuer and its Consolidated Restricted Subsidiaries for such period; and

(iv) any other non-cash unusual, non-operating and/or non-recurring expense or other loss (other than any such non-cash item to the extent that it represents an accrual of, or reserve for, cash expenditures in any future period);

(v) losses from any sale or disposition of Property and other assets (other than sales in the ordinary course of business) and any other extraordinary losses minus

(b) to the extent included in determining Consolidated Net Income, the sum of:

(i) actuarially determined minimum pension funding obligations,

(ii) gains from any sale or disposition of Property and other assets (other than sales in the ordinary course of business) and any other extraordinary gains; and

(iii) all non-cash, unusual, non-operating and/or non-recurring revenue or other gain (other than any such non-cash item to the extent that it will result in the receipt of cash payments in any future period).

"**Consolidated EBITDA**" shall mean, for any period, the sum (without duplication) of:

(a) Consolidated Net Income for such period, plus

(b) the amount which, in the determination of Consolidated Net Income for such period, has been deducted for (i) interest expense, (ii) total federal, state, local and foreign income taxes, (iii) depreciation, amortization expense and other non-cash charges (excluding non-cash charges that are expected to become cash charges in a future period or that are reserves for future cash charges), (iv) unusual, non-operating and/or non-recurring expenses and other losses, (v) other

cash restructuring charges in an aggregate amount not to exceed **[$_____]**[1] during any four fiscal quarter period, (vi) losses on any sale or disposition of Property or other assets (other than sales in the ordinary course of business) and any other extraordinary losses and (vii)pension plan expenses, all as determined in accordance with GAAP, minus

(c) the amount which, in determining such Consolidated Net Income for such period, had been added for (i) actuarially determined minimum pension funding obligations (ii) gains from any sale or disposition of Property or other assets, other than sales in the ordinary course of business and any other extraordinary gains and (iii) all non-cash gains (other than any such non-cash item to the extent that it will result in the receipt of cash payments in any future period) and (iv) unusual, non-operating and/or non-recurring revenue and any other gains. For the avoidance of doubt, Consolidated EBITDA shall not include any cancellation of indebtedness income arising in connection with the cancellation and discharge of any of the Obligors' Debt and other liabilities in connection with the Cases or otherwise.

"**Consolidated Fixed Charge Coverage Ratio**" means, as of any date of determination, the ratio of:

(a) the aggregate amount of Consolidated Cash Flow for the most recent four consecutive fiscal quarters for which internal financial statements are available; to

(b) Consolidated Fixed Charges for such four fiscal quarters; provided, however, that:

(i) if

(A) since the beginning of such period the Issuer or any Restricted Subsidiary has Incurred any Debt that remains outstanding or Repaid any Debt, or

(B) the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio is Repayment of Debt,

Consolidated Fixed Charges for such four-quarter period shall be calculated after giving effect on a *pro forma* basis to such Incurrence or Repayment as if such Debt was Incurred or Repaid on the first day of such four-quarter period; *provided* that, in the event of any such Repayment of Debt, Consolidated Cash Flow for such period shall be calculated as if the Issuer or such Restricted Subsidiary had not earned any interest income actually earned during such period in respect of the funds used to Repay such Debt; and

(ii) if

(A) since the beginning of such period the Issuer or any Restricted Subsidiary shall have made any Asset Sale or an Investment (by merger or otherwise) in any Restricted Subsidiary (or any Person that becomes a Restricted Subsidiary) or an acquisition of Property which constitutes all or substantially all of an operating unit of a business,

[1] Bracketed language is subject to discussion and agreement.

(B) the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio is such an Asset Sale, Investment or acquisition, or

(C) since the beginning of such period any Person, that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any Restricted Subsidiary since the beginning of such period, shall have made such an Asset Sale, Investment or acquisition,

then Consolidated Cash Flow for such four-quarter period shall be calculated after giving *pro forma* effect to such Asset Sale, Investment or acquisition as if such Asset Sale, Investment or acquisition had occurred on the first day of such four-quarter period.

If any Debt bears a floating rate of interest and is being given *pro forma* effect, the interest expense on such Debt shall be calculated as if the base interest rate in effect for such floating rate of interest on the date of determination had been the applicable base interest rate for the entire period (taking into account any Interest Rate Agreement applicable to such Debt if such Interest Rate Agreement has a remaining term in excess of 12 months). In the event the Capital Stock of any Restricted Subsidiary is sold during the period, the Issuer shall be deemed, for purposes of clause (i) above, to have Repaid during such period the Debt of such Restricted Subsidiary to the extent the Issuer and its continuing Restricted Subsidiaries are no longer liable for such Debt after such sale.

"**Consolidated Fixed Charges**" means, for any period, the total interest expense of the Issuer and its Consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest expense, and to the extent Incurred by the Issuer or its Restricted Subsidiaries, without duplication,

(a) any and all mandatory (including regularly scheduled) repayments of principal of Debt (other than principal payments on account of revolving loans unless such prepayment is accompanied by a corresponding reduction of the revolving commitments thereunder),

(b) interest expense attributable to leases constituting part of a Sale and Leaseback Transaction and to Capital Lease Obligations [and all other payments on account of Capital Expenditures][2],

(c) amortization of debt discount and debt issuance costs, including commitment fees,

(d) capitalized interest,

(e) non-cash interest expense,

(f) commissions, discounts and other fees and charges owed with respect to letters of credit and banker's acceptance financing,

(g) net costs associated with Hedging Obligations (including amortization of fees) related to Interest Rate Agreements,

[2] Bracketed language is subject to discussion and agreement.

(h) Disqualified Stock Dividends,

(i) Preferred Stock Dividends,

(j) interest Incurred in connection with Investments in discontinued operations, and

(k) interest actually paid by the Issuer or any Restricted Subsidiary on account of any Guarantee of Debt of any other Person.

"**Consolidated Net Income**" means, for any period, the net income (loss) of the Issuer and its Consolidated Restricted Subsidiaries; provided, however, that there shall not be included in such Consolidated Net Income (including the related tax effect):

(a) any net income of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary, except that, subject to the exclusion contained in clause (c) below, equity of the Issuer and its Consolidated Restricted Subsidiaries in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (b) below);

(b) any net income of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to the Issuer, except that, subject to the exclusion contained in clause (d) below, the equity of the Issuer and its Consolidated Restricted Subsidiaries in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the greater of (i) the aggregate amount of cash actually distributed by such Restricted Subsidiary during such period to the Issuer or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause (b)) and (ii) the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause (b));

(c) any gain or loss realized upon the sale or other disposition of any Property of the Issuer or any of its consolidated Subsidiaries (including pursuant to any Sale and Leaseback Transaction) that is not sold or otherwise disposed of in the ordinary course of business;

(d) any net extraordinary gain or loss;

(e) to the extent non-cash, any unusual, non-operating or non-recurring gain or loss;

(f) the cumulative effect of a change in accounting principles;

(g) any non-cash compensation expense realized for grants of performance shares, stock options or other rights to officers, directors and employees of the Issuer or any Restricted

Subsidiary; provided that such shares, options or other rights can be redeemed at the option of the holder only for Capital Stock of the Issuer (other than Disqualified Stock);

(h) any cash or non-cash expenses attributable to the closing of manufacturing facilities or the lay-off of employees, in either case which are recorded as "restructuring and other special charges" in accordance with GAAP; and

(i) gains or losses due to fluctuations in currency values.

Notwithstanding the foregoing, for purposes of Section 4.10 only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of Property from Unrestricted Subsidiaries to the Issuer or a Restricted Subsidiary to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under clause (a)(iii)(D) thereof. For the avoidance of doubt, Consolidated Net Income shall not include any cancellation of indebtedness income arising in connection with the cancellation and discharge of any of the Obligors' and/or other Restricted Subsidiaries' Debt and other liabilities in connection with the Cases or otherwise.

"**Consolidated Restricted Subsidiary**" means, for any Person, each Restricted Subsidiary of such Person (whether now existing or hereinafter created or acquired) the financial statements of which are consolidated for financial statement reporting purposes with the financial statements of such Person in accordance with GAAP.

"**Contributing Guarantors**" has the meaning set forth in Section 10.10.

"**Convertible Note Agent**" shall mean the trustee under the Convertible Note Indenture.

"**Convertible Note Facility**" shall mean that certain credit facility evidenced by the Convertible Note Indenture, the Convertible Senior Secured Notes due 2017 and the Convertible Note Security Documents.

"**Convertible Note Indenture**" shall mean that certain Indenture dated as of the date hereof providing for the issuance of up to [$237,500,000] of Convertible Senior Secured Notes due 2017 by the Issuer to the holders thereof, as amended, restated, supplemented and/or modified from time to time in accordance with the provisions hereof and thereof.

"**Convertible Note Obligations**" means the Obligations outstanding under the Convertible Senior Secured Notes due 2017 and the Convertible Note Indenture.

"**Convertible Note Security Documents**" shall have the meaning ascribed to "Convertible Note Security Documents" set forth in the Convertible Note Indenture, as in effect on the date hereof.

"**Convertible Senior Secured Notes due 2017**" means the 4.75% Convertible Senior Secured Notes due 2017 issued by the Issuer to the holders thereof in the aggregate original principal amount of up to **[$237,500,000].**

"**Corporate Trust Office**" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 400 Madison Avenue, 4th Floor, New York, New York 10017, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the principal Corporate Trust Office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

"**Covenant Defeasance**" has the meaning set forth in Section 9.01(b).

"**Credit Facilities**" means, with respect to the Issuer or any Restricted Subsidiary, one or more debt or commercial paper facilities with banks or other institutional lenders providing for revolving credit loans, term loans, notes, receivables or inventory financing (including through the sale of receivables or inventory to such lenders or to special purpose, bankruptcy remote entities formed to borrow from such lenders against such receivables or inventory) or trade or standby letters of credit, in each case as any such facility may be revised, restructured or Refinanced from time to time, including to extend the maturity thereof, to increase the amount of commitments thereunder (provided that any such increase is permitted under Section 4.09), or to add Restricted Subsidiaries as additional borrowers or guarantors thereunder, whether by the same or any other agent, lender or group of lenders or investors and whether such revision, restructuring or Refinancing is under one or more Debt facilities or commercial paper facilities, indentures or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters or credit, together with related documents thereto (including, without limitation, any guaranty agreements and security documents). Notwithstanding the foregoing, Credit Facilities shall not include Debt of the Obligors evidenced by the Notes, New Credit Facility or the Convertible Senior Secured Notes due 2017.

"**Creditors' Committee**" means the official committee of unsecured creditors of the Debtors appointed by the United States Trustee in the Cases pursuant to Section 1102 of the Bankruptcy Code as its composition has changed from time to time by addition, resignation or removal of its members.

"**Currency Exchange Protection Agreement**" means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

"**Custodian**" means any receiver, interim receiver, receiver and manager, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

"**Debt**" means, with respect to any Person on any date of determination (without duplication):

(a) the principal of and premium (if any) in respect of:

(i) debt of such Person for borrowed money; and

(ii) debt evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;

(b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale and Leaseback Transactions entered into by such Person;

(c) all obligations of such Person representing the deferred purchase price of Property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) 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 third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);

(e) the amount of all obligations of such Person with respect to the Repayment of any Disqualified Stock or, with respect to any Subsidiary of such Person, any Preferred Stock (but excluding, in each case, any accrued dividends);

(f) all obligations of the type referred to in clauses (a) through (e) above of other Persons, and all dividends of other Persons the payment of which, in either case, such Person is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(g) all obligations of the type referred to in clauses (a) through (f) above of other Persons secured by any Lien on any Property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such Property or the amount of the obligation so secured; and

(h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Debt of any Person at any date shall be the outstanding balance, or the accreted value of such Debt in the case of Debt issued with original issue discount, at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. The amount of Debt represented by a Hedging Obligation shall be equal to:

(i) zero if such Hedging Obligation has been Incurred pursuant to Section 4.09(vi) or (vii); or

(ii) the notional amount of such Hedging Obligation if not Incurred pursuant to such clauses.

"**Debtors**" shall have the meaning set forth in the Recitals hereto.

"**Default**" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"**Default Rate**" shall have the meaning given to such term in Section 4.01(b) hereof.

"**Definitive Notes**" means one or more certificated Notes registered in the name of the Holder thereof and issued in accordance with Section 2.07 hereof, substantially in the form of Exhibit A hereto, except that such Note shall not bear the DTC Legend and shall not have the "Schedule of Increases or Decreases in the Principal Amount of this Global Note" attached thereto.

"**Depositary**" or "**DTC**" means, with respect to the Notes issued or issuable in whole or in part in global form, the Person specified in Section 2.04 hereof as the Depositary with respect to the Notes, and any and all successors appointed as depositary hereunder and having become such pursuant to the applicable provisions of this Indenture, which successor must be a clearing agency registered under the Exchange Act.

"**Disclosure Statement**" means that certain Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization dated December 16, 2009 filed by Issuer.

"**Disqualified Stock**" means any Capital Stock of the Issuer or any of its Restricted Subsidiaries that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in either case at the option of the holder thereof) or otherwise:

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

(b) is or may become redeemable or repurchaseable at the option of the holder thereof, in whole or in part; or

(c) is convertible or exchangeable at the option of the holder thereof for Debt or Disqualified Stock,

on or prior to, in the case of clause (a), (b) or (c), 123 days following the Stated Maturity of the Notes. Notwithstanding the foregoing, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a Change of Control or an Asset Sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Issuer may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.10 hereof.

"**Disqualified Stock Dividends**" means all dividends with respect to Disqualified Stock of the Issuer held by Persons other than a Restricted Subsidiary. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one

and the maximum statutory federal income tax rate (expressed as a decimal number between 1 and 0) then applicable to the Issuer.

"**Domestic Restricted Subsidiary**" means any Restricted Subsidiary other than a Foreign Restricted Subsidiary.

"**Domestic Subsidiary**" means any Subsidiary of the Issuer other than a Foreign Subsidiary.

"**DTC Legend**" means the legend set forth in Section 2.07(f).

"**Environmental Law(s)**" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection, preservation or restoration of the environment or the release or threatened release of any materials into the environment.

"**Equity Incentive Plan**" shall mean that certain equity incentive plan pursuant to which up to 9,005,376 shares of the Issuer's common stock is available to be issued by the Issuer to employees, management and the directors of the Issuer and the Subsidiaries of the Issuer provided, however, that grants of no more than 3,752,240 shares of the Issuer's common stock may be issued for an exercise, conversion or purchase price below (i) in the 90 days following the Issue Date, the greater of (A) the value per share of the Issuer's common stock issued under the Plan of Reorganization or (B) the fair market value per share of the Issuer's common stock at the time of issuance and (ii) thereafter, the fair market value per share of the Issuer's common stock at the time of grant. Pursuant to the Plan of Reorganization, as of the Issue Date, the Equity Incentive Plan shall have a term of 10 years, and shall permit the issuance of up to 9,005,376 shares in the form of incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, and other standard equity incentive awards.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) that, together with the Obligors, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code. Notwithstanding the foregoing, for purposes of any liability related to a Multiemployer Plan under Title IV of ERISA, the term "ERISA Affiliate" means any trade or business that, together with the Obligors, is treated as a single employer within the meaning of Section 4001(b) of ERISA.

"**ERISA Event**" means (a) a "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder for which the notice requirement has not been waived with respect to any Pension Plan, (b) the existence with respect to any Pension Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan, (d) the incurrence by any Obligor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, (e) the receipt by

any Obligor or any ERISA Affiliate from the PBGC or plan administrator of any notice relating to an intention to terminate any Pension Plan or Pension Plans or to appoint a trustee to administer any Pension Plan, (f) the receipt by any Obligor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Obligor or any ERISA Affiliate of any notice of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or (g) the incurrence by any Obligor, Subsidiary or Affiliate of any liability with respect to any Foreign Plan as a result of any noncompliance with the terms of such Foreign Plan, the failure to satisfy any applicable funding requirements, or any violation of applicable foreign law.

"**Event of Default**" has the meaning set forth in Section 6.01.

"**Excess Proceeds**" has the meaning set forth in Section 4.12(c).

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

"**Excluded Property**" means the following:

(i) any General Intangible, Chattel Paper, Instrument or Account which by its terms prohibits the creation of a Lien therein (whether by assignment otherwise), except to the extent that Sections 9-406(d), 9-407(a) or 9-408(a) of the UCC are effective to render any such prohibition ineffective; provided, however, that if any General Intangible, Chattel Paper, Instrument or Account contains any term restricting or requiring consent of any Person (other than a Grantor) obligated thereon to any exercise of remedies under the applicable Security Documents in respect of the Liens therein granted under the granting clause in the applicable Security Documents, then the enforcement of such Lien under the applicable Security Documents shall be subject to obtaining consent thereto (but such provision shall not limit the creation, attachment or perfection of the Liens under such Security Document);

(ii) any Property that is subject to an agreement which by its terms prohibits the creation of a Lien therein (whether by assignment or otherwise or that would provide the third party to such agreement the right to terminate such agreement), except to the extent that Sections 9-406(d), 9-407(a) or 9-408(a) of the UCC are effective to render any such prohibition ineffective; provided, however, that if any such agreement contains any term restricting or requiring consent of any Person (other than a Grantor) obligated thereon to any exercise of remedies under the applicable Security Documents in respect of the Lien therein granted under the granting clause in the applicable Security Document (and no restriction on the creation, attachment or perfection of the Lien), then the enforcement of such Lien under the applicable Security Document shall be subject to obtaining a consent) (but such provision shall not limit the creation, attachment or perfection of the Lien in such Property under the applicable Security Document);

(iii) any permit, lease, license (including any License) or franchise to the extent any Law applicable thereto is effective to prohibit the creation of a Lien therein;

(iv) any Equipment (including any Software incorporated therein) or other Property owned by any Grantor on the date hereof or hereafter acquired that is subject to

a Lien securing a purchase money obligation or Capital Lease Obligations permitted to be incurred pursuant to the provisions of this Indenture to the extent that the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money obligation or Capitalized Lease) validly prohibits the creation of any other Lien on such Property or provides that the creation of any such Lien would provide the third party to such agreement the right to terminate such agreement;

(v) in excess of 65% of any of the outstanding Equity Interests (with voting rights) of a controlled foreign corporation (as defined in Section 957(a) of the Code) owned by any Grantor (or such other amount as would result in adverse tax consequences for any Grantor) unless such controlled foreign corporation is a Material Foreign Subsidiary (in which case, subject to the Legal Limitations, the Property that is Collateral shall include (and the Excluded Property shall not include) 100% of the Equity Interests of such foreign controlled corporation, including 100% of the Equity Interests holding the voting power of all classes of Equity Interests of such Material Foreign Subsidiary);

(vi) the UBS Auction Rate Securities; and

(vii) any "intent-to-use" application for Trademark registration filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051, prior to the filing under Section 1(c) or Section 1(d) of the Lanham Act of a "Statement of Use" or an "Amendment to Allege Use" with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a Lien therein prior to such filing would impair the validity or enforceability of any registration that issues from such intent-to-use Trademark application under applicable federal law.

With respect to the property described in clauses (i) through (iv) of this definition, such property shall constitute Excluded Property only to the extent and for so long as the creation of a Lien on such property in favor of the Collateral Agent is, and remains, validly prohibited or subject to a right to terminate the underlying agreement, and upon termination of such prohibition or right (however occurring), such property shall cease to constitute Excluded Property (and shall thereafter constitute Collateral for all purposes). Notwithstanding any other provisions set forth herein, capitalized terms used but not defined in this definition shall have the meanings ascribed to them in the Pledge and Security Agreement.

"**FAC Regulations**" has the meaning set forth in Section 4.26(p).

"**Fair Market Value**" means, with respect to any Property, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided,

(a) if such Property has a Fair Market Value equal to or less than $25 million, by any Officer of the Issuer (in his or her good faith judgment), or

(b) if such Property has a Fair Market Value in excess of $25 million, by at least a majority of the Board of Directors and evidenced by a Board Resolution dated within 30 days before the relevant transaction.

"**Fair Share**" has the meaning set forth in Section 10.10

"**Fair Share Contribution Amount**" has the meaning set forth in Section 10.10.

"**Foreign Intellectual Property Security Agreements**" shall mean those certain intellectual property security agreements evidencing the Obligors' grant of security interest in their respective intellectual property registered outside of the United States. Foreign Intellectual Property Security Agreements shall include and the Obligors shall enter into an intellectual property security agreement for each of the following jurisdictions, in each case, in accordance with Section 4.01(p) of the Pledge and Security Agreement: Japan, China, Canada, Germany, Britain, Hong Kong, Singapore, South Korea and Taiwan.

"**Foreign Plan**" means any employee pension, deferred compensation, or other retirement plan, program, or arrangement (other than a Pension Plan) contributed to or maintained by any Obligor, Subsidiary or Affiliate with respect to any employees employed outside of the United States.**"Foreign Pledge Agreements**" shall mean those certain Pledge Agreements (one for each such Subsidiary) evidencing SLLC's pledge of its Capital Stock (other than the Excluded Property) in Spansion Holdings (Singapore) Pte. Ltd., Spansion (Thailand) Limited and Saifun Semiconductors Ltd. (Israel).

"**Foreign Restricted Subsidiary**" means any Foreign Subsidiary that is not an Unrestricted Subsidiary.

"**Foreign Subsidiary**" means any Subsidiary of the Issuer that is not formed under the laws of the United States of America or any jurisdiction thereof.

"**Funding Guarantor**" has the meaning set forth in Section 10.10

"**GAAP**" means generally accepted accounting principles consistently applied as in effect in the United States from time to time.

"**Global Note**" means a Note in registered global form without interest coupons substantially in the form of Exhibit A hereto.

"**Guarantee**" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise), provided, however, that the term "Guarantee" shall not include:

(i) endorsements for collection or deposit in the ordinary course of business; or

(ii) a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute a Permitted Investment under clauses (a)(i), (a)(ii) or (a)(iii) of the definition of "Permitted Investment".

The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means (i) SLLC, (ii) Intermediate Holdco, (iii) SI, (iv) CL, (v) each other Domestic Restricted Subsidiary (other than any Domestic Restricted Subsidiary of the Issuer that is owned directly or indirectly by a Foreign Subsidiary that is not a Guarantor), (vi) each Material Foreign Subsidiary, and (vii) each other Person that Guarantees the Notes until such time as such Person is released from its Guarantee. Each of the Guarantors shall constitute Restricted Subsidiaries.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, mold and all other substances or wastes of any nature regulated or subject to regulation pursuant to any Environmental Law (including, any that are or become classified as hazardous or toxic under any Environmental Law).

"**Hedging Obligation**" of any Person means any obligation of such Person pursuant to any Interest Rate Agreement, Currency Exchange Protection Agreement or any other similar agreement or arrangement.

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

"**Incur**" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by merger, conversion, exchange or otherwise), extend, assume, Guarantee or become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or 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, and is not theretofore classified as Debt, becoming Debt shall not be deemed an Incurrence of such Debt; *provided further, however,* that any Debt or other obligations of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary.

"**Indenture**" means this Indenture as amended, restated or supplemented from time to time.

"**Independent Financial Advisor**" means an investment banking firm of national standing or any third-party appraiser with national standing in the Untied States, *provided* that such firm or appraiser is not an Affiliate of the Issuer or any other Obligor.

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

"**Intellectual Property Security Agreements**" means (i) that certain Trademark Security Agreement dated as of the date hereof by and between Collateral Agent and Obligors, (ii) that certain Patent Security Agreement dated as of the date hereof by and between Collateral Agent and Obligors and (iii) that certain Copyright Security Agreement dated as of the date hereof by

and between Collateral Agent and Obligors, as each may be amended, restated, supplemented and/or modified from time to time.

"**Intercreditor Agreement**" means the Intercreditor Agreement dated on or about the Issue Date among Bank of America, N.A., as Bank Collateral Agent, the Trustee, as trustee and the Collateral Agent under this Indenture, **[Law Debenture Trust Company of New York, as trustee and collateral agent under the Convertible Note Indenture] [AGENT UNDER NEW CREDIT FACILITY]** and as acknowledged by the Issuer and each other Guarantor named therein, as such agreement may be amended, restated, supplemented or otherwise modified from time to time.

"**Interest Payment Date**" means July 31 and January 31 of each year, commencing July 31, 2010.

"**Interest Rate**" means 10.75% per annum.

"**Interest Rate Agreement**" means, for any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement designed to protect against fluctuations in interest rates.

"**Intermediate Holdco**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party pursuant to Article Five and thereafter means the successor.

"**Investment**" by any Person means any direct or indirect loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person), advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, or Incurrence of a Guarantee of any obligation of, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Debt issued by, any other Person. For purposes of Sections 4.10 and 4.16 and the definition of "Restricted Payment," the term "Investment" shall include (a) upon the issuance, sale or other disposition of Capital Stock of any Restricted Subsidiary to a Person other than the Issuer or another Restricted Subsidiary as a result of which such Restricted Subsidiary ceases to be a Restricted Subsidiary, the Fair Market Value of the remaining interest, if any, in such former Restricted Subsidiary held by the Issuer or such other Restricted Subsidiary, and (b) at the time that a Subsidiary of the Issuer is designated an Unrestricted Subsidiary, the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary; *provided, however,* that upon a redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary of an amount (if positive) equal to:

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

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

In determining the amount of any Investment made by transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such Investment.

"**Issue Date**" means [], 2010, being the date that the Notes are originally issued. **[SAME AS PLAN EFFECTIVE DATE]**

"**Issuer**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party pursuant to Article Five and thereafter means the successor.

"**Issuer Common Stock**" means New Equity of Issuer, par value $0.01 per share, to be issued or reserved for issuance by Issuer on or after the Issue Date pursuant to the Plan of Reorganization.

"**Issuer Governing Documents**" means the amended and restated certificate of incorporation or organization and amended and restated bylaws or certificate of incorporation or formation, in each case, of the Issuer substantially consistent with the forms of such certificates and bylaws contained in the Plan Supplement (as defined in the Plan of Reorganization).

"**Legal Defeasance**" has the meaning set forth in Section 9.01(b).

"**Legal Holiday**" has the meaning set forth in Section 12.07.

"**Legal Limitations**" means any and all financial assistance, corporate benefit and other similar principles under any applicable law which prohibit, limit or otherwise restrict the ability of a Foreign Subsidiary to provide a Note Guaranty, or require that the Note Guaranty (or any collateral pledged as security for such a Foreign Subsidiary's obligations under such Note Guaranty) be limited by an amount or otherwise to the extent of such legal limitations.

"**Lien**" means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation, conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing or any Sale and Leaseback Transaction).

"**Material Adverse Effect**" means, any event, circumstance, happening or condition, which has resulted or is reasonably likely to result in a material adverse effect on (a) the operations, business, assets, condition (financial or otherwise), or results of operations of the Obligors taken as a whole, (b) the ability of the Obligors to pay or perform their obligations under this Indenture, the Notes or the other Security Documents, (c) the validity or enforceability of (i) this Indenture and the Notes, or (ii) the Security Documents, taken as a whole, (d) the rights of or benefits available to the Trustee, the Collateral Agent or the Holders under this Indenture, the Notes or any of the other Security Documents or (e) the validity, perfection or priority of the Liens on Collateral in favor of the Collateral Agent pursuant to the Security Documents.

"**Material Foreign Subsidiary**" has the meaning given to such term in Section 1.03 of the Pledge and Security Agreement.

"**Maturity Date**" when used with respect to any Note, means the date on which the principal amount of such Note becomes due and payable as therein or herein provided.

"**Moody's**" means Moody's Investors Service or any successor to the rating agency business thereof.

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"**Net Available Cash**" from any Asset Sale means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Debt or other obligations or liabilities relating to the Property that is the subject of such Asset Sale or received in any other non-cash form), in each case net of:

(a) all legal, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;

(b) all payments made on or in respect of any Debt that is secured by any Property subject to such Asset Sale, in accordance with the terms of any Lien upon such Property, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law, be repaid out of the proceeds from such Asset Sale;

(c) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale; and

(d) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the Property disposed of in such Asset Sale and retained by the Issuer or any Restricted Subsidiary after such Asset Sale until such amounts are no longer required to be held in reserve.

"**New Equity**" means all shares of common stock or other ownership interests of Issuer, authorized under the Plan of Reorganization as of the Issue Date and any additional shares or ownership interests authorized for the purposes specified in the Plan of Reorganization and as further described in the Issuer Governing Documents.

"New Credit Facility" means that certain credit facility consisting of new unsecured notes issued by or other unsecured debt obligations provided to one or more of the Debtors on or before the Issue Date in an aggregate original principal amount of up to $275 million**,** all of the proceeds from which, if any, shall be used by the Obligors to make all (or, if the Rights Offering closes, some) of the portion of the Closing Date Cash Payment in excess of $158.3 million.

"**New Credit Facility Obligations**" means the **["Obligations"]** as defined in **[_____]**.

"New Debt Documents" means the indentures, credit agreements, other documents governing the New Credit Facility and any guaranties, and intercreditor and/or subordination agreements executed in connection therewith.

"**Non-Recourse Debt**" means Debt:

(a) as to which neither the Issuer nor any Restricted Subsidiary provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Debt) or is directly or indirectly liable (as a guarantor or otherwise) or as to which there is any recourse to the assets of the Issuer or any Restricted Subsidiary; and

(b) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of other Debt of the Issuer or any Restricted Subsidiary to declare a default under such other Debt or cause the payment therefor to be accelerated or payable prior to its stated maturity.

"**Note Guaranty**" means the guaranty of the Notes by the Guarantors pursuant to this Indenture.

"**Notes**" means the Senior Secured Notes due 2015 issued by the Issuer on the Issue Date pursuant to this Indenture (and any notes issued in replacement thereof or exchange therefor), all of which are treated as a single class of securities.

"**Notice of Acceleration**" has the meaning set forth in Section 6.02(a).

"**Notice of Defaul**t" has the meaning set forth in Section 6.01.

"**Notifying Holders**" means the registered Holders of not less than 25% in the aggregate principal amount of the Notes then outstanding.

"**Obligations**" means, with respect to any Debt, all obligations (whether in existence or arising on the Issue Date or arising afterwards, absolute or contingent, direct or indirect) for or in respect of principal (when due, upon acceleration (or on a regularly scheduled payment date), upon redemption, upon mandatory repayment or repurchase pursuant to a mandatory offer to purchase, or otherwise), premium, interest, penalties, fees, indemnification, reimbursement and other amounts payable and liabilities with respect to such Debt, including all interest accrued or accruing after the commencement of any bankruptcy, insolvency or reorganization or similar case or proceeding at the contract rate (including, without limitation, any contract rate applicable upon default) specified in the relevant documentation, whether or not the claim for such interest is allowed as a claim in such case or proceeding.

"**Obligors**" means, collectively, the Issuer and the Guarantors and each, individually, an "**Obligor**."

"**OFAC Regulations**" shall have the meaning given to such term in Section 4.26(o).

"**Offer Amount**" has the meaning set forth in Section 4.12(e).

"**Offer Period**" has the meaning set forth in Section 4.12(e).

"**Officer**" means the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, the Secretary or any Executive Vice President of the Issuer or any other Obligor, as applicable.

"**Officer's Certificate**" means a certificate signed by an Officer of the Issuer and delivered to the Trustee.

"**Opinion of Counsel**" means a written opinion from legal counsel who is reasonably acceptable to the Trustee which meets the requirements of Section 12.04. The counsel may be an employee (who is an attorney) of or outside counsel to the Issuer, the other Obligors or the Trustee (as applicable).

"**Participant**" means a Person who has an account with the Depositary.

"**Paying Agent**" has the meaning set forth in Section 2.04.

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Pension Plan**" means any Plan that is a defined benefit pension plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Obligor or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Perfection Certificate**" means a certificate substantially in the form of Exhibit A attached to the Pledge and Security Agreement, completed by the Issuer and SLLC on behalf of itself and each other Grantor (as defined in the Pledge and Security Agreement).

"**Permitted Debt**" has the meaning set forth in Section 4.09.

"**Permitted Investment"** means any Investment by:

(a) the Issuer or a Restricted Subsidiary in existence on the Issue Date or by the Issuer or a Restricted Subsidiary in:

(i) the Issuer or any Obligor;

(ii) any Person that will, upon the making of such Investment, become an Obligor;

(iii) any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its Property to, the Issuer or an Obligor;

(iv) Cash Equivalents;

(v) receivables owing to the Issuer or a Restricted Subsidiary, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Issuer or such Restricted Subsidiary deems reasonable under the circumstances;

(vi) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(vii) loans and advances to employees made in the ordinary course of business consistent with past practices of the Issuer or a Restricted Subsidiary, as the case may be; provided that such loans and advances do not exceed $5 million in the aggregate at any one time outstanding;

(viii) stock, obligations or other securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or a Restricted Subsidiary or in satisfaction of judgments;

(ix) any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated in compliance with Section 4.12;

(x) Investments in Permitted Joint Ventures that do not exceed 10% of Total Assets of the Issuer in the aggregate outstanding at any time;

(xi) any acquisition of assets or Capital Stock solely in exchange for the issuance of Capital Stock (other than Disqualified Stock) of the Issuer;

(xii) Investments represented by Hedging Obligations if such Hedging Obligation has been Incurred pursuant to Section 4.09(vi) or (vii); and

(xiii) other Investments (other than Investments in any Issuer or Obligor) made for Fair Market Value that do not exceed $17.5 million in the aggregate outstanding at any one time.

(b) any Restricted Subsidiary (that is not an Obligor) in:

(i) another Restricted Subsidiary;

(ii) any Person that will, upon the making of such Investment, become a Restricted Subsidiary; and

(iii) any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its Property to, the Issuer or another Restricted Subsidiary.

"**Permitted Joint Venture**" means any Person which is, directly or indirectly, engaged principally in a Related Business, and the Capital Stock, or securities convertible into Capital Stock, of which is owned by the Issuer and one or more Persons other than the Issuer or any of its Affiliates.

"**Permitted Liens**" means:

(a) Liens securing the Notes, the Note Guaranties and other Obligations in respect thereof under the Indenture and the Security Documents;

(b) Liens on the Collateral to secure Debt permitted to be Incurred pursuant to Section 4.09(ii) (which Liens secure the Revolving Credit Obligations Incurred pursuant to clause (y) of such Section 4.09(ii) may be senior to the Liens on the Notes in the case of Secondary Collateral and shall be junior to the Liens on the Notes in the case of Primary Collateral and in other cases shall have junior Liens to the Notes);

(c) Liens to secure Debt permitted to be Incurred pursuant to Section 4.09(iii); provided that any such Lien may not extend to any Property of the Issuer or any Restricted Subsidiary, other than the Property acquired, constructed or leased with the proceeds of any such Debt and any improvements or accessions to such Property;

(d) Liens for taxes, assessments or governmental charges or levies on the Property of the Issuer and/or Restricted Subsidiary if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor;

(e) Liens imposed by law, such as carriers', landlords', warehousemen's and mechanics' Liens and other similar Liens, on the Property of the Issuer and/or Restricted Subsidiaries arising in the ordinary course of business and securing payment of obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;

(f) Liens on the Property of the Issuer and/or Restricted Subsidiaries Incurred in the ordinary course of business to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and Incurred in a manner consistent with industry practice, in each case which are not Incurred in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate impair in any material respect the use of Property in the operation of the business of the Issuer and the Restricted Subsidiaries taken as a whole;

(g) Liens on Property at the time the Issuer and/or Restricted Subsidiaries acquired such Property, including any acquisition by means of a merger or consolidation with or into the Issuer and/or such Restricted Subsidiary/Subsidiaries; provided, however, that any such Lien may not extend to any other Property of the Issuer or of any Restricted Subsidiary; *provided, further, however,* that such Liens shall not have been Incurred in anticipation of or in connection

with the transaction or series of transactions pursuant to which such Property was acquired by the Issuer and/or such Restricted Subsidiary/Subsidiaries;

(h) pledges or deposits by the Issuer and/or Restricted Subsidiaries under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Debt) or leases to which the Issuer and/or Restricted Subsidiary/Subsidiaries are party, or deposits to secure public or statutory obligations of the Issuer and/or Restricted Subsidiaries, surety or appeal bonds, performance bonds or deposits for the payment of rent or margin deposits, in each case Incurred in the ordinary course of business;

(i) utility easements, building restrictions and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character;

(j) Liens securing Debt permitted to be Incurred with respect to Hedging Obligations pursuant to Section 4.09 on collateral for such Debt to which the Hedging Obligations relate;

(k) Liens on the Capital Stock of any Unrestricted Subsidiary or any Foreign Restricted Subsidiary (that is not a Material Foreign Subsidiary) to secure Debt of that Subsidiary;

(l) Liens in favor of the Issuer or any Obligor;

(m) Liens existing on the Issue Date not otherwise described in clauses (a) through (l) above, each of which is listed on Schedule 3;

(n) Liens on the Property of the Issuer and/or Restricted Subsidiaries to secure any Permitted Refinancing Debt, in whole or in part, of any Debt secured by any Lien referred to in clauses (b), (c), (g), (m) or (o) of this definition; *provided however*, that any such Lien shall be limited to all or part of the same Property that secured the original Debt (together with any improvements and accessions to such Property) and the aggregate principal amount of Debt that is secured by such Lien shall not be increased to an amount greater than the sum of:

(i) the outstanding principal amount, or, if greater, the committed amount, of the Debt secured by Liens described under clause (b), (c), (g), (m) or (o) above, as the case may be, at the time the original Lien became a Permitted Lien under the Indenture; and

(ii) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by the Issuer and/or Restricted Subsidiaries in connection with such Refinancing;

(o) Liens securing the Convertible Note Obligations to the extent such Debt is permitted under Section 4.09(xii)(B) and provided that such Liens in the Collateral are junior in all respects to the Liens in the Collateral securing the Obligations under the Notes and this Indenture pursuant to subordination provisions set forth in the **[Convertible Note Indenture as in effect on the Issue Date]** and/or the Intercreditor Agreement;

(p) other Liens to secure Debt, so long as (i) the aggregate principal amount of Debt secured thereby does not exceed $100 million, (ii) such Debt is permitted under Section 4.09(xi) and (iii) such Liens are junior in all respects to the Liens securing the Obligations under this Indenture and the Notes;

(q) Liens on UBS Auction Rate Securities to secure Debt permitted to be Incurred pursuant to Section 4.09(xiv); and

(r) Liens shown as exceptions to title in the title insurance policies or commitments, to the extent that such exceptions are reasonably acceptable to Required Holders, issued in connection with the Closing Date Mortgages and any subsequent mortgages or deeds of trust executed pursuant to this Indenture and/or the Pledge and Security Agreement.

"**Permitted Refinancing Debt**" means any Debt that Refinances any other Debt, including any successive Refinancings, so long as:

(a) such Debt is in an aggregate principal amount (or if Incurred with original issue discount, an aggregate accreted value) not in excess of the sum of:

(i) the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding of the Debt being Refinanced, and

(ii) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, related to such Refinancing;

(b) the Average Life of such Debt is equal to or greater than the Average Life of the Debt being Refinanced;

(c) the Stated Maturity of such Debt is no earlier than the Stated Maturity of the Debt being Refinanced;

(d) the new Debt shall not be senior in right of payment to the Debt being Refinanced;

(e) the new Debt shall not be secured if the Debt being Refinanced was unsecured; and

(f) the new Debt shall not be secured by Liens senior to the Liens securing the Debt being Refinanced

provided, however, that Permitted Refinancing Debt shall not include:

(x) debt of a Subsidiary that Refinances Debt of the Issuer; or

(y) Debt of the Issuer or a Restricted Subsidiary that Refinances Debt of (i) an Unrestricted Subsidiary or (ii) a Foreign Subsidiary that is not a Material Foreign Subsidiary.

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

"**Petition Date**" shall mean March 1, 2009.

"**Plan**" means any employee benefit plan within the meaning of Section 3(3) of ERISA in which any Obligor or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA, including, but not limited to, any Pension Plan or Multiemployer Plan.

"**Plan of Reorganization**" means the Debtors' plan of reorganization which (i) provides for, *inter alia*, (x) the full payment or other satisfaction of the Prepetition Senior ABL Credit Facility, (y) the cancellation of the Prepetition FRN Notes and all indebtedness outstanding thereunder and under the Prepetition Indenture and (z) the payment or satisfaction in full of administrative and priority claims and expenses outstanding in connection with the Cases, and (ii) approves, in all respects, (A) the payment of the Closing Date Cash Payment, (B) the issuance of the Unsecured Creditors' Common Stock, (C) the issuance of common stock of the Issuer pursuant to the Rights Offering (to the extent that the Rights Offering Documents are entered into on the Issue Date), (D) the Equity Incentive Plan, (E) the terms of this Bond Facility, the Revolving Credit Facility, the Convertible Note Facility (to the extent entered into on the Issue Date) and the New Credit Facility (to the extent entered into on the Issue Date) and (F) the execution copies of this Indenture, the Security Documents, the Convertible Note Indenture (to the extent entered into on the Issue Date), the Convertible Note Security Documents (to the extent entered into on the Issue Date), the Rights Offering Documents (to the extent entered into on the Issue Date), the New Debt Documents (to the extent entered into on the Issue Date), the Revolving Credit Agreement and the Revolving Credit Security Documents.

"**Pledge and Security Agreement**" means that certain Pledge and Security Agreement dated as of the date hereof, among the Issuer, SLLC, the other Obligors party thereto from time to time, as Grantors, and Law Debenture Trust Company of New York, as Collateral Agent.

"**Preferred Stock**" means any Capital Stock of a Person, however designated, which entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

"**Preferred Stock Dividends**" means all dividends with respect to Preferred Stock of Restricted Subsidiaries held by Persons other than the Issuer or a Restricted Subsidiary. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income rate (expressed as a decimal number between 1 and 0) then applicable to the issuer of such Preferred Stock.

"**Prepayment Offer**" has the meaning set forth in Section 4.12(c).

"**Prepetition FRN Noteholders**" means the holders of the Prepetition FRN Notes immediately prior to the Issue Date.

"**Prepetition FRN Notes**" shall have the meaning set forth in the Recitals hereto.

"**Prepetition Indenture**" shall have the meaning set forth in the Recitals hereto.

"**Prepetition Senior ABL Credit Facility"** means that certain credit facility extended pursuant to that certain Credit Agreement dated September 19, 2005, as amended, by and among SLLC, Bank of America, N.A., as agent, and certain other lenders and other parties thereto.

["Primary Collateral" means "Noteholder Priority Collateral" as defined in the Intercreditor Agreement as in effect on the Issue Date, including, upon the payment in full of the **[Bank Obligations][Revolving Credit Obligations]** and the termination of the commitments under the Revolving Credit Agreement, all Secondary Collateral**.]**

"**Pro Forma**" means, with respect to any calculation made or required to be made pursuant to the terms hereof, a calculation performed in accordance with Article 11 of Regulation S-X promulgated under the Securities Act.

"**Property**" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities (including auction rate securities) of, any other Person and intellectual property. Unless expressly provided otherwise herein or in the Security Documents, for purposes of any calculation required pursuant to the Indenture, the value of any Property shall be its Fair Market Value.

"**Purchase Date**" has the meaning set forth in Section 4.12(d).

"**Purchase Money Debt**" means Debt:

(a) consisting of the deferred purchase price of Property, conditional sale obligations, obligations under any title retention agreement, other purchase money obligations and obligations in respect of industrial revenue bonds, in each case where the maturity of such Debt does not exceed the anticipated useful life of the Property being financed; and

(b) Incurred to finance the acquisition, construction or lease by the Issuer or a Restricted Subsidiary of such Property, including additions and improvements thereto;

provided, however, that such Debt is Incurred within 180 days after the acquisition, construction or lease of such Property by the Issuer or such Restricted Subsidiary.

"**Refinance**" means, in respect of any Debt, to refinance, extend, renew, refund or Repay, or to issue other Debt, in exchange or replacement for, such Debt. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Registrar**" has the meaning set forth in Section 2.04.

"**Regular Record Date**" for the interest payable on any Interest Payment Date means the July 15 and January 15 (whether or not a Business Day) immediately preceding such Interest Payment Date.

"**Related Business"** means any business that is related, ancillary or complementary to the businesses of the Issuer and the Restricted Subsidiaries on the Issue Date and any reasonable extension thereof.

"**Repay**" means, in respect of any Debt, to repay, prepay, repurchase, redeem, legally defease or otherwise retire such Debt. "**Repayment**" and "**Repaid**" shall have correlative meanings. For purposes of Section 4.12 and the definition of "Consolidated Fixed Charge Coverage Ratio," Debt shall be considered to have been Repaid only to the extent the related loan commitment, if any, shall have been permanently reduced in connection therewith.

"**Required Holders**" means the registered Holders of not less than 50% in the aggregate principal amount of the Notes then outstanding.

"**Responsible Officer**" means any officer of the Trustee within the corporate trust department of the Trustee including any senior vice president, vice president, assistant vice president, 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, with direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer of the Trustee to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"**Restricted Payment**" means:

(a) any dividend or distribution (whether made in cash, securities or other Property) declared or paid on or with respect to any shares of the Capital Stock of the Issuer or any Restricted Subsidiary (including any payment in connection with any merger or consolidation with or into the Issuer or any Restricted Subsidiary), except for (i) any dividend or distribution that is made solely to the Issuer or a Restricted Subsidiary (that is an Obligor) (and, if such Restricted Subsidiary receiving such dividend or other distribution is not a Wholly Owned Restricted Subsidiary, to the other shareholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by the Issuer or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis), (ii) any dividend or distribution that is made by the Issuer or a Restricted Subsidiary (that is an Obligor) to a Restricted Subsidiary (that is not an Obligor) provided that any such dividend or distribution shall be made only in the form of Capital Stock of the issuer of such dividend and/or distribution, (iii) any dividend or distribution that is made solely to a Restricted Subsidiary from a Restricted Subsidiary (that is not an Obligor) (and, if such Restricted Subsidiary receiving such dividend or other distribution is not a Wholly Owned Restricted Subsidiary, to the other shareholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by the Issuer or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis) or (iv) any dividend or distribution payable solely in shares of Capital Stock (other than Disqualified Stock) of the Issuer;

(b) the purchase, repurchase, redemption, acquisition or retirement for value of any Capital Stock of the Issuer or any Restricted Subsidiary (other than from the Issuer or a Restricted Subsidiary and other than for Capital Stock of the Issuer that is not Disqualified Stock);

(c) the purchase, repurchase, redemption, acquisition, payment (whether consisting of a principal payment, interest payment or any other type of payment) or retirement for value of any Subordinated Obligations prior to 91 days after the Stated Maturity Date (with respect to the Notes) and payment in full of the Notes (excluding, in each case, any such payment in connection with a change of control thereunder, which requires payment in full of the Notes prior to the payment of such Debt provided that the Notes are paid in full prior to such purchase, repurchase, redemption, acquisition, payment or retirement of any Subordinated Obligations); and

(d) any Investment (other than Permitted Investments) in any Person.

"**Restricted Payment Basket**" shall have the meaning set forth in Section 4.10(b)(iii).

"**Restricted Subsidiary**" means any Subsidiary of the Issuer other than an Unrestricted Subsidiary.

"**Revolver Cap Amount**" has the meaning given to ["**Cap Amount**"] in the Intercreditor Agreement, as in effect on the Issue Date, with respect to the Revolving Credit Obligations.

"**Revolving Credit Agreement**" means that certain Credit Agreement dated as of [], 2010 among the Issuer, [SLLC,] the Revolving Credit Agent, and a syndicate of lenders, as may be revised, restructured or Refinanced from time to time, including to extend the maturity thereof, to increase the amount of commitments thereunder (*provided* that any such increase is permitted under the covenant described under Section 4.09 and the Revolving Credit Agreement), or to add Restricted Subsidiaries as additional borrowers or guarantors thereunder, whether by the same or any other agent, lender or group of lenders or investors and whether such revision, restructuring or Refinancing is under one or more Debt facilities or commercial paper facilities, indentures or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters or credit, together with related documents thereto (including, without limitation, any guaranty agreements and security documents) or, in the event such agreement is terminated and not immediately replaced, any Credit Facility into which the Issuer subsequently enters that the Issuer designates, in a notice to the Trustee, as a replacement, as it may be revised, restructured or Refinanced from time to time, subject to the *proviso* set forth above.

"**Revolving Credit Facility**" shall mean the credit facility evidenced by the Revolving Credit Agreement and the Revolving Credit Security Documents.

"**Revolving Credit Obligations**" has the meaning given to ["**Obligations**"] set forth in the Revolving Credit Agreement, as in effect on the Issue Date.

"**Revolving Credit Security Documents**" has the meaning given to "_____" set forth in the Revolving Credit Agreement, as in effect on the date hereof.

"**Rights Offering**" means that certain rights offering of New Spansion Common Stock (as defined in the Plan of Reorganization) in an amount of up to $109,375,000 to be offered to the Rights Offering Participants (as defined in the Plan of Reorganization), pursuant to the

Rights Offering Documents. If the Rights Offering does not occur on or prior to the Issue Date, it shall not be consummated.

"**Rights Offering Documents**" means [_____] and the other agreements, documents and instruments evidencing the Rights Offering.

"**S&P**" means Standard & Poor's Rating Services or any successor to the rating agency business thereof.

"**Sale and Leaseback Transaction**" means any direct or indirect arrangement relating to Property now owned or hereafter acquired whereby the Issuer or a Restricted Subsidiary transfers such Property to another Person and the Issuer or a Restricted Subsidiary leases it from such Person.

"**Secondary Collateral**" means ["**Revolving Credit Priority Collateral**"] as defined in the Intercreditor Agreement as in effect on the Issue Date.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Security Agreement Supplement**" shall have the meaning given to such term in the Pledge and Security Agreement.

"**Security Documents**" means (i) the Intercreditor Agreement, (ii) the Pledge and Security Agreement, (iii) the Intellectual Property Security Agreements, (iv) the Foreign Pledge Agreements, (v) the Foreign Intellectual Property Security Agreements, (vi) the Closing Date Mortgages and (vii) the other security documents, mortgages, control agreements, collateral assignments and UCC financing statements granting or evidencing a security interest and/or mortgage(s) in any property and assets of any Person to secure the Obligations under this Indenture, the Notes and the Note Guaranties as each may be amended, restated, supplemented or otherwise modified from time to time.

"**Senior Exchangeable Subordinated Debentures Indenture**" means that certain Indenture dated as of June 12, 2006 providing for the issuance of $207,000,000 aggregate principal amount of 2.25% Senior Exchangeable Subordinated Indentures due 2016 by SLLC in favor of the holders thereof, as amended and in effect immediately prior to the Issue Date.

"**Senior Notes Indenture**" means that certain Indenture dated as of December 21, 2005 providing for the issuance of $250,000,000 aggregate principal amount of 11.25% Senior Notes due 2016 by SLLC in favor of the holders thereof, as amended and in effect immediately prior to the Issue Date.

"**Significant Subsidiary**" means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Issuer within the meaning of Rule 1-02 under Regulation S-X promulgated by the United States Securities and Exchange Commission.

"**SLLC**" means the party named as such in the first paragraph of the Indenture until a successor replaces such party pursuant to Article Five and thereafter means the successor.

"**Spansion Singapore**" has the meaning set forth in the definition of Asset Sale set forth in this Section 1.01.

"**Stated Maturity**" means with respect to any Debt or security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"**Subordinated Obligation**" means any Debt of the Issuer or any other Obligor (whether outstanding on the Issue Date or thereafter Incurred) that is subordinate or junior in right of payment to the Notes pursuant to a written agreement to that effect, including the Convertible Note Obligations and the New Credit Facility Obligations.

"**Subsidiary**" means, in respect of any Person, any corporation, company (including any limited liability company), association, partnership, joint venture or other business entity of which at least a majority of the total voting power of the Voting Stock is at the time owned or controlled, directly or indirectly, by:

(a) such Person;

(b) such Person and one or more Subsidiaries of such Person; or

(c) one or more Subsidiaries of such Person.

"**Supplemental Indenture**" shall have the meaning given to such term in Section 4.14(a) hereof.

"**Surviving Person**" means the surviving Person formed by merger or consolidation and for purposes of Article Five, a Person to whom all or substantially all of the property of the Issuer or Guarantor (as applicable) is sold, transferred, assigned, leased, conveyed or otherwise disposed.

"**TIA**" means the Trust Indenture Act of 1939 (15 U.S. Code §§77aaa-77bbbb) as in effect on the date of the Indenture (except as provided in Section 8.03); *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "TIA" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"**Total Assets**" means, with respect to any date of determination, the total consolidated assets of the referenced Person or Persons shown on its consolidated balance sheet in accordance with GAAP on the last day of the fiscal quarter prior to the date of determination.

"**Trustee**" means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture and thereafter means the successor.

"**UBS Auction Rate Securities**" means those certain auction rate securities owned by SLLC and pledged to UBS Bank USA to secure that certain revolving line of credit of up to $85 million evidenced by that certain Credit Line Account Application and Agreement dated as of December 29, 2008, as amended, restated, supplemented and/or otherwise modified, between SLLC and UBS Bank USA.

"**Unrestricted Subsidiary**" means, at any date of determination, any Subsidiary of the Issuer that, together with all other Unrestricted Subsidiaries, (i) had consolidated assets comprising in the aggregate less than 2% of the Total Assets of the Issuer and its Subsidiaries on the last day of the most recent fiscal quarter for which financial statements are available and (ii) contributed in the aggregate less than 2% of the Consolidated EBITDA of the Issuer and all of its Subsidiaries for the period of four fiscal quarters most recently ended for which financial statements are available. As of the date hereof, Schedule 1 sets forth a list of the all of the Unrestricted Subsidiaries, as supplemented from time to time in accordance with the provisions hereof. Unless so designated as an Unrestricted Subsidiary in accordance with Section 4.16 hereof, any Person that becomes a Subsidiary of the Issuer will be classified as a Restricted Subsidiary.

"**Unsecured Creditors' Common Stock**" means the Issuer Common Stock issued pursuant to the Plan of Reorganization to all unsecured creditors of the Debtors holding allowed Class 5A claims, Class 5B claims and/or Class 5C claims, in each case, under the Plan of Reorganization.

"**U.S. Government Obligations**" means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"**Voting Stock**" of any Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"**Wholly Owned Restricted Subsidiary**" means, at any time, a Restricted Subsidiary all the Voting Stock of which (except directors' qualifying shares) is at such time owned, directly or indirectly, by the Issuer and/or its other Wholly Owned Restricted Subsidiaries.

Section 1.02. *Incorporation by Reference of Trust Indenture Act.* Whenever the Indenture refers to a provision of the TIA, the portion of such provision required to be incorporated herein in order for the Indenture to be qualified under the TIA is incorporated by reference in and made a part of the Indenture. The following TIA terms used in the Indenture have the following meanings:

"**Indenture Securities**" means the Notes;

"**Indenture Securityholder**" means a Holder;

"**Indenture to be Qualified**" means the Indenture; and

"**Obligor on this Indenture Securities**" means the Issuer, the Guarantors or any other obligor on the Notes.

All other terms used in the Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by Commission rule have the meanings therein assigned to them.

Section 1.03. *Rules of Construction.* Unless the context otherwise requires:

(a) a term has the meaning assigned to it herein, whether defined expressly or by reference;

(b) "or" is not exclusive;

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

(d) words used herein implying any gender shall apply to both genders;

(e) "herein," "hereof" and other words of similar import refer to the Indenture as a whole and not to any particular Article, Section or other subsection;

(f) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP provided that notwithstanding any other provision set forth herein, all financial covenants contained herein shall be calculated (including any measure of the Consolidated Fixed Charge Coverage Ratio), without giving effect to any election (or the effects of any such election) under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof; and

(g) "$," "U.S. Dollars" and "United States Dollars" each refer to United States dollars, or such other successor money to the United States dollar, "Japanese yen" refers to the Japanese yen or such other successor money to the Japanese yen, and "euro" refers to the European Union euro or such other successor money to the European Union euro, in each case that at the time of payment is legal tender for payment of public and private debts.

ARTICLE 2.
THE SECURITIES

Section 2.01. *Amount of Notes.* The Trustee shall initially authenticate the Notes for original issue on the Issue Date in an aggregate principal amount of [$237.5] million upon a written order of the Issuer in the form of an Officer's Certificate of the Issuer which shall also certify that each of the conditions precedent to issuance of the Notes specified in the Condition Precedent Letter Agreement hereof have been satisfied and completed.

Section 2.02. *Form, Dating and Denominations; Legends.*

(a) The Notes and the Trustee's certificate of authentication will be substantially in the form attached as Exhibit A. The Notes may have notations, legends or endorsements required by law, rules of or agreements with national securities exchanges to which the Issuer is subject, or usage. Each Note will be dated the date of its authentication. The Notes will be issuable in denominations of $1,000 in principal amount and any multiple of $1,000 in excess thereof.

(b) The terms and provisions contained in the Notes (in the form of the Notes annexed hereto at Exhibit A) shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer, 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.

(c) The Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the DTC Legend thereon and the "Schedule of Increases or Decreases in the Principal Amount of the Global Note" attached thereto). The Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the DTC Legend thereon and without the "Schedule of Increases or Decreases in the Principal Amount of the Global Note" attached thereto). The Global Note will be registered in the name of the Depositary or its nominee and, so long as DTC is serving as the Depositary thereof, will bear the DTC Legend. The Global Note will be delivered to the Trustee as custodian for the Depositary. The Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of the outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of the outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions (or repurchases). Any endorsement of the Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of the outstanding Notes represented thereby shall be made by the Trustee as custodian for DTC, in accordance with the instructions given by the Holder thereof as required by Section 2.07 hereof.

Section 2.03. *Execution and Authentication*. The Notes shall be executed on behalf of the Issuer by its Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President or any Executive Vice President. The signature of any of these Officers on the Notes may be manual or facsimile.

If an Officer whose signature is on a Note was an Officer at the time of such execution but no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

No Note shall be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Note shall have

been authenticated and delivered hereunder but never issued and sold by the Issuer, and the Issuer shall deliver such Note to the Trustee for cancellation as provided in Section 2.12, for all purposes of the Indenture such Note shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of the Indenture.

Section 2.04. *Registrar and Paying Agent*. The Issuer shall maintain an office or agency where the Notes may be presented for registration of transfer or for exchange (the "**Registrar**"), and an office or agency where the Notes may be presented for payment (the "**Paying Agent**") and an office or agency where notices and demands to or upon the Issuer, if any, in respect of the Notes and the Indenture may be served. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Issuer may have one or more additional Paying Agents. The term "Paying Agent" includes any additional Paying Agent.

The Issuer shall enter into an appropriate agency agreement, which shall incorporate the provisions of the TIA, with any Agent that is not a party to the Indenture. The agreement shall implement the provisions of the Indenture that relate to such Agent. The Issuer shall notify the Trustee of the name and address of any such Agent. If the Issuer fails to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee shall act as such and shall be entitled to appropriate compensation in accordance with Section 7.06.

The Issuer initially appoints the Trustee as Registrar, Paying Agent and Agent for service of notices and demands in connection with the Notes and the Indenture and as custodian with respect to the Global Note. The Issuer may change the Paying Agent without prior notice to the Holders. The Issuer may act as Paying Agent.

The Issuer initially appoints DTC to act as Depositary with respect to the Global Note.

Section 2.05. *Paying Agent to Hold Money in Trust.* Each Paying Agent shall hold in trust solely for the benefit of the Holders and/or the Trustee all money held by the Paying Agent for the payment of principal of or premium, interest, fees, costs or expenses on the Notes (whether such money has been paid to it by the Issuer or any other Obligor), and the Issuer and the Paying Agent shall notify the Trustee of any default by the Issuer (or any other Obligor) in making any such payment. Money held in trust for the benefit of the Holders of the Notes and/or the Trustee by the Paying Agent need not be segregated except as required by law and in no event shall the Paying Agent be liable for any interest on any money received by it hereunder; provided that if the Issuer or an Affiliate thereof acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund subject to an Account Control Agreement (as defined in the Pledge and Security Agreement) in favor of Collateral Agent. The Issuer at any time may require the Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed and the Trustee may at any time during the continuance of any Event of Default specified in Section 6.01(i) or (ii), upon written request to the Paying Agent, require such Paying Agent to pay forthwith all money so held by it to the Trustee and to account for any funds disbursed. Upon making such payment, the Paying Agent (if other than the Issuer or one of the other Obligors) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy or reorganization proceedings relating to the Issuer or any Obligor, the Trustee shall serve as Paying Agent for the Notes.

Section 2.06. *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 the Holders and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least five Business Days before each Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders, provided that, as long as the Trustee is the Registrar, no such list need be furnished.

Section 2.07. *Transfer and Exchange.*

(a) Transfer and Exchange of the Global Note. The Global Note may not be transferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. The Global Note will be exchanged by the Issuer for Definitive Notes only if (i) the Issuer delivers to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Issuer within 120 days after the date of such notice from the Depositary or (ii) the Issuer in its sole discretion determines that the Global Note (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee. Upon the occurrence of either of the preceding events in (i) or (ii) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. The Global Note also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.11 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, the Global Note or any portion thereof, pursuant to this Section 2.07 or Section 2.08 or 2.11 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. The Global Note may not be exchanged for another Note other than as provided in this Section 2.07(a). However, beneficial interests in the Global Note may be transferred and exchanged as provided in Section 2.07(b) or (c) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Note. The transfer and exchange of beneficial interests in the Global Note shall be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Transfers of beneficial interests in the Global Note also shall require compliance with either subparagraph (i) or (ii) below, as applicable:

(i) Transfer of Beneficial Interests in the Global Note. Beneficial interests in the Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.07(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in the Global Note. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.07(b)(i) above, 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 the 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 (1) above. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in the Global Note contained in this Indenture and the Notes, the Trustee shall adjust the principal amount of the Global Note pursuant to Section 2.07(g) hereof.

(c) Transfer or Exchange of Beneficial Interests in the Global Note for Definitive Notes. If any holder of a beneficial interest in the 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 satisfaction of the conditions set forth in Section 2.07(b)(ii) hereof, the Trustee shall cause the aggregate principal amount of the Global Note to be reduced accordingly pursuant to Section 2.07(g) hereof, and the Issuer shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.07(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 deliver such Definitive Notes to the Persons in whose names such Notes are so registered.

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

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

(f) Legends. The Global Note shall bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.07 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.07(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.12 OF THE INDENTURE, AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITORY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) Cancellation and/or Adjustment of the Global Note. At such time as all beneficial interests in the Global Note have been exchanged for Definitive Notes or the Global Note has been repurchased or canceled in whole and not in part, the Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.12 hereof. At any time prior to such cancellation, if any beneficial interest in the Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in the Global Note or for Definitive Notes, the principal amount of the Notes represented by the Global Note shall be reduced accordingly and an endorsement shall be made on the 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 the Global Note, the Global Note shall be increased accordingly and an endorsement shall be made on the Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate the Global Note and Definitive Notes upon the Issuer's order or at the Registrar's request.

(ii) No service charge shall be made to a holder of a beneficial interest in the Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuer 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 2.11, 4.12 and 8.05 hereof).

(iii) The Global Note and Definitive Notes issued upon any registration of transfer or exchange of the Global Note or Definitive Notes shall be the valid obligation of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Note or Definitive Notes surrendered upon such registration of transfer or exchange.

(iv) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer 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 interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(v) The Trustee shall authenticate the Global Note and Definitive Notes in accordance with the provisions of Section 2.03 hereof.

(vi) All certifications and certificates required to be submitted to the Registrar pursuant to this Section 2.07 to effect a registration of transfer or exchange may be submitted by facsimile.

(vii) Each Holder agrees to indemnify the Issuer and the Trustee against any liability that may result from the transfer, exchange or assignment by such Holder of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

(viii) 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 and/or Indirect Participants or beneficial owners of interests in the 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. The Trustee shall have no liability for the actions or omissions of the Depositary.

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

(x) Neither the Trustee nor the Registrar shall have any duty to monitor the Issuer's compliance with or have any responsibility with respect to the Issuer's compliance with any Federal or state securities laws or bankruptcy laws.

(xi) The Registrar will promptly register any transfer or exchange that meets the requirements of this Section 2.07 by noting the same in the register maintained by the Registrar for the purpose; provided that:

(a) no transfer or exchange will be effective until it is registered in such register and

(b) the Registrar will not be required (i) to register the transfer of or exchange any Note for a period of 15 days before a selection of the Notes to be purchased pursuant to a Change of Control Offer or Prepayment Offer, (ii) to register the transfer of or exchange any Note so selected for purchase in whole or in part, except, in the case of a partial purchase, that portion of any Note not being purchased, or (iii) if a purchase pursuant to a Change of Control Offer or Prepayment Offer is to occur after a Regular Record Date but on or before the corresponding Interest Payment Date, to register the transfer of or exchange any Note on or after the Regular Record Date and before the date of purchase. Prior to the registration of any transfer, the Issuer, the Trustee and their agents will treat the Person in whose name the Note is registered as the owner and Holder thereof for all purposes (whether or not the Note is overdue), and will not be affected by notice to the contrary.

From time to time the Issuer will execute and the Trustee will authenticate additional Notes as necessary in order to permit the registration of a transfer or exchange in accordance with this Section 2.07.

Section 2.08. *Replacement Notes*. If a mutilated Note is surrendered to the Registrar or the Trustee, or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Note if the Holder of such Note furnishes to the Issuer and the Trustee evidence reasonably acceptable to them of the ownership and the destruction, loss or theft of such Note and if the requirements of Section 8 405 of the New York Uniform Commercial Code as in effect on the date of the Indenture are met. An indemnity bond shall be posted, sufficient in the judgment of the Issuer, the Trustee or any Paying Agent to protect the Issuer, the Trustee or any Paying Agent from any loss that any of them may suffer if such Note is replaced. The Issuer may charge such Holder for the Issuer's reasonable out-of-pocket expenses in replacing such Note, and the Trustee may charge the Issuer

for the Trustee's expenses (including, without limitation, attorneys' fees and disbursements) in replacing such Note. Every replacement Note is an obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.09. *Outstanding Notes*. The Notes outstanding at any time are all Notes that have been authenticated by the Trustee except for (a) those canceled by it, (b) those delivered to it for cancellation, (c) to the extent set forth in Section 9.01 and 9.02, on or after the date on which the conditions set forth in Section 9.01 or 9.02 have been satisfied, those Notes theretofore authenticated and delivered by the Trustee hereunder and (d) those described in this Section 2.09 as not outstanding. Subject to Section 2.10, a Note does not cease to be outstanding because the Issuer or one of its Affiliates holds the Note.

If a Note is replaced pursuant to Section 2.08, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser in whose hands such Note is a legal, valid and binding obligation of the Issuer.

If the Paying Agent (other than the Issuer or any of its Affiliates) holds (in trust), in its capacity as such, on any Maturity Date, money sufficient to pay all accrued and unpaid interest and principal and all other amounts outstanding with respect to the Notes payable on that date and is not prohibited from paying such money to the Holders thereof pursuant to the terms of the Indenture, then on and after that date such Notes cease to be outstanding provided that interest shall continue to accrue on the Notes until all Obligations under the Notes and this Indenture are paid in full in cash.

Section 2.10. *Treasury Notes.* In determining whether the Holders of the required principal amount of the Notes have concurred in any declaration of acceleration or Notice of Default or direction to exercise rights and remedies or otherwise, waiver or consent or any amendment, modification or other change to the Indenture, the Notes owned by the Issuer or any other Affiliate of the Issuer shall be disregarded as though they were not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent or any amendment, modification or other change to the Indenture, only Notes as to which a Responsible Officer of the Trustee has actually received an Officer's Certificate stating that such Notes are so owned shall be so disregarded. The Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee established to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Issuer, any other obligor on the Notes or any of their respective Affiliates.

Section 2.11. *Temporary Notes*. Until Definitive Notes are prepared and ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes. Until such exchange, temporary Notes shall be entitled to the same rights, benefits and privileges as Definitive Notes.

Section 2.12. *Cancellation.* The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall, upon the Issuer's written request, deliver such canceled Notes to the Issuer. The Issuer shall not reissue or resell, or issue new Notes to replace, Notes that the Issuer has redeemed or paid, or that have been delivered to the Trustee for cancellation.

Section 2.13. *Defaulted Interest.* All interest accruing at the Default Rate shall be payable, in accordance with the terms of the Note, to the Persons who are Holders on a subsequent special record date, which date shall be at least five Business Days prior to the payment date. The Issuer shall fix such special record date and payment date in a manner satisfactory to the Trustee provided that, in any case, such payment date shall not be later than the next Interest Payment Date. At least 10 days before such special record date, the Issuer shall mail to each Holder a notice that states the special record date, the payment date and the amount of interest to be paid. The Issuer may make payment of any of such interest in any other lawful manner not inconsistent with the requirements (if applicable) of any securities exchange on which the Notes may be listed and, upon such notice as may be required by such exchange, if, after written notice given by the Issuer to the Trustee of the proposed payment pursuant to this sentence, such manner of payment shall be deemed practicable by the Trustee.

Section 2.14. *CUSIP Number.* The Issuer in issuing the Notes may use a "CUSIP" number, and if so, such CUSIP number shall be included in notices of exchange as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers printed on the Notes. The Issuer shall promptly notify the Trustee in writing of any such CUSIP number used by the Issuer in connection with the issuance of the Notes and of any change in the CUSIP number.

Section 2.15. *Deposit of Moneys.* Prior to 10:00 a.m., New York City time, on each Interest Payment Date, each payment date under Section 2.13 hereof and Maturity Date, the Issuer shall have deposited with the Paying Agent in immediately available funds money sufficient to make cash payments, if any, due on such Interest Payment Date, such payment date under Section 2.13 hereof or Maturity Date, as the case may be, in a timely manner which permits the Payment Agent to remit payment to the Depositary or Holders on such Interest Payment Date, such payment date under Section 2.13 hereof or Maturity Date, as the case may be. The principal and interest on the Global Note shall be payable to the Depositary or its nominee, as the case may be, as the sole registered owner and the sole Holder of the Global Note represented thereby. The principal and interest on Definitive Notes shall be payable, either in person or by mail, at the office of the Paying Agent.

Section 2.16. *Computation of Interest.* Interest on the Notes shall be computed on the basis set forth therein.

Section 2.17. Intentionally Omitted:

Section 2.18. Intentionally Omitted.

Section 2.19. *Payments*. All payments to the Trustee and/or Holders made hereunder, on account of the Notes and/or pursuant to any of the Security Documents shall be made in U.S. Dollars without setoff or counterclaim.

ARTICLE 3.
REDEMPTION

Section 3.01. *Optional Redemption.* The Notes are not subject to optional or voluntary redemption and the Issuer is not otherwise required or permitted to purchase the Notes other than in accordance with Section 3.02 hereof.

Section 3.02. *Mandatory Redemption.* The Issuer is not required or permitted to make mandatory redemption or sinking fund payments with respect to the Notes and is not otherwise required or permitted to purchase the Notes other than on the Stated Maturity Date with respect to the Notes and/or in accordance with Sections 4.08, 4.12 and 6.02 hereof.

ARTICLE 4.
COVENANTS AND REPRESENTATIONS AND WARRANTIES

Until the Notes have been paid in full in cash, with respect to Sections 4.01 through 4.26, each Obligor (as to itself and each other Obligor) agrees that:

Section 4.01. *Payment of Notes; Additional Amounts; Permitted Investments; Rights Offering*.

(a) The Issuer shall pay the principal of and interest on the Notes in accordance with the terms of the Notes and the Indenture. An installment of principal or interest shall be considered paid on the date it is due if the Trustee holds on that date money designated for and sufficient to pay such installment.

(b) Notwithstanding any other provisions set forth herein or in any of the Notes, interest shall accrue at a rate equal to two percent (2%) per annum in excess of the Interest Rate (the "**Default Rate"**), at Trustee's option, without notice, (i) either (A) for the period on and after the date of termination hereof until such time as all Obligations hereunder and under the Notes are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Trustee.

Section 4.02. *Maintenance of Office or Agency*.

(a) The Issuer shall maintain an office or agency in the United States of America (which may be an office of the Trustee or an affiliate of the Trustee or Registrar) where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and the Indenture may be served. The Issuer 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 Issuer 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, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office in the United States of America. The Issuer 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.

(c) The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.04.

Section 4.03. *Legal Existence*. Subject to Articles Four and Five, the Issuer and each of the Obligors shall do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence, and the corporate, partnership or other existence of each Restricted Subsidiary, in accordance with the respective organizational documents (as the same may be amended from time to time) of each Restricted Subsidiary and the material rights (charter and statutory) and franchises of the Issuer and the Restricted Subsidiaries; provided that the Issuer and Obligors shall not be required to preserve any such right, franchise or the corporate, partnership or other existence of its Restricted Subsidiaries if (i) the Issuer, in good faith, shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries taken as a whole and (ii) the failure to so preserve any such right, franchise or existence could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 4.04. *Maintenance of Properties; Insurance; Compliance with Law*.

(a) The Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, at all times cause all material properties used or useful in the conduct of their respective businesses to be maintained and kept in good condition, repair and working order (reasonable wear and tear excepted) and supplied with all necessary equipment, and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Issuer may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section 4.04(a) shall prevent the Issuer or any of its Restricted Subsidiaries from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the reasonable judgment of the Issuer, desirable in the conduct of the business of the Issuer and its Subsidiaries taken as a whole and not adverse in any material respect to the Holders.

(b) The Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, keep at all times all of their material properties which are of an insurable nature insured against such loss or damage with insurers believed by the Issuer to be responsible to the extent that Property of a similar character is usually so insured by corporations

similarly situated and owning like Properties in accordance with good business practice. Subject to Section 11.02 and the proviso in Section 4.04(a), the Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, use the proceeds from any such insurance policy to repair, replace or otherwise restore the Property to which such proceeds relate.

(c) The Issuer and other Obligors shall, and the Issuer shall cause each of its Restricted Subsidiaries to, comply with all statutes, laws, ordinances or government rules and regulations to which they are subject (including, but not limited to, Environmental Laws, OFAC Regulations, FAC Regulations, the USA Patriot Act of 2001, the Trading with the Enemy Act and the United States Foreign Corrupt Practices Act of 1977, as amended), except to the extent that any failure to comply therewith could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) Obligors shall perform in accordance with its terms each material contract, agreement or other arrangement to which it is a party or by which it or any material amount of Collateral is bound, except where the failure to so perform would not reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

(e) Each Obligor shall, at all times, preserve and keep in full force and effect all licenses and permits material to its business except where the failure to so preserve and keep in full force and effect such licenses and permits would not reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

Section 4.05. *Waiver of Stay, Extension or Usury Laws*. The Obligors, each, covenant (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law which may affect the covenants or the performance of the Indenture; and (to the extent that it may lawfully do so) the Issuer and Obligors, each, hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.06. *Compliance Certificate and Perfection Certificate.*

(a) The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Issuer, commencing with the Issuer's fiscal year ending in December of 2010 an Officer's Certificate of the Issuer, signed by the principal executive officer, principal accounting officer or principal financial officer of the Issuer, stating whether or not to the best knowledge of the signers thereof any Defaults or Events of Default have occurred and are continuing and, if the Issuer and/or Obligors shall be in Default (or an Event of Default has occurred), specifying all such Defaults (and/or Event(s) of Default), the nature and status thereof of which they may have knowledge and what action the Issuer and/or Obligors are taking or propose to take with respect thereto (the "**Compliance Certificate**"). Such determination shall be made without regard to notice requirements or periods of grace.

(b) The Issuer shall deliver to the Trustee, as soon as possible and in any event no later than eight (8) Business Days after the Issuer or any of the Obligors becomes aware of the occurrence of (i) a Default or an Event of Default or an event which, with notice or the lapse of time or both, would constitute a Default or Event of Default, (ii) the filing or commencement of any action, suit or proceeding by or before any arbitrator or governmental authority against or affecting any Obligor or any Collateral that could reasonably be expected to result in a Material Adverse Effect, (iii) the occurrence of any ERISA Event related to any Plan or Foreign Plan of any Obligor or Subsidiary or actual knowledge of any ERISA Event related to a Plan or Foreign Plan of any other ERISA Affiliate that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect, (iv) any loss, damage or casualty relating to Collateral having a value of more than $2,000,000 and (v) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect, an Officer's Certificate setting forth the details thereof, and the action which the Issuer and/or Obligors are taking or propose to take with respect to such Default or Event of Default, action, suit, proceeding, ERISA Event, loss, damage, casualty or other development.

(c) The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year commencing with the Issuer's fiscal year ending December of 2010, a written statement by the Issuer's independent public accountants stating whether, in connection with their audit of the Issuer's financial statements, any event which would constitute an Event of Default as defined herein insofar as they relate to accounting matters has come to their attention and, if such an Event of Default has come to their attention, specifying the nature and period of the existence thereof.

(d) The Issuer shall deliver to the Trustee and Collateral Agent, within 120 days after the end of each fiscal year of the Issuer, commencing with the Issuer's fiscal year ending in December of 2010, Perfection Certificates (or an updated Perfection Certificate covering all of the Obligors) updating the Perfection Certificate(s) most recently delivered to Trustee and/or Collateral Agent.

Section 4.07. *Payment of Taxes and Other Claims*. The Issuer and Obligors shall, and shall cause each of the Restricted Subsidiaries to, pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Issuer or any of its Subsidiaries or upon the income, profits, capital or Property of the Issuer or any of its Subsidiaries, and (ii) all material lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the Property of the Issuer or any of its Subsidiaries; provided, however, that the Issuer and its Subsidiaries shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

Section 4.08. *Repurchase at the Option of Holders Upon Change of Control*.

(a) Upon the occurrence of a Change of Control, each Holder of Notes shall have the right to require the Issuer to repurchase all or any part of such Holder's Notes in cash pursuant to the offer described below (the "**Change of Control Offer**") at a purchase price (the "**Change of Control Purchase Price**") equal to 101% of the aggregate principal amount thereof, plus

accrued and unpaid interest, if any, to but excluding the repurchase date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date).

(b) Within 30 days following any Change of Control the Issuer shall (x) cause a notice of the Change of Control Offer to be sent at least once to the Dow Jones News Service or similar business news service in the United States, and (y) send, by first-class mail, with a copy to the Trustee, to each Holder of Notes, at such Holder's address appearing in the Note register, a notice stating:

(i) that a Change of Control has occurred or will occur and a Change of Control Offer is being made pursuant to this Section 4.08 and that all Notes timely tendered will be accepted for payment;

(ii) the Change of Control Purchase Price and the repurchase date (the "**Change of Control Payment Date**"), which shall be, subject to any contrary requirements of applicable law, a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed;

(iii) the circumstances and relevant facts regarding the Change of Control; and

(iv) the procedures that Holders of Notes must follow in order to tender their Notes (or portions thereof) for payment, and the procedures that Holders of Notes must follow in order to withdraw an election to tender Notes (or portions thereof) for payment.

Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Issuer or its agent at the address specified in the notice at least three Business Days prior to the Change of Control Payment Date. Holders shall be entitled to withdraw their election if the Trustee or the Issuer receives, not later than one Business Day prior to the Change of Control Payment Date, a facsimile transmission, electronic mail or letter setting forth the name of the Holder, the principal amount of the Note that was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Note purchased.

(c) On or prior to the Change of Control Payment Date, the Issuer shall irrevocably deposit with the Trustee or with the Paying Agent (or, if the Issuer or any of its Subsidiaries is acting as the Paying Agent, segregate and hold in trust for the benefit of the Holders of the Notes) in cash an amount equal to the Change of Control Purchase Price payable to the Holders entitled thereto, to be held for payment in accordance with this Section 4.08. On the Change of Control Payment Date, the Issuer or its Agent shall deliver to the Trustee the Notes or portions thereof that have been properly tendered to and are to be accepted by the Issuer for payment.

(d) The Trustee or the Paying Agent shall, on the Change of Control Payment Date, mail or deliver payment to each tendering Holder of its portion of the Change of Control Purchase Price. In the event that the aggregate Change of Control Purchase Price is less than the amount delivered by the Issuer to the Trustee or the Paying Agent, the Trustee or the Paying Agent, as the case may be, shall deliver the excess to the Issuer immediately after the Change of Control Payment Date.

(e) The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations 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 4.08, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.08 by virtue of such compliance.

(f) The Issuer shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.08 applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer.

Section 4.09. *Limitation on Debt.*

The Issuer and Obligors shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Debt unless (x) after giving effect to the application of the proceeds therefrom, no Default or Event of Default would occur as a consequence of such Incurrence or be continuing following such Incurrence and (y) such Debt is Permitted Debt. The term "**Permitted Debt**" means the following:

(i) Intentionally Omitted;

(ii) Debt of the Issuer or a Restricted Subsidiary (x) under Credit Facilities, provided that, after giving effect to the Incurrence of any such Debt, the aggregate principal amount of all such Debt under Credit Facilities at any one time outstanding, together with the amount of Notes issued on the Issue Date (or Permitted Refinancing Debt in respect thereof) outstanding at such time shall not exceed $250 million and (y) under the Revolving Credit Agreement provided that the aggregate principal amount of all such Debt under this clause (y) shall not exceed $100 million;

(iii) Debt of the Issuer or a Restricted Subsidiary in respect of Capital Lease Obligations and Purchase Money Debt, provided that:

(A) the aggregate principal amount of such Debt does not exceed the Fair Market Value (on the date of the Incurrence thereof) of the Property acquired, constructed or leased; and

(B) the aggregate principal amount of all Debt Incurred and then outstanding pursuant to this Section 4.09(iii) (together with all Permitted Refinancing Debt Incurred and then outstanding in respect of Debt previously Incurred pursuant to this Section 4.09(iii)) does not exceed [15%][3] of the Total Assets of the Issuer;

[3] Bracketed amount subject to discussion and agreement. This percentage may be reduced depending upon how the Consolidated Fixed Charge definition is finalized.

(iv) Debt of the Issuer owing to and held by any Restricted Subsidiary and Debt of a Restricted Subsidiary owing to and held by the Issuer or any Restricted Subsidiary; provided, that (A) if the Issuer or a Guarantor is the obligor on such Debt Incurred after the Issue Date, then such Debt is expressly subordinated by its terms to the prior payment in full in cash of all Obligations under the Notes and this Indenture; provided, however, that any subsequent issue or transfer of Capital Stock or other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Debt (except to the Issuer or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Debt by the issuer thereof and (B) the aggregate principal amount of the Debt of the Subsidiaries of the Issuer (that are not Obligors) owing to the Issuer and/or Obligors shall not exceed **[$2,000,000]**[4] at any time;

(v) Debt of a Restricted Subsidiary outstanding on the date on which such Restricted Subsidiary is acquired by the Issuer or otherwise becomes a Restricted Subsidiary (other than Debt Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Subsidiary of the Issuer or was otherwise acquired by the Issuer);

(vi) Debt under Interest Rate Agreements entered into by the Issuer or a Restricted Subsidiary for the purpose of managing interest rate risk in the ordinary course of the financial management of the Issuer or such Restricted Subsidiary and not for speculative purposes;

(vii) Debt under Currency Exchange Protection Agreements entered into by the Issuer or a Restricted Subsidiary for the purpose of managing currency exchange rate risks in the ordinary course of business and not for speculative purposes;

(viii) Guarantees by the Issuer or any Restricted Subsidiary of Debt or any other obligation or liability of the Issuer or any Restricted Subsidiary that the Issuer or such Restricted Subsidiary could otherwise have Incurred pursuant to this Section 4.09 provided that the Issuer and Guarantors shall not guaranty or be jointly and severally liable with respect to the Debt of any Subsidiary of the Issuer (not constituting an Obligor) other than the Permitted Debt referenced in clauses (ii), (iii), (vi), (vii) and (ix) of this Section 4.09 hereof provided that to the extent that the Debt guaranteed by such Guarantees of the of the Issuer or any Restricted Subsidiary is subordinated to the Obligations hereunder, the Guarantees of such Debt shall also be subordinate (and to the same extent) to the Guarantees of the Obligations hereunder;

(ix) Debt in connection with one or more standby letters of credit or performance or surety bonds issued by the Issuer or a Restricted Subsidiary in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances or credit not to exceed 5% of Total Assets of the Issuer;

[4] Bracketed amount subject to discussion and agreement.

(x) Debt of the Issuer or a Restricted Subsidiary outstanding on the Issue Date not otherwise described in Section 4.09(i) through (ix) above, as set forth on Schedule 2 attached hereto;

(xi) Debt of the Issuer or a Restricted Subsidiary in an aggregate principal amount outstanding at any one time not to exceed $100 million (which amount shall not include Guarantees of Debt of Unrestricted Subsidiaries) provided that such Debt and any Lien securing such Debt is subordinated in all respects to the Obligations under this Indenture, the Notes and the Security Documents and the Liens securing such Obligations;

(xii) Debt of the Issuer and Obligors in an amount not to exceed $475 million evidenced by (A) this Indenture, the Notes and the Note Guaranties thereof, (B) the Convertible Senior Secured Notes due 2017, the Convertible Note Indenture and the guaranties thereof provided that the aggregate principal amount of such Debt shall not exceed $237.5 million and/or (C) the New Credit Facility provided that the aggregate principal amount of such Debt shall not exceed $275 million;

(xiii) Permitted Refinancing Debt Incurred in respect of Debt Incurred pursuant to Sections 4.09 (ii), (iii), (v), (x) and (xii) above;

(xiv) Debt of the Issuer in an aggregate principal amount of up to $85 million under that certain Credit Line Account Application and Agreement dated as of December 29, 2008, as amended, restated, modified and/or supplemented, between SLLC and UBS Bank USA provided that the UBS Auction Rate Securities and the securities account in which the UBS Auction Rate Securities are held constitute the only collateral securing such Debt; and

(xv) Debt of the Issuer and/or any or all of the Restricted Subsidiaries in an aggregate principal amount outstanding at any time not to exceed (i) $50 million at any time that the Consolidated Fixed Charge Coverage Ratio at such time is less than 2.0 to 1.0 and (ii) $200 million at any time that the Consolidated Fixed Charge Coverage Ratio is equal to or greater than 2.0 to 1.0 (in each case, which amount shall not include Guarantees of Debt of Unrestricted Subsidiaries).

Notwithstanding anything to the contrary in this Section 4.09:

(A) the Obligors shall not Incur any Debt pursuant to this Section 4.09 if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations unless such Debt and the Liens securing such Debt shall be subordinated to the Notes and the Liens securing the Notes to at least the same extent as such Subordinated Obligations and such Debt otherwise constitutes Permitted Debt;

(B) the Issuer shall not permit any Restricted Subsidiary that is not a Guarantor to Incur any Debt pursuant to Section 4.09 if the proceeds thereof are used, directly or indirectly, to Refinance any Debt of the Issuer; and

(C) accrual of interest, accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Debt will be deemed not to be an Incurrence of Debt for the purposes of this Section 4.09.

For the purposes of determining compliance with this Section 4.09, in the event that an item of Debt meets the criteria of more than one of the categories of Permitted Debt described in Section 4.09(i) through (xv) above, the Issuer shall, in its reasonable discretion, classify (or later reclassify in whole or in part, in its reasonable discretion) such item of Debt in any manner that complies with this Section 4.09.

For purposes of determining compliance with any dollar-denominated restriction on the Incurrence of Debt, with respect to any Debt which is denominated in a foreign currency, the dollar-equivalent principal amount of such Debt Incurred pursuant thereto shall be calculated based on the relevant currency exchange rate in effect on the date that such Debt was Incurred, and any such foreign-denominated Debt may be Refinanced or replaced or subsequently Refinanced or replaced in an amount equal to the dollar equivalent principal amount of such Debt on the date of such refinancing or replacement whether or not such amount is greater or less than the dollar equivalent principal amount of the Debt on the date of initial Incurrence.

Section 4.10. *Limitation on Restricted Payments.*

(a) The Issuer shall not make, and shall not permit any Restricted Subsidiary to make, directly or indirectly, any Restricted Payment on account of (i) the Convertible Note Obligations provided that the Issuer is permitted to pay interest accrued and outstanding on account of the Convertible Note Obligations provided that, at the time of, and after giving effect to, such proposed Restricted Payment, a Default or Event of Default shall not have occurred and be continuing, (ii) the New Credit Facility Obligations provided that the Issuer is permitted to pay interest accrued and outstanding on account of the New Credit Facility Obligations and principal payments in an amount not to exceed one percent (1%) per year of the original principal amount of the New Credit Facility Obligations provided that, in each case, at the time of, and after giving effect to, such proposed Restricted Payment, a Default or Event of Default shall not have occurred and be continuing and (iii) any other Subordinated Obligations provided that the Issuer and the Restricted Subsidiaries are permitted to pay interest accrued and outstanding on account of such Subordinated Obligations provided that, at the time of, and after giving effect to, such proposed Restricted Payment, a Default or Event of Default shall not have occurred and be continuing. Notwithstanding the foregoing, nothing herein shall be construed to prevent interest from being paid on account of (i) the Convertible Note Obligations for more than 180 days in any 365 day period, (ii) the New Credit Facility Obligations for more than 180 days in any 365 day period and (iii) the Subordinated Obligations for more than 180 days in any 365 day period or for any greater portion of any 365 day period to the extent consistent with what is customarily available in the market at such time with respect to Subordinated Obligations of such type.

(b) The Issuer shall not make, and shall not permit any Restricted Subsidiary to make, directly or indirectly, any Restricted Payment (other than payments permitted under Section 4.10(a)) if at the time of, and after giving effect to, such proposed Restricted Payment,

(i) a Default or Event of Default shall have occurred and be continuing,

(ii) the Consolidated Fixed Charge Coverage Ratio is less than 2.0 to 1.0; or

(iii) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made since the Issue Date (the amount of any Restricted Payment, if made other than in cash, to be based upon Fair Market Value at the time of such Restricted Payment) would exceed an amount equal to the sum of (such sum, the "**Restricted Payment Basket**"):

(A) 50% of the aggregate amount of Consolidated Net Income accrued during the period (treated as one accounting period) from the beginning of the fiscal quarter during which the Issue Date occurs to the end of the most recently ended fiscal quarter for which internal financial statements are available (or if the aggregate amount of Consolidated Net Income for such period shall be a deficit, minus 100% of such deficit), plus

(B) 100% of Capital Stock Sale Proceeds and 100% of the aggregate net cash proceeds received by the Issuer after the Issue Date as a contribution to its common equity, plus

(C) the aggregate net cash proceeds received by the Issuer or any Restricted Subsidiary from the issuance or sale after the Issue Date of convertible or exchangeable Debt or Disqualified Stock that has been converted into or exchanged for Capital Stock (other than Disqualified Stock) of the Issuer (to the extent that such Debt is not prohibited under Section 4.09 hereof),

excluding:

(x) any such Debt issued or sold to a Subsidiary of the Issuer or the Issuer, and

(y) the aggregate amount of any cash or other Property (other than Capital Stock of the Issuer which is not Disqualified Stock) distributed by the Issuer or any Restricted Subsidiary upon any such conversion or exchange, plus

(D) an amount equal to the sum of:

(x) the net reduction in Investments in any Person other than the Issuer or a Restricted Subsidiary resulting from dividends, repayments of loans or advances or other transfers of Property, in each case to the Issuer or a Restricted Subsidiary from such Person; and

(y) to the extent that any Investment (other than a Permitted Investment) that was made after the Issue Date is sold for cash or otherwise liquidated or repaid for cash, the cash return of capital to the Issuer or its Restricted Subsidiaries with respect to such Investment; and

(z) the portion (proportionate to the Issuer's equity interest in such Unrestricted Subsidiary) of the Fair Market Value of the net assets of an Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary (that is an Obligor).

provided, *however*, that the amount in (D) shall not exceed, in the case of any Person, the amount of Investments previously made (and treated as a Restricted Payment) by the Issuer or any Restricted Subsidiary in such Person.

(c) Notwithstanding the foregoing limitation, the Issuer and its Restricted Subsidiaries, as applicable, may:

(i) pay dividends on its Capital Stock within 60 days of the declaration thereof if, on the declaration date, such dividends could have been paid in compliance with the Indenture; provided, however, that on the declaration date for such dividend the Restricted Payment Basket shall be reduced by the amount of such dividend;

(ii) purchase, repurchase, redeem, legally defease, acquire or retire for value Capital Stock of the Issuer or Subordinated Obligations in exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Issuer (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Issuer); provided, however, that

(x) subject to clause (y) of this clause (c)(ii), such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(ii)) to the Restricted Payment Basket), and

(y) the amount of Restricted Payments that may be paid under Section 4.10(b)(iii)(B) shall be reduced by the amount of the Capital Stock Sale Proceeds from such exchange or sale;

(iii) purchase, repurchase, redeem, legally defease, acquire or retire for value any Subordinated Obligations in exchange for, or out of the proceeds of the substantially concurrent sale of, Permitted Refinancing Debt; provided, however, that such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(iii)) to the Restricted Payment Basket) reduce the amount of Restricted Payments that may be paid under Section 4.10(b)(iii);

(iv) repurchase shares of, or options to purchase shares of, common stock of the Issuer or any of its Subsidiaries from current or former officers, directors or employees of the Issuer or any of its Subsidiaries (or permitted transferees of such current or former officers, directors or employees), pursuant to the terms of agreements (including employment agreements) or plans (including the Equity Incentive Plan) or amendments thereto approved by the Board of Directors of the Issuer under which such individuals purchase or sell, or are granted the option to purchase or sell, shares of such common stock; provided, however that;

(x) the aggregate amount of such repurchases shall not exceed [$2,000,000] in any calendar year;

(y) at the time of any such repurchase, no Default or Event of Default shall have occurred and be continuing (or result therefrom); and

(z) such repurchase shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(iv)) to the Restricted Payment Basket);

(v) make payments on intercompany Debt owed to Obligors, the Incurrence of which was permitted pursuant to Section 4.09;

(vi) make, or make dividends or other payments to the Issuer (or to Intermediate Holdco for prompt distribution to the Issuer) to permit the Issuer to make, cash payments, in lieu of issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Capital Stock of the Issuer, Intermediate Holdco, SLLC or a Restricted Subsidiary; provided that any such payments and dividends shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(vi)) to the Restricted Payment Basket);

(vii) make dividends or other payments to the Issuer (or to Intermediate Holdco for prompt distribution to the Issuer) of (A) such amounts and at such times as are necessary for the Issuer to pay taxes, in an amount not to exceed the amount of taxes the Issuer and its Subsidiaries would pay on a stand-alone basis, plus (B) such amounts to pay general corporate and overhead expenses (including salaries and other compensation for employees) incurred by the Issuer in the ordinary course of business as a holding company; provided that all such payments shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(vii) to the Restricted Payment Basket); and

(viii) repurchase Capital Stock to the extent such repurchase is deemed to occur upon a cashless exercise of stock options, restricted stock units or warrants; provided, however, that

(w) subject to clause (x) of this Section 4.10(c)(viii), such repurchases shall not be included in calculating the Restricted Payment Basket (and as such, shall be in addition (under this clause (c)(viii)) to the Restricted Payment Basket), and

(x) the Restricted Payments that may be paid under Section 4.10(b)(iii)(B) shall be reduced by the amount of such Capital Stock Sale Proceeds from the issuance of such Capital Stock.

Section 4.11. *Limitation on Liens*. The Issuer and the Guarantors shall not, and shall not permit any of their respective Subsidiaries to, directly or indirectly, Incur or suffer to exist, any Lien (other than Permitted Liens) upon any of their Property (including Capital Stock of a

Restricted Subsidiary), whether owned on the Issue Date or thereafter acquired, or any interest therein or any income or profits therefrom.

Section 4.12. *Limitation on Asset Sales.*

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Sale unless:

(i) the Issuer or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the Property subject to such Asset Sale;

(ii) at least 75% of the consideration paid to the Issuer or such Restricted Subsidiary in connection with such Asset Sale is in the form of cash or Cash Equivalents; provided that to the extent that the assets disposed of in such Asset Sale were Primary Collateral, the non-cash consideration received is pledged as Primary Collateral under the Security Documents substantially simultaneously with such sale; and

(iii) the Issuer delivers an Officer's Certificate to the Trustee certifying that such Asset Sale complies with the foregoing Sections 4.12(a)(i) and (ii).

Solely for the purposes of Section 4.12(a)(ii), the following will be deemed to be cash:

(x) the assumption by the purchaser of liabilities of the Issuer or any Restricted Subsidiary (other than contingent liabilities or liabilities that are by their terms subordinated to the Notes) as a result of which the Issuer and the Restricted Subsidiaries are no longer obligated with respect to such liabilities;

(y) any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such purchaser to the extent they are promptly converted or monetized by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received); and

(z) Additional Assets; provided that assets acquired in exchange for Primary Collateral are pledged as Primary Collateral under the Security Documents substantially simultaneously in accordance with this Indenture.

(b) The Net Available Cash (or any portion thereof) from Asset Sales may be applied by the Issuer or a Restricted Subsidiary, to the extent the Issuer or such Restricted Subsidiary elects (or is required by the terms of any Debt) to:

(i) permanently prepay or permanently Repay any (A) Revolving Credit Obligations resulting in a dollar-for-dollar reduction in the commitment to make revolving loans under the Revolving Credit Agreement, (B) Debt which had been secured by the assets sold in the relevant Asset Sale, to the extent the assets sold were not Collateral, (C) Debt of a Restricted Subsidiary that is not a Guarantor, to the extent the assets sold were not Collateral or (D) Debt secured by Liens on the assets sold which are prior to the Liens securing the Obligations); and/or

(ii) to reinvest in Additional Assets (including by means of an investment in Additional Assets by the Issuer or a Restricted Subsidiary with the Net Available Cash received by the Issuer or another Restricted Subsidiary); provided that assets acquired with the proceeds from a disposition of Primary Collateral are pledged as Primary Collateral under the Security Documents substantially simultaneously in accordance with this Indenture.

(c) Any Net Available Cash from an Asset Sale not applied in accordance with Section 4.12(b) within 365 days (or with respect to Section 4.12(b)(ii), if a commitment to make such investment by such date has not been made or such investment has not been made promptly thereafter) after the date of the receipt of such Net Available Cash shall constitute "**Excess Proceeds**". To the extent that any Net Available Cash is from a disposition of Primary Collateral (and/or any cash proceeds from a casualty or condemnation event in respect of Primary Collateral), such Net Available Cash shall be deposited in the Cash Collateral Account and held as Primary Collateral pending application pursuant to Section 4.12(b) or the Prepayment Offer set forth below and released from the Cash Collateral Account to make such payment or investment in accordance with Section 4.12(b) hereof or released to the Issuer or the applicable Restricted Subsidiary if such amounts are remaining after consummation of such Prepayment Offer. Notwithstanding anything to the contrary in this Section 4.12, the Issuer's and other Obligors' right to reinvest Net Available Cash in such Additional Assets or make the payments set forth in Section 4.12(b)(i) hereof shall not be applicable during the continuation of an Event of Default (in which case, all of such Net Available Cash shall constitute Excess Proceeds and shall be promptly used to make a Prepayment Offer).

When the amount of Excess Proceeds exceeds $5 million, the Issuer shall be required to promptly make an offer to each of the Holders to repurchase (the "**Prepayment Offer**") the Notes, which offer to all Holders shall be in the amount of such Excess Proceeds, on a pro rata basis according to principal amount, at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, to but not including the repurchase date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures (including prorating in the event of oversubscription) set forth in the Indenture. To the extent that any portion of the amount of Net Available Cash remains after compliance with the preceding sentence and provided that all Holders of Notes have been given the opportunity to tender their Notes for repurchase in accordance with the Indenture including without limitation, Section 4.12(d) and Section 4.12(e), the Issuer or such Obligor may use such remaining amount of Excess Proceeds for any purpose permitted by the Indenture, and the amount of Excess Proceeds will be reset to zero.

(d) Within five Business Days after the Issuer is obligated to make a Prepayment Offer under (c), the Issuer shall send a written notice, by first-class mail, to the Holders of Notes, accompanied by such information regarding the Issuer and its Subsidiaries as the Issuer in good faith believes will enable such Holders to make an informed decision with respect to such Prepayment Offer. Such notice shall state, among other things, the purchase price and the repurchase date (the "**Purchase Date"**), which shall be, subject to any contrary requirements of applicable law, a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed.

(e) Not later than the date upon which written notice of a Prepayment Offer is delivered to the Holders of the Notes as provided in Section 4.12(d), the Issuer shall deliver to the Trustee an Officer's Certificate as to (i) the amount of the Prepayment Offer to Holders of Notes (the "**Offer Amount**"), (ii) the allocation of the Net Available Cash from the Asset Sales pursuant to which such Prepayment Offer is being made and (iii) the compliance of such allocation with the provisions of Section 4.12(b) and (c). On or before the Purchase Date, the Issuer shall also irrevocably deposit with the Trustee or with the Paying Agent (or, if the Issuer or a Restricted Subsidiary is the Paying Agent, shall segregate and hold in trust for the benefit of the Holders) in Cash Equivalents (other than in those enumerated in clauses (c) or (g) of the definition of Cash Equivalents), maturing on the last day prior to the Purchase Date or on the Purchase Date if funds are immediately available by the opening of business, an amount equal to the Offer Amount to be held for payment in accordance with the provisions of this Section 4.12. Upon the expiration of the period for which the Prepayment Offer remains open (the "**Offer Period**"), the Issuer shall deliver to the Trustee for cancellation the Notes or portions thereof that have been properly tendered to and are to be accepted by the Issuer. The Trustee or the Paying Agent shall, on the Purchase Date, mail or deliver payment to each tendering Holder in the amount of the purchase price. In the event that the aggregate purchase price of the Notes delivered by the Issuer to the Trustee is less than the Offer Amount, the Trustee or the Paying Agent shall deliver the excess to the Issuer immediately after the expiration of the Offer Period for application in accordance with this Section 4.12.

(f) Holders electing to have a Note purchased shall be required to surrender the Note, with an appropriate form duly completed, to the Issuer or its agent at the address specified in the notice at least three Business Days prior to the Purchase Date. Holders shall be entitled to withdraw their election if the Trustee or the Issuer receives not later than one Business Day prior to the Purchase Date a facsimile transmission, electronic mail or letter setting forth the name of the Holder, the principal amount of the Note that was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Note purchased. If at the expiration of the Offer Period the aggregate principal of Notes surrendered by Holders exceeds the Offer Amount, the Issuer shall select the Notes to be purchased on pro rata basis for all Notes (with such adjustments as may be deemed appropriate by the Issuer so that only Notes in denominations of $1,000, or integral multiples thereof, shall be purchased). Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(g) At the time the Issuer or its agent delivers Notes to the Trustee that are to be accepted for purchase, the Issuer shall also deliver an Officer's Certificate stating that such Notes are to be accepted by the Issuer pursuant to and in accordance with the terms of this Section 4.12. A Note shall be deemed to have been accepted for purchase at the time the Trustee or the Paying Agent mails or delivers payment therefor to the surrendering Holder.

(h) The Issuer will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other applicable securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 4.12. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.12, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.12 by virtue thereof.

Section 4.13. *Limitations on Restrictions on Distributions from Restricted Subsidiaries.*

(a) The Issuer and the Obligors shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist any consensual restriction on the right of any Restricted Subsidiary to:

(i) pay dividends, in cash or otherwise, or make any other distributions on or in respect of its Capital Stock, or pay any Debt or other obligation owed, to the Issuer or any other Restricted Subsidiary;

(ii) make any loans or advances to the Issuer or any other Restricted Subsidiary; or

(iii) transfer any of its Property to the Issuer or any other Restricted Subsidiary.

(b) The foregoing limitations will not apply:

(i) With respect to Section 4.13(a)(i), (ii) and (iii), to restrictions:

(A) in effect on the Issue Date (including, without limitation, restrictions pursuant to the Notes, the Indenture, Convertible Senior Secured Notes due 2017, the Convertible Note Indenture, the New Debt Documents, the Revolving Credit Agreement and any Credit Facility in existence on the Issue Date);

(B) relating to Debt of a Restricted Subsidiary and existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Issuer;

(C) that result from the Refinancing of Debt Incurred pursuant to an agreement referred to in Section 4.13(b)(i)(A) or (B) above or in Section 4.13(b)(ii)(A) or (B) below, provided such restrictions are not materially less favorable, taken as a whole, to the Holders of Notes than those under the agreement evidencing the Debt so Refinanced;

(D) relating to Debt incurred after the Issue Date, so long as such restrictions (x) are not materially less favorable, taken as whole, to the Holders of Notes than those restrictions in effect on the Issue Date pursuant to the Notes, the Indenture, Convertible Senior Secured Notes due 2017, the Convertible Note Indenture, the Revolving Credit Agreement and the Credit Facilities in existence on the Issue Date or (y) relate to Debt incurred pursuant to Section 4.09(iii), so long as the respective restrictions apply only to specific Property or projects financed with the respective Incurrence of Debt and/or to any Subsidiary substantially of all whose assets consist of Property or a project financed with proceeds of such Debt;

(E) existing under or by reason of applicable law or governmental regulation; or

(F) that constitute customary restrictions contained in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in good faith and not otherwise prohibited by the Indenture; and

(ii) With respect to Section 4.13(a)(iii) only, to restrictions:

(A) relating to Debt that is permitted to be Incurred and secured without also securing the Notes pursuant to Sections 4.09 and 4.11 that limit the right of the debtor to dispose of the Property securing such Debt;

(B) encumbering Property at the time such Property was acquired by the Issuer or any Restricted Subsidiary, so long as such restrictions relate solely to the Property so acquired and were not created in connection with or in anticipation of such acquisition;

(C) resulting from customary provisions restricting subletting or assignment of leases or customary provisions in other agreements that restrict assignment of such agreements or rights thereunder;

(D) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; or

(E) customary restrictions contained in asset sale agreements limiting the transfer of such Property pending the closing of such sale.

Section 4.14. *Additional Note Guaranties*.

(a) Additional Domestic Subsidiary Guarantor. If after the Issue Date, (x) the Issuer or any Subsidiary of the Issuer creates or acquires any new Domestic Subsidiary (other than an Unrestricted Subsidiary) or (y) an Unrestricted Subsidiary that is a Domestic Subsidiary becomes a Restricted Subsidiary, then within 45 days after such Domestic Subsidiary is created or acquired or becomes a Restricted Subsidiary, the Issuer shall cause such Restricted Subsidiary to (i) execute and deliver to the Trustee a supplemental indenture, in the form of Exhibit B attached hereto, pursuant to which it joins the Note Guaranty as a Guarantor hereunder for all purposes ("**Supplemental Indenture"**); (ii) deliver to the Trustee an Opinion of Counsel (other than from Trustee's counsel) addressed to the Trustee to the effect that the Supplemental Indenture has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a valid and binding obligation of such Restricted Subsidiary, enforceable against such Restricted Subsidiary in accordance with its terms (subject to customary exceptions) and that the Liens granted by such Restricted Subsidiary pursuant to Security Agreement Supplement (referenced in clause (iii) of this sentence) and the Security Documents are enforceable and perfected (to the extent contemplated thereunder), (iii) execute and deliver to the Trustee a Security Agreement Supplement pursuant to which such Restricted Subsidiary joins the Pledge and Security Agreement as a "Grantor" for all purposes (and joins and/or enters into all other applicable

Security Documents as a grantor or mortgagor thereunder); and (iv) execute and deliver to the Trustee a Perfection Certificate that provides the information required pursuant to the Perfection Certificate provided that notwithstanding the foregoing, such Restricted Subsidiary shall be required to execute and deliver all mortgages and/or deeds of trust (if any) within 90 days after such Domestic Subsidiary is created or acquired or becomes a Restricted Subsidiary.

(b) Additional Foreign Subsidiary Guarantor. If after the Issue Date, (x) the Issuer or any Subsidiary of the Issuer creates or acquires any new Foreign Subsidiary that is also a Material Foreign Subsidiary or (z) a Foreign Subsidiary becomes or is designated a Material Foreign Subsidiary, the Issuer shall cause such Restricted Subsidiary to (i) within 90 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, execute and deliver to the Trustee a Supplemental Indenture (and/or any other agreements, documents and/or instruments required under applicable law to evidence that such Foreign Subsidiary is a Guarantor hereunder); (ii) within 120 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, deliver to the Trustee an Opinion of Counsel (other than from Trustee's counsel) addressed to the Trustee to the effect that the Supplemental Indenture has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a valid and binding obligation of such Restricted Subsidiary, enforceable against such Restricted Subsidiary in accordance with its terms (subject to customary exceptions) and that the Liens granted by such Restricted Subsidiary pursuant to Security Agreement Supplement and/or the other documents, agreements or other instruments (referenced in clause (iii) of this sentence) and/or the Security Documents are enforceable and perfected to the extent contemplated thereunder, (iii) within 120 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, execute and deliver to the Trustee a Security Agreement Supplement (and/or any other agreements, documents and/or instruments required under applicable law to evidence the Liens granted by such Foreign Subsidiary in its Property and assets) pursuant to which such Restricted Subsidiary joins the Pledge and Security Agreement as a "Grantor" for all purposes (and/or joins and/or enters into all other applicable Security Documents as a grantor or mortgagor thereunder to the extent required or permitted under the laws of the jurisdictions in which such Foreign Subsidiary is organized and/or maintains its Property); and (iv) within 120 days after such Foreign Subsidiary is created or acquired or becomes or is designated as a Material Foreign Subsidiary, execute and deliver to the Trustee a Perfection Certificate that provides the information required pursuant to the Perfection Certificate. Notwithstanding the foregoing, (A) the obligation of such Foreign Subsidiary to provide a Note Guaranty shall be subject to the Legal Limitations applicable to such Foreign Subsidiary, and any such Foreign Subsidiary will endeavor in good faith to use commercially reasonable efforts to demonstrate that adequate corporate benefit accrues to it and to take other steps reasonably required to avoid or mitigate such Legal Limitations; and (B) in addition to (or, in lieu thereof, to the extent required under the laws of the jurisdictions in which such Foreign Subsidiary is organized and/or maintains its Property) the Security Agreement Supplement, such Foreign Subsidiary may be required to deliver such pledges, security agreements and other collateral documents to evidence the grant of such Lien by such Foreign Subsidiary in its Property (other than to the extent that such Liens are not required to be created and/or perfected as set forth in the Pledge and Security Agreement) as are customarily used in the jurisdiction in which such Foreign Subsidiary owns assets or is otherwise organized.

Section 4.15. *Limitation on Transactions with Affiliates*.

(a) The Issuer and Obligors shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, conduct any business or enter into or suffer to exist any transaction or series of related transactions (including the purchase, sale, transfer, assignment, lease, conveyance or exchange of any Property or the rendering of any service) with, or for the benefit of, any Affiliate of the Issuer (an "**Affiliate Transaction**"), unless:

(i) the terms of such Affiliate Transaction are:

(A) set forth in writing; and

(B) no less favorable to the Issuer or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of the Issuer;

(ii) if such Affiliate Transaction involves aggregate payments or value in excess of $25 million, the Board of Directors (including at least a majority of the disinterested members of the Board of Directors) approves such Affiliate Transaction and, in its good faith judgment, believes that such Affiliate Transaction complies with Section 4.15(a)(i)(B) as evidenced by a Board Resolution; and

(iii) if such Affiliate Transaction involves aggregate payments or value in excess of $50 million, the Issuer obtains a written opinion from an Independent Financial Advisor to the effect that the consideration to be paid or received in connection with such Affiliate Transaction is fair, from a financial point of view, to the Issuer and any relevant Restricted Subsidiaries.

(b) Notwithstanding the foregoing paragraphs, the Issuer or any Restricted Subsidiary may enter into or suffer to exist the following:

(i) any transaction or series of transactions between (i) the Issuer and one or more Obligors or between two or more Obligors or (ii) between the Issuer and/or an Obligor and one or more Restricted Subsidiaries provided that such transaction is in the ordinary course of the Issuer's or such Obligor's, as applicable, business consistent with past practice;

(ii) any transaction or series of transactions between a Restricted Subsidiary that is not an Obligor and one or more a Restricted Subsidiaries that is not an Obligor or between two or more of such Restricted Subsidiaries;

(iii) any Restricted Payment permitted to be made pursuant to Section 4.10 or any Permitted Investment;

(iv) any employment, indemnification or other similar agreement or employee benefit plan entered into by the Issuer or a Restricted Subsidiary with an employee, officer or director (and payments pursuant thereto) in the ordinary course of business and consistent with past practice that is not otherwise prohibited by the Indenture;

(v) loans and advances to employees made in the ordinary course of business consistent with past practices of the Issuer or a Restricted Subsidiary, as the case may be; provided that such loans and advances do not exceed $5 million in the aggregate at any one time outstanding;

(vi) payment of reasonable directors' fees to persons who are not otherwise Affiliates of the Issuer;

(vii) any issuances of Capital Stock (other than Disqualified Stock) of the Issuer to Affiliates of the Issuer; and

(viii) agreements (and the transactions contemplated thereunder) in effect on the Issue Date and described in the Disclosure Statement and any modifications, extension or renewals thereto that are not materially less favorable, taken as a whole, to the Issuer and its Restricted Subsidiaries than such agreement as in effect on the Issue Date.

Section 4.16.

Unrestricted Subsidiaries. Simultaneously with the delivery of the financial statements required to be delivered by the Issuer for each fiscal quarter pursuant to the provisions hereof, the Issuer shall update Schedule 1 hereto to add additional Unrestricted Subsidiaries, to the extent permitted and/or remove Subsidiaries to the extent required pursuant to the definition of Unrestricted Subsidiary.

Section 4.17. *Reports*.

(a) Notwithstanding that the Issuer may in the future not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Issuer shall at all times file with the Commission and provide the Trustee and Holders with copies thereof, without cost to Trustee or any Holder, within fifteen (15) days after it files them with the Commission, with such annual reports and such information, documents and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such information, documents and reports to be so filed with the Commission and provided at the times specified for the filing of such information, documents and reports under such Sections, subject to modification by applicable regulation and the rules promulgated by the Commission; provided, however, that the Issuer shall not be so obligated to file such information, documents and reports with the Commission if the Commission does not permit such filings but shall still provide such information, documents and reports to the Trustee and Holders. Without duplication with respect to the aforementioned items required to be delivered pursuant to this Section 4.17(a), the Issuer shall also furnish to Trustee and each Holder:

(i) as soon as available and in any event upon the first to occur of (x) the date on which the Issuer files its annual report on Form 10 K with the Commission for each fiscal year of the Issuer or (y) 90 days after the end of each fiscal year of the Issuer:

(x) audited consolidated statements of operations, shareholders' equity and cash flows of the Issuer and its Subsidiaries for such fiscal year and the related consolidated balance sheets of the Issuer and its

Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form the corresponding consolidated figures for the preceding fiscal year;

(y) an opinion of any independent certified public accountants of recognized international standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) stating that such audited consolidated financial statements fairly present in all material respects the consolidated financial condition and results of operations of the Issuer and its Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP; and

(z) a management discussion and analysis that includes a comparison of performance for that fiscal year to the prior fiscal year; and

(ii) as soon as available and in any event upon the first to occur of (x) the date on which the Issuer files its quarterly report on Form 10 Q with the Commission for each fiscal quarter or (y) 45 days after the end of each fiscal quarter (including the fourth fiscal quarter of each fiscal year):

(x) consolidated statements of operations, shareholders' equity and cash flows of the Issuer and its Subsidiaries for such fiscal quarter and for the period from the beginning of the respective fiscal year to the end of such fiscal quarter, and the related consolidated balance sheets of the Issuer and its Subsidiaries at the end of such period, setting forth in each case in comparative form the corresponding consolidated figures for the corresponding period in the preceding fiscal year;

(y) a certificate of the Chief Financial Officer or Controller, which certificate shall state that said consolidated financial statements referred to in the preceding clause (1) fairly present in all material respects the consolidated financial condition and results of operations of the Issuer and its Subsidiaries, in each case in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to year-end audit adjustments and the omission of footnotes);

(z) a management discussion and analysis that includes a comparison of performance for that fiscal quarter to the corresponding period in the prior year.

(b) The Issuer will deliver to the Trustee, within 120 days after the end of each fiscal year, beginning with the fiscal year ending December of 20__, a written Opinion of Counsel as to the continued perfection of the liens of the Security Documents on the Collateral, to the extent required by Section 314(b)(2) of the Trust Indenture Act.

(c) Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such reports shall not constitute constructive notice of any information contained therein or determinable from information

contained therein, including the Issuer's and Obligors' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(d) Each Obligor agrees to provide at least fifteen (15) days prior written notice to the Trustee of any change (i) in its legal name, (ii) in its identity or type of organization or corporate structure, (iii) in its Federal Taxpayer Identification Number or organizational identification number or (iv) in its jurisdiction of organization. Each Obligor agrees to promptly provide the Trustee with certified organizational documents reflecting any of the changes described in the immediately preceding sentence, to the extent applicable. Each Obligor agrees not to effect or permit any change referred to in the first sentence of this paragraph (d) unless all filings have been made under the applicable Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue (without interruption) at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral subject to Permitted Liens and except as provided in Section 4.01 of the Pledge and Security Agreement.

Section 4.18. *Payment for Consents*. The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or 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 4.19. *Impairment of Security Interest; Further Assurances; Collateral Inspections and Reports; Costs and Indemnification.*

(a) Neither the Issuer nor any of its Restricted Subsidiaries will take any action, or knowingly or negligently 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 Trustee, the Collateral Agent and the Holders in contravention of the provisions of this Indenture and the Security Documents.

(b) Without limiting the provisions set forth in the Pledge and Security Agreement, the Issuer and the Obligors shall, and shall cause each of the Restricted Subsidiaries to make, execute, endorse, acknowledge, file, record, register and/or deliver such agreements, documents, instruments, and further assurances (including, without limitation, Uniform Commercial Code financing statements, mortgages, deeds of trust, vouchers, invoices, schedules, confirmatory assignments, conveyances, transfer endorsements, powers of attorney, certificates, real property surveys, reports, landlord waivers, bailee agreements and control agreements), and take such other actions, as may be required under applicable law or as the Trustee or the Collateral Agent may deem reasonably appropriate or advisable to cause the Collateral Requirements to be and remain satisfied and otherwise to create, perfect, preserve or protect the security interest in the Collateral of the secured parties under and in accordance with the Security Documents, all at the Issuer's expense.

(c) Upon request of the Trustee or the Collateral Agent at any time after an Event of Default has occurred and is continuing, the Issuer and the Obligors shall, and shall cause the Restricted Subsidiaries to, (i) permit the Trustee or the Collateral Agent or any advisor, auditor, consultant, attorney or representative acting for the Trustee or the Collateral Agent, upon reasonable notice to the Issuer and during normal business hours, to visit and inspect any of the property of the Issuer and its Restricted Subsidiaries, to review, make extracts from and copy the books and records of the Issuer and its Restricted Subsidiaries relating to any such property, and to discuss any matter pertaining to any such property with the officers and employees of the Issuer and its Restricted Subsidiaries, and (ii) deliver to the Trustee or the Collateral Agent such reports, including valuations, relating to any such property or any Lien thereon as the Trustee or such Collateral Agent may request.

(d) Without limiting the provisions set forth in Section 4.19(e) hereof, the Issuer will bear and pay all legal expenses, collateral audit and valuation costs, filing fees, insurance premiums and other costs associated with the performance of the obligations of the Issuer and its Restricted Subsidiaries set forth in this Section 4.19 and also will pay, or promptly reimburse the Trustee and the Collateral Agent for, all costs and expenses incurred by the Trustee or the Collateral Agent in connection therewith, including all reasonable fees and charges of any advisors, auditors, consultants, attorneys or representatives acting for the Trustee or for the Collateral Agent.

(e) Obligors shall pay all reasonable fees and expenses incurred by Trustee, Collateral Agent and the members of the Ad Hoc Consortium (as defined in the Plan of Reorganization) (provided that the Obligors shall only be required to pay the reasonable attorneys' fees and expenses of one counsel for the Trustee and Collateral Agent and one counsel for the members of the Ad Hoc Consortium (together with one local counsel representing the Trustee, Collateral Agent and the members of the Ad Hoc Consortium, for each applicable jurisdiction)), in connection with the preparation, negotiation, execution, delivery and administration of the Indenture, the Notes and the Security Documents. Obligors shall pay all reasonable fees and expenses incurred by Trustee, Collateral Agent and the Holders, (provided that the Obligors shall only be required to pay the reasonable attorneys' fees and expenses of one counsel for the Trustee and Collateral Agent and one counsel for the Holders (together with one local counsel representing the Trustee, Collateral Agent and the Holders, for each applicable jurisdiction)),in connection with Trustee's, Collateral Agent's and Holders' exercise of their rights and remedies hereunder and/or under the Notes and/or Security Documents (including in connection with any workout or restructuring). Such fees and expenses shall be payable upon demand. The Issuer and Obligors shall fully reimburse and indemnify, on demand, Trustee, Collateral Agent and each Holder (and their respective directors, officers, employees and agents) (each, an "**Indemnified Party**") and hold each Indemnified Party harmless against any and all loss, damage, claim, liability, obligation, penalty, claim, litigation, demand, defense, judgment, suit, proceeding, costs, disbursements or expense of any kind whatsoever imposed upon, incurred by, awarded, asserted or assessed against, or otherwise impacting any of them in connection with or arising from or out of the transactions contemplated hereunder. Each applicable Holder shall notify the Issuer in writing promptly of any claim of which such Holder has actual knowledge asserted against such Holder for which it may seek indemnity; provided that the failure by such Holder to so notify the Issuer shall not relieve the Issuer or any other Obligor of its obligations hereunder except to the extent the Issuer or such Obligor is actually prejudiced thereby. Such

notice shall reasonably specify the amount of such payment or liability and shall be conclusive absent manifest error.

Notwithstanding the foregoing, an Indemnified Party shall not be entitled to indemnification in respect of claims arising from acts of its own gross negligence or willful misconduct to the extent that such gross negligence or willful misconduct is determined by the final judgment of a court of competent jurisdiction, not subject to further appeal, in proceedings to which such Indemnified Party is a proper party.

Section 4.20. *Rating of Notes; Listing of Stock*. Within forty-five (45) days of the Issue Date, the Issuer shall have met with S&P or Moody's or such other rating agency approved by the Required Holders to commence the process to rate the Notes (and thereafter shall use good faith reasonable efforts to promptly complete such process). In addition, the Issuer shall cause its common stock to be publicly traded on a national exchange or on an over-the-counter market within ninety (90) days after the Issue Date.

Section 4.21. *ERISA*. Except where a failure to comply with any of the following, individually or in the aggregate, would not or could not reasonably be expected to result in a Material Adverse Effect, (i) the Obligors will maintain, and cause each ERISA Affiliate to maintain, each Plan in compliance with all applicable requirements of ERISA and of the Code and with all applicable rulings and regulations issued under the provisions of ERISA and of the Code, (ii) the Obligors will not and, to the extent authorized, will not permit any of the ERISA Affiliates to (a) engage in any transaction with respect to any Plan which would subject any Obligor to either a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Code, (b) fail to make full payment when due of all amounts which, under the provisions of any Plan, any Obligor or any ERISA Affiliate is required to pay as contributions thereto, or permit to exist any accumulated funding deficiency (as such term is defined in Section 302 of ERISA and Section 412 of the Code), whether or not waived, with respect to any Pension Plan or (c) fail to make any payments to any Multiemployer Plan that any Obligor or any of the ERISA Affiliates may be required to make under any agreement relating to such Multiemployer Plan or any law pertaining thereto and (iii) the Obligors will maintain, and will cause each Subsidiary to maintain, each Foreign Plan in compliance with the terms thereof and all requirements of applicable law.

Section 4.22. Intentionally Omitted.

Section 4.23. *Environmental Matters; Reporting*. The Obligors shall, and shall cause each of their Subsidiaries to, observe and comply with, and cause each Subsidiary to observe and comply with all Environmental Laws, except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 4.24. *Related Business.* The Obligors shall not engage in any business other than the businesses of Obligors on the date hereof and any Related Business.

Section 4.25. Intentionally Omitted.

Section 4.26. *Representations and Warranties*. Each of the Obligors represents and warrants to the Trustee and the Holders, as to itself and the other Restricted Subsidiaries (as applicable), as of the Issue Date and as of each date thereafter on which any of the following representations and warranties are required to be restated or remade (whether in connection with any amendment or waiver of any of the provisions of this Indenture or otherwise), that:

(a) Organization and Good Standing. Each Obligor has been duly formed and is validly existing and in good standing as an organization under the laws of its jurisdiction of organization, with power and authority to own its properties and to conduct its business as presently conducted and has the power and authority to own and convey all of its properties and to execute and deliver this Indenture, the Notes (as applicable) and the other Security Documents and to perform the transactions contemplated hereby and thereby.

(b) Binding Obligation. This Indenture and the Security Documents to which each of the Obligors is a party have each been duly executed and delivered on behalf of the Obligors and this Indenture and each Security Document to which each of the Obligors is a party constitutes a legal, valid and binding obligation of such Obligor in accordance with its terms except as may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights and by general principles of equity.

(c) No Consents Required. No consent of, or other action by, and no notice to or filing with, any governmental authority or any other party, is required for the due execution, delivery and performance by each of the Obligors of this Indenture or any of the other Security Documents or for the perfection of or the exercise by the Trustee, Collateral Agent or the Holders of any of their rights or remedies thereunder or hereunder which have not been duly obtained.

(d) No Violation. The consummation of the transactions contemplated by this Indenture and the Security Documents and the fulfillment of the terms hereof and thereof shall not conflict with, result in any material breach of any of the terms and provisions of, nor constitute (with or without notice or lapse of time) a default under, the organizational documents of any Obligor, or any material indenture, agreement or other instrument to which any Obligor is a party or by which it is bound; nor result in the creation or imposition of any Lien upon any of its properties pursuant to the terms of any such indenture, agreement or other instrument (other than this Indenture).

(e) No Proceedings. There is no pending or, to any Obligor's knowledge, threatened action, suit or proceeding, nor any injunction, writ, restraining order or other order of any nature against or affecting any Restricted Subsidiary, its officers or members, or the property of any Restricted Subsidiary, in any court or tribunal, or before any arbitrator of any kind or before or by any governmental authority (i) asserting the invalidity of this Indenture, the Notes or any of the Security Documents, (ii) seeking to prevent the issuance of any of the Notes or the consummation of any of the transactions contemplated thereby or hereby, or (iii) seeking any determination or ruling that could be reasonably expected to have a Material Adverse Effect.

(f) Obligors Not Insolvent. Each Obligor is solvent and will not become insolvent after giving effect to the transactions contemplated by this Indenture, the Notes, and each of the

Security Documents and the financings, if applicable, evidenced by the Revolving Credit Facility, the New Credit Facility and the Convertible Note Facility.

(g) Name. The legal name of the Issuer and the other Obligors is as set forth in the signature page of this Indenture and, except as set forth in the Perfection Certificate, neither the Issuer nor any other Obligor has any tradenames, fictitious names, assumed names or "doing business as" names that are material to the business of the Obligors taken as a whole.

(h) Title to Assets. Each of the Obligors has good and valid legal title to all of its assets necessary for it to conduct its business without any Liens upon such assets other than Permitted Liens. The security interests and liens granted to Collateral Agent pursuant to the Security Documents constitute valid and perfected (a) first priority liens and security interests in and upon the **[Priority Collateral]** and (b) second priority liens and security interest in and upon the **[Secondary Collateral]**, in each case, subject only to certain of the Permitted Liens.

(i) Events of Default. No event or omission has occurred and no condition exists that would constitute a Default or an Event of Default after giving effect to this Indenture and the transactions contemplated hereunder to occur on or before the Issue Date.

(j) Compliance with Laws and Ordinances. None of the Obligors or any of the Restricted Subsidiaries is in violation of any laws, ordinances or governmental rules or regulations to which it is subject and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its properties or to the conduct of its activities, which violation or failure could reasonably be expected to have a Material Adverse Effect.

(k) Federal Reserve Regulations. No Obligor or other Restricted Subsidiary is engaged principally or as one of its important activities in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System). The transactions contemplated by this Indenture, the Notes and the Security Documents, including the issuance of the Notes, the security arrangements contemplated thereby, the execution, delivery and performance of the Security Documents and the consummation of all other transactions contemplated thereby, will not violate or be inconsistent with any of the provisions of Regulations T, U, or X of the Board of Governors of the Federal Reserve System.

(l) ERISA. No Obligor or Subsidiary has any liability under any Pension Plans or Foreign Plans that could reasonably be expected to cause or result in a Material Adverse Effect . No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. No Obligor or Subsidiary has a present intention to terminate any Pension Plan or Foreign Plan with respect to which any Obligor or Subsidiary could reasonably be expected to result in a Material Adverse Effect.

(m) Financial Statements. The audited consolidated financial statements provided to the Trustee and/or Holders prior to the Issue Date fairly present in all material respects the consolidated financial condition and results of operation of the Issuer and its Subsidiaries at the

end of the 2008 fiscal year of the Issuer in accordance with GAAP. The unaudited consolidated financial statements provided to the Trustee and/or Holders fairly present in all material respects the consolidated financial conditions and results of operations of the Issuer and its Subsidiaries, in case in accordance with GAAP, consistently applied, as at the end of **[_____ _, 2009]**, and for such period (subject to year-end audit adjustments and the omission of footnotes). Except as disclosed on Schedule 4.26(m) and in the Disclosure Statement, since **[December __, 2008]**, there has been no material adverse change in the business, assets, operations or condition, financial or otherwise, of the Issuer or its Subsidiaries from that set forth in the financial statements referred to in the first sentence of this Section 4.26(m).

(n) Plan of Reorganization. The Confirmation Order has been entered by the Bankruptcy Court, is in full force and effect, and has not been reversed, vacated, modified or stayed, and no application or motion has been filed or served on the Issuer or any other Obligor seeking leave to appeal or a stay pending appeal and the Plan of Reorganization has not been amended, supplemented or otherwise modified since **[the voting deadline with respect to the Plan of Reorganization]**.

(o) OFAC. No Obligor, nor any Subsidiary of any Obligor (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) to its knowledge engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order. The regulations and executive orders described in clauses (i) through (iii) of the preceding sentence are referred to herein as "**OFAC Regulations**".

(p) Patriot Act. The Obligors and the other Restricted Subsidiaries are in compliance, in all material respects, with the (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto (collectively, the "**FAC Regulations**"), and (ii) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001).

(q) Investment and Holding Company Status. No Obligor is (a) an "investment company" as defined in, and/or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) a "bank holding company" as defined in, or subject to regulation under, the Bank Holding Company Act of 1956, as amended.

(r) Taxes. Each Obligor has filed, or caused to be filed, all federal and material foreign, state and local tax returns required to be filed and paid (a) all amounts of material taxes shown thereon to be due (including interest and penalties) and (b) all other material taxes, fees, assessments and other governmental charges (including all mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not

yet delinquent or (ii) that are being contested in good faith and by proper proceedings. No Obligor is aware as of the Issue Date of any proposed tax assessments against any of them which, individually or in the aggregate, could reasonably be expected to have Material Adverse Effect.

(s) Environmental. Neither the Obligors nor any of their Subsidiaries have generated, used, stored, treated, transported, manufactured, handled, produced, released or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which violates any applicable Environmental Law or permit, and the operations of the Obligors and their Subsidiaries complies in all material respects with all Environmental Laws and all permits other than such actions which could not reasonably be expected to have a Material Adverse Effect.

(t) Labor and Employment Matters.

(i) Except as could not reasonably be expected to result in a Material Adverse Effect or as disclosed in the Disclosure Statement, as of the Issue Date, (A) no employee of the Obligors is represented by a labor union, no labor union has been certified or recognized as a representative of any such employee, and the Obligors do not have any obligation under any collective bargaining agreement or other agreement with any labor union or any obligation to recognize or deal with any labor union, and there are no such contracts or other agreements pertaining to or which determine the terms or conditions of employment of any employee of the Obligors; (B) there are no pending or threatened representation campaigns, elections or proceedings; (C) the Obligors do not have knowledge of any strikes, slowdowns or work stoppages of any kind, or threats thereof, and no such activities occurred during the 24 month period preceding the date hereof; and (D) no Obligor has engaged in, admitted committing or been held to have committed any unfair labor practice.

(ii) The Obligors are in compliance in all material respects with, all applicable laws, rules and regulations respecting employment, wages, hours, compensation, benefits, and payment and withholding of taxes in connection with employment except as could not reasonably be expected to have a Material Adverse Effect.

(v) Real Property. The real property owned by any of the Obligors complies with, and shall continue to comply with, all laws, regulations and other legal requirements and any and all covenants, conditions, restrictions or other matters which materially affect such real property, and none of the Obligors has received any notice of any violation of any law, regulation of other legal requirement with respect to any such real property unless such non-compliance or violation could not reasonably be expected to have a Material Adverse Effect, individually or together with all other such noncompliance or violation(s).

ARTICLE 5.
MERGER, CONSOLIDATION AND SALE OF PROPERTY

Section 5.01. *Merger, Consolidation and Sale of Property of the Issuer.*

(a) The Issuer shall not merge or consolidate with or into any other Person (other than a merger of a Wholly Owned Restricted Subsidiary and the Issuer) or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all its Property (other than sales, transfers, assignments, leases, conveyances or dispositions to a Wholly Owned Restricted Subsidiary that is a Guarantor) in any one transaction or series of transactions unless:

(i) the Issuer shall be the Surviving Person in such merger or consolidation, or the Surviving Person (if other than the Issuer) formed by such merger or consolidation or to which such sale, transfer, assignment, lease, conveyance or disposition is made shall be a corporation or limited liability company organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(ii) the Surviving Person (if other than the Issuer) expressly assumes, by Supplemental Indenture (and thereby becomes the "Issuer" for all purposes hereunder) and Security Agreement Supplement (and thereby becomes a "Grantor" for all purposes hereunder) in form reasonably satisfactory to the Trustee, executed and delivered to the Trustee by such Surviving Person, the due and punctual payment of the principal of, and premium, if any, and interest on, all the Notes, according to their tenor, and the due and punctual performance and observance of all the covenants, conditions and all other obligations of the Issuer under the Indenture, the Notes and the Security Documents to be performed by the Issuer;

(iii) immediately before and after giving effect to such transaction or series of transactions on a pro forma basis (and treating, for purposes of this Section 5.01(a)(iii) and Section 5.01(a)(iv) below, any Debt that becomes, or is anticipated to become, an obligation of the Surviving Person or any Restricted Subsidiary as a result of such transaction or series of transactions as having been Incurred by the Surviving Person or such Restricted Subsidiary at the time of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing;

(iv) immediately after giving effect to such transaction or series of transactions on a pro forma basis, (x) the Consolidated Fixed Charge Coverage Ratio would be at least 2.0 to 1.0, or (y) the Consolidated Fixed Charge Coverage Ratio for the Issuer or the Surviving Person (as applicable) would be equal to or greater than such ratio immediately prior to such transaction or series of transactions; and

(v) the Issuer shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officer's Certificate and an Opinion of Counsel, each stating that such transaction or series of transactions and the Supplemental Indenture and Security Agreement Supplement, if any, in respect thereto comply with this Section 5.01 and that all conditions precedent herein provided for relating to such transaction or series of transactions have been satisfied and that the Liens

in the Collateral of the Surviving Person are enforceable (for the benefit of the Collateral Agent) and perfected.

(b) The Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of the Issuer under the Indenture, the Notes and the Security Documents with the same effect as if such successor Person had been named as the Issuer in this Indenture; provided that the predecessor company in the case of:

(i) a sale, transfer, assignment, conveyance or other disposition of all or substantially all of its Property (unless such sale, transfer, assignment, conveyance or other disposition is of all the Property of the Issuer as an entirety or virtually as an entirety), or

(ii) a lease,

shall not be released from any of the obligations or covenants under the Indenture, the Notes and the Security Documents, including with respect to the payment of the Notes.

Section 5.02. *Merger, Consolidation and Sale of Property of the Guarantors*. No Guarantor may merge or consolidate with or into any Person, or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all its Property, to any Person unless:

(a) in the case of Intermediate Holdco, the other Person is the Issuer;

(b) in the case of any Guarantor, the other Person is the Issuer or a Guarantor or becomes a Guarantor for all purposes hereunder and the Surviving Person becomes a "Guarantor" for all purposes hereunder and a "Grantor" for all purposes under the Security Documents concurrently with the transaction;

(c) (i) either (x) the Guarantor is the Surviving Person or (y) the resulting, surviving or transferee Person expressly assumes by Supplemental Indenture and Security Agreement Supplement all of the obligations of the Guarantor under its Note Guaranty (in such Person's capacity as a "Guarantor" thereunder) and the Security Documents (in such Person's capacity as a "Grantor" thereunder); and (ii) immediately after giving effect to the transaction, no Default or Event of Default has occurred and is continuing; or

(d) in the case of any Guarantor, the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the Property of the Guarantor (in each case other than to the Issuer and/or to another Guarantor), in each case, which is otherwise permitted by the Indenture.

Any Surviving Person that is not already a Guarantor shall comply with the provisions of Section 4.14 hereof.

ARTICLE 6.
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default*.

(a) The following events shall be "**Events of Default**":

(i) the Issuer defaults in any payment of interest, fees, costs or expenses on any Note when the same becomes due and payable and such default continues for a period of twenty (20) Business Days;

(ii) the Issuer defaults in the payment of the principal or premium amount of any Note when the same becomes due and payable at its Stated Maturity, upon acceleration, required repurchase/redemption or otherwise;

(iii) a breach of Section 5.01 or Section 5.02;

(iv) a breach of any covenant or agreement in the Notes, the Security Documents or in this Indenture (other than a failure that is the subject of the foregoing Section 6.01(i), (ii) or (iii)) and such failure continues unremedied for a period of forty-five (45) days after the written notice demanding that such default be remedied is given to the Issuer as specified in the last paragraph of this Section 6.01;

(v) (x) a default by any Obligor or any other Restricted Subsidiary under any Debt (including, without limitation, the Debt under the Revolving Credit Facility, the New Credit Facility and/or the Convertible Note Facility, to the extent applicable under this clause (v)) of such Obligor and/or Restricted Subsidiary that results in acceleration of the final stated maturity of such Debt, or (y) the failure to pay any such Debt (including, without limitation, the Debt under the Revolving Credit Facility, the New Credit Facility and/or the Convertible Note Facility, to the extent applicable under this clause (v)) when due, whether at final stated maturity or otherwise (after giving effect to any applicable grace periods and any extensions thereof), in each case, with respect to Debt in an aggregate principal amount in excess of $25 million (or its foreign equivalent at the time);

(vi) a final judgment or judgments for the payment of money in excess of $20 million in the aggregate (exclusive of judgment amounts fully covered by insurance where the insurer has not denied liability in respect of such judgment) shall be rendered by one or more courts, administrative tribunals or other bodies having jurisdiction against any Obligor or any Restricted Subsidiary and the same shall not be waived or discharged (or provision shall not be made for such discharge), bonded, or a stay for any period of 60 consecutive days after the date of entry thereof;

(vii) the Issuer, SLLC or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary insolvency proceeding or gives notice of intention to make a proposal under any Bankruptcy Law;

(B) consents to the entry of an order for relief against it in an involuntary insolvency proceeding or consents to its dissolution or winding-up;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(D) makes a general assignment for the benefit of its creditors;

or takes any comparable action under any foreign laws relating to insolvency; provided, however, that the liquidation of any Restricted Subsidiary into any Obligor or the liquidation of any Restricted Subsidiary (that is not an Obligor) into any Restricted Subsidiary, in each case, other than as part of a credit reorganization, shall not constitute an Event of Default under this Section 6.01(vii);

(viii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Issuer, SLLC or any Significant Subsidiary in an involuntary insolvency proceeding;

(B) appoints a Custodian of the Issuer, SLLC or any Significant Subsidiary or for any substantial part of its property;

(C) orders the winding up, liquidation or dissolution of the Issuer, SLLC or any Significant Subsidiary;

(D) orders the presentation of any plan or arrangement, compromise reorganization of the Issuer, SLLC or any Significant Subsidiary; or

(E) grants any similar relief under any Bankruptcy Law or foreign laws; and in the case of (A), (B), (C), (D) and (E), the order or decree remains unstayed and in effect for 90 days;

(ix) any Note Guaranty ceases to be in full force and effect, other than in accordance with the terms of the Indenture, or a Guarantor denies or disaffirms its obligations under its Note Guaranty, other than in accordance with the terms of the Indenture or a Guarantor fails to timely make any payment or to timely perform any obligation set forth herein and/or in the Security Documents (after any cure periods set forth herein have expired with respect to such payment by Issuer and/or obligations to be performed by Issuer);

(x) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on any material portion of the Collateral intended to be covered thereby (to the extent perfection is required by the Indenture or the Security Documents), or, except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture, any of the Security Documents shall for whatever reason be terminated or

cease to be in full force and effect, or the enforceability thereof shall be contested by any Obligor or any other Subsidiary of an Obligor;

(xi) any representation or warranty made or deemed made by or on behalf of any Obligor in or in connection with this Indenture or any Security Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Indenture, any of the other Security Documents or any amendment or modification hereof or thereof, shall prove to have been incorrect in any material respect when made or deemed made;

(xii) payment by the Issuer or any Restricted Subsidiary of any Subordinated Obligation unless expressly permitted under the Indenture, the Notes and/or the Intercreditor Agreement [or other subordination agreement between the Trustee and the Holders of (or agents with respect to) such Subordinated Obligations];

(xiii) any of the Issuer, SLLC or any Significant Subsidiary shall become unable, admit in writing or fail generally to pay its debts as they become due; or

(xiv) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, if any, could reasonably be expected to result in a Material Adverse Effect.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law, pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or otherwise.

The Issuer shall deliver to the Trustee, as soon as reasonably possible and, in any case, within twenty (20) days after the Issuer or any Obligor becomes aware thereof, written notice in the form of an Officer's Certificate of any Event of Default and any event that with the giving of notice or the lapse of time would become an Event of Default, its status and what action the Issuer is taking or proposes to take with respect thereto. The Issuer shall immediately notify the Trustee if a meeting of the Board of Directors of the Issuer is convened to consider any action mandated by a petition for debt settlement proceedings or bankruptcy proceedings. The Issuer shall also promptly advise the Trustee of the approval of the filing of a debt settlement or bankruptcy petition prior to the filing of such petition.

A Default under Section 6.01(a)(iv) is not an Event of Default until the Trustee or the Notifying Holders notify the Issuer of the Default and such Default is not cured within forty-five (45) days after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "**Notice of Default**." In the event that a Default under Section 6.01(a)(iv) has occurred with respect to the covenant described in Section 4.20 and is continuing, provided that the Issuer has used commercially reasonable good faith efforts to satisfy the requirements of Section 4.20 and such Default was caused by events, acts or omissions out of the control of the Issuer and/or its Subsidiaries, the sole remedy of the Trustee and Holders of the Notes shall be to impose the Default Rate with respect to all Obligations

outstanding under this Indenture and the Notes, effective automatically as of the date of such Default (without notice) (absent the Issuer's use of commercially reasonable good faith efforts to satisfy the requirements of Section 4.20 or if such Default was caused by events, acts or omissions in the control of the Issuer and/or its Subsidiaries, the Trustee and Holders shall have all of the rights and remedies that are otherwise available to them in the event that such Default ripens to an Event of Default).

Section 6.02. *Acceleration of Maturity; Rescission.*

(a) If an Event of Default with respect to the Notes (other than an Event of Default specified in Section 6.01(vii) or Section 6.01(viii) with respect to the applicable Obligor) shall have occurred and be continuing, the Trustee or the Notifying Holders may (i) impose the Default Rate of interest (which shall become effective as of the initial occurrence of the initial Event of Default irrespective of when Issuer is notified that the Default Rate has been imposed) with respect to all Obligations outstanding under this Indenture and the Notes and (ii) declare the principal of and accrued interest on all the Notes to be due and payable by notice in writing to the Issuer and the Trustee specifying the applicable Event of Default and that it is a "**notice of acceleration**", and the same shall become immediately due and payable.

(b) In case an Event of Default resulting from Section 6.01(vii) or Section 6.01(viii) with respect to the applicable Obligor shall occur, all Obligations outstanding under this Indenture and the Notes shall become due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Notes. After any such acceleration, but before a judgment or decree based on acceleration is obtained by the Trustee, the Required Holders may, under certain circumstances, rescind and annul such acceleration if (i) the rescission would not conflict with any judgment or decree, (ii) all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration, (iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest which has become due otherwise than by such declaration of acceleration, and all other interest accruing at the Default Rate has been paid in full in cash, (iv) the Issuer and/or any other Obligor has paid the Trustee its agreed upon compensation and reimbursed the Trustee for its expenses, disbursements and advances and all other amounts due to the Trustee under Section 7.06 and (v) in the event of the cure or waiver of an Event of Default of the type described in either Section 6.01(vii) or Section 6.01(viii), the Trustee shall have received an Officer's Certificate to the effect that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(c) In the event of a declaration of acceleration of the Notes because an Event of Default described in Section 6.01(v) has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the payment Default or other Default triggering such Event of Default pursuant to Section 6.01(v) shall be remedied or cured or waived by the holders of the relevant Debt pursuant to the documentation governing such Debt and if (i) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction, (ii) 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 and (iii) all the other amounts due to the Trustee have been paid.

(d) Subject to the provisions of Section 7.01, in case an Event of Default shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the Holders of the Notes, unless such Holders shall have offered to the Trustee indemnity reasonably satisfactory to the Trustee. Subject to Article 7, the Required Holders will have the right to direct the exercise of rights and remedies and the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes.

Section 6.03. *Other Remedies*. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture and may take any necessary action requested of it as Trustee to settle, compromise, adjust or otherwise conclude any proceedings to which it is a party.

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. Any such proceeding instituted by the Trustee may be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provisions for the payment of the reasonable compensation, expenses, disbursements of the Trustee and its counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative, to the extent permitted by law. Any costs associated with actions taken by the Trustee under this Section 6.03 shall be reimbursed to the Trustee by the Issuer.

Section 6.04. *Waiver of Past Defaults and Events of Default*. Provided the Notes are not then due and payable by reason of a declaration of acceleration, the Required Holders may on behalf of the Holders of all the Notes waive any past Default or Event of Default with respect to such Notes and this Indenture and its consequences by providing written notice thereof to the Issuer and the Trustee, except a Default or Event of Default (i) in the payment of interest on or the principal of any Note or (ii) in respect of a covenant or provision hereof which under the Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected. In the case of any such waiver, the Obligors, the Trustee and the Holders of the Notes will be restored to their former positions and rights under the Indenture, respectively; provided that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto.

Section 6.05. *Control by Majority*. Subject to Article 7 hereof, the Required Holders may direct the exercise of rights and remedies by Trustee and the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee in personal liability, or that the

Trustee determines in good faith may be unduly prejudicial to the rights of Holders of the Notes not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from requisite Holders of the Notes.

Section 6.06. *Limitation on Suits*.

(a) No Holder of Notes will have any right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any remedy hereunder unless:

(i) such Holder has previously given to the Trustee written notice of a continuing Event of Default;

(ii) the Notifying Holders have made written request and offered the Trustee indemnity reasonably satisfactory to the Trustee to institute such proceeding as Trustee;

(iii) the Trustee shall have failed to institute such proceeding within 60 days after such notice, request and offer; and

(iv) during such 60 day period, the Trustee shall not have received from the Required Holders a direction inconsistent with such request.

However, such limitations do not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of, and premium, if any, or interest on, such Note on or after the respective due dates expressed in such Note.

Section 6.07. *No Personal Liability of Directors, Officers, Employees and Stockholders*. No director, officer, employee, incorporator or stockholder (solely in its capacity as a stockholder and not in its capacity as an Obligor) of any Guarantor or the Issuer, as such, will have any liability for any obligations of any Guarantor or the Issuer under the Notes, any Note Guaranty or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 6.08. *Rights of Holders to Receive Payment.* Notwithstanding any other provision of the Indenture, the right of any Holder of a Note to receive payment of the principal of or premium, if any, or interest, if any, on such Note or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes shall not be impaired or affected without the consent of such Holder.

Section 6.09. *Collection Suit by Trustee*. If an Event of Default in payment of principal, premium or interest specified in Section 6.01(i) or (ii) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any Guarantor (or any other obligor on the Notes) for the whole amount of unpaid principal, premium and accrued interest remaining unpaid.

Section 6.10. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses,

disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06) and the Holders allowed in any judicial proceedings relative to the Issuer and/or any Guarantor (or any other obligor upon the Notes), its creditors or its Property and, unless prohibited by law, shall be entitled and empowered to collect and receive any monies or other Property payable or deliverable on any such claims and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings 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 shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceedings. All rights of action and claims under the Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 6.11. *Priorities.* If the Trustee collects any money pursuant to this Article Six or receives any money from the Collateral Agent upon foreclosure and sale of any Collateral, it shall pay out the money in the following order (subject to the Intercreditor Agreement):

FIRST: to the Trustee for all amounts due under Section 7.06;

SECOND: to the Collateral Agent for all amounts due under the Security Documents;

THIRD: to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest as to each (and any other amounts outstanding thereunder), ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes; and

FOURTH: **[as required under the Intercreditor Agreement and then]** to the Issuer or as a court of competent jurisdiction may direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.11.

Section 6.12. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable

costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Trustee and/or Collateral Agent, a suit by a Holder pursuant to Sections 6.06 and 6.08 or a suit by Holders of more than 10% in principal amount of the Notes then outstanding.

ARTICLE 7.
TRUSTEE

Section 7.01. *Duties of Trustee.*

(a) If an Event of Default actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such Person's own affairs.

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

(i) The Trustee need perform only such duties as are specifically set forth in the Indenture.

(ii) In the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Indenture but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of the Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). Whenever in the administration of the Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officer's Certificate, subject to the requirement in the preceding sentence, if applicable.

(c) The Trustee shall not be relieved from liability for its own action or inaction (if constituting negligence) or its own willful misconduct, except that:

(i) This paragraph does not limit the effect of Section 7.01(b).

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

(iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it from the requisite Holders pursuant to the terms hereof.

(iv) No provision of the Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights, powers or duties if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, Section 7.01(a), (b), (c) and (e) shall govern every provision of the Indenture that in any way relates to the Trustee.

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

(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 Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by the law.

Section 7.02. *Rights of Trustee.* Subject to Section 7.01:

(a) The Trustee may conclusively rely on any document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may request an Officer's Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of Section 12.05. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed by it with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers; provided that the Trustee's conduct does not constitute willful misconduct, negligence or bad faith.

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

(f) 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.

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

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

(i) Intentionally Omitted.

(j) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to the Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not suspended.

(k) The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (i) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been given to the Trustee by the Issuer or by any Holder of the Notes and such notice references the Notes and the Indenture; and

(l) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(m) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

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 make loans to, accept deposits from, perform services for or otherwise deal with the Issuer, or any Affiliate thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to Sections 7.09 and 7.10.

Section 7.04. *Trustee's Disclaimer.* The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of the Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the sale of Notes or any money paid to the Issuer pursuant to the terms of the Indenture and it shall not be responsible for any statement in the Notes or the Indenture other than its certificate of authentication, except that the Trustee represents that it is duly authorized to execute and deliver the Indenture, authenticate the Notes

and perform its obligations hereunder and that the statements made by it in any Statement of Eligibility and Qualification on Form T-1 to be supplied to the Issuer will be true and accurate subject to the qualifications set forth therein.

Section 7.05. *Notice of Defaults; Professional Reports.*

(a) *Notice of Defaults*. If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall give to each Holder a notice of the Default within 90 days after it occurs in the manner and to the extent provided in the TIA and otherwise as provided in the Indenture. Except in the case of a Default in payment of the principal of or interest on any Note (including payments pursuant to a redemption or repurchase of the Notes pursuant to the provisions of the Indenture), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Holders.

(b) *Reports by Trustee to Holders*. If required by TIA §313(a), within 60 days after July 15 of any year, commencing in 2010, the Trustee shall mail to each Holder a brief report dated as of such date that complies with TIA §313(a). The Trustee also shall comply with TIA §313(b)(2). The Trustee shall also transmit by mail all reports as required by TIA §13(c) and TIA §313(d).

Reports pursuant to this Section 7.05(b) shall be transmitted by mail:

(i) to all Holders of Notes, as the names and addresses of such Holders appear on the Registrar's books; and

(ii) to such Holders of Notes as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose.

A copy of each report at the time of its mailing to Holders shall be filed with the Commission and each stock exchange on which the Notes are listed. The Issuer shall promptly notify the Trustee in writing when the Notes are listed on any stock exchange or delisted therefrom.

Section 7.06. *Compensation and Indemnity.* The Issuer shall annually pay to the Trustee and Agents, in advance, such compensation for their services hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as shall be agreed upon in writing, and such annual fee shall, unless otherwise agreed by the Trustee or the applicable Agent in writing, be non-refundable and non-proratable and fully earned upon payment. The Issuer shall reimburse the Trustee and Agents upon request for all reasonable disbursements, expenses and advances incurred or made by them in connection with the Trustee's duties under the Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and external counsel, except any expense disbursement or advance as may be attributable to its willful misconduct, negligence or bad faith.

The Issuer shall fully indemnify each of the Trustee, Agent and any predecessor Trustee for, and hold each of them harmless against, any and all loss, damage, claim, liability or expense, including without limitation taxes (other than taxes based on the income of the Trustee or such

Agent) and reasonable attorneys' fees and expenses incurred by each of them in connection with the acceptance or performance of its duties under the Indenture including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder (including, without limitation, settlement costs). The Trustee or Agent shall notify the Issuer in writing promptly of any claim (a "**Claim**") (whether asserted by the Issuer, a Guarantor, a Holder or any other Person) of which a Responsible Officer of the Trustee has actual knowledge asserted against the Trustee or Agent for which it may seek indemnity; provided that the failure by the Trustee or Agent to so notify the Issuer shall not relieve the Issuer of its obligations hereunder except to the extent the Issuer is actually prejudiced thereby. In the event that a conflict of interest exists, the Trustee may have separate counsel, which counsel (to the extent that no Events of Default are continuing) must be reasonably acceptable to the Issuer, and the Issuer shall pay the reasonable fees and expenses of such counsel.

Notwithstanding the foregoing, the Issuer need not reimburse the Trustee for any expense or indemnify it against any loss or liability to have been incurred by the Trustee through its own willful misconduct, negligence or bad faith.

To secure the payment obligations of the Issuer in this Section 7.06, the Trustee shall have a lien prior to the lien of the Notes on all money or Property held or collected by the Trustee and such money or Property held in trust to pay principal of and interest on particular Notes.

The obligations of the Issuer under this Section 7.06 to compensate and indemnify the Trustee, Agents and each predecessor Trustee and to pay or reimburse the Trustee, Agents and each predecessor Trustee for expenses, disbursements and advances shall be the liability of the Issuer and shall survive the resignation or removal of the Trustee and the satisfaction, discharge or other termination of the Indenture, including any termination or rejection hereof under any Bankruptcy Law.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(vii) or Section 6.01(viii) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

For purposes of this Section 7.06, the term "Trustee" shall include any trustee appointed pursuant to this Article Seven.

Section 7.07. *Replacement of Trustee.* The Trustee shall comply with Section 313(b) of the TIA, to the extent applicable.

The Trustee may resign by so notifying the Issuer in writing no later than 15 Business Days prior to the date of the proposed resignation. The Required Holders may remove the Trustee by notifying the Issuer and the removed Trustee in writing and may appoint a successor Trustee with, to the extent that no Defaults or Events of Default are continuing, the Issuer's prior written consent, which consent shall not be unreasonably withheld or delayed. The Issuer may remove the Trustee at its election if:

(a) the Trustee fails to comply with Section 7.09 or Section 310 of the TIA;

(b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(c) a receiver or other public officer takes charge of the Trustee or its Property; or

(d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Issuer or by the Required Holders or if a vacancy exists in the office of Trustee for any other reason and the Required Holders do not reasonably promptly appoint a successor Trustee and, to the extent that no Default or Event of Default is continuing, obtain the Issuer's prior reasonable consent thereto, the Issuer shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Required Holders may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.09, any 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 Issuer. Immediately following such delivery, the retiring Trustee shall, subject to its rights under Section 7.06, transfer all Property held by it as Trustee to the successor Trustee, 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 the Indenture. A successor Trustee shall promptly mail notice of its succession to each Holder. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Issuer's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

Section 7.08. *Successor Trustee by Consolidation, Merger, etc*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another corporation, subject to Section 7.09, the successor corporation without any further act shall be the successor Trustee; provided such entity shall be otherwise qualified and eligible under this Article Seven.

Section 7.09. *Eligibility; Disqualification*. The Indenture shall always have a Trustee who satisfies the requirements of TIA §310(a)(1), (2) and (5) in every respect. The Trustee (together with its corporate parent) shall have a combined capital and surplus of at least $50 million as set forth in the most recent applicable published annual report of condition. The Trustee shall comply with TIA §310(b), including the provision in §310(b)(i).

Section 7.10. *Preferential Collection of Claims Against the Issuer*. The Trustee shall comply with TIA §311(a), excluding any creditor relationship listed in TIA §311(b). A Trustee who has resigned or been removed shall be subject to TIA §311(a) to the extent indicated therein.

Section 7.11. *Paying Agents.* The Issuer shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 7.11:

(a) (i) that it will hold all sums held by it as agent for the payment of principal of, or premium, if any, or interest on, the Notes (whether such sums have been paid to it by the Issuer or by any obligor on the Notes) in trust for the benefit of Holders of the Notes or the Trustee;

(ii) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and

(iii) that it will give the Trustee written notice within three (3) Business Days of any failure of the Issuer or Obligor (or by any obligor on the Notes) in the payment of any installment of the principal of, premium, if any, or interest on, the Notes or Note Guarantees (as applicable) when the same shall be due and payable.

(b) The Paying Agent shall comply with all U.S. withholding tax, backup withholding tax and information reporting requirements under the U.S. Internal Revenue Code of 1986, as amended, and the Treasury Regulations issued thereunder, with respect to any payments under the Notes or hereunder (including the collection of U.S. Internal Revenue Service Forms W-8 and W-9 and the filing of U.S. Internal Revenue Service Forms 1042, 1042-S and 1099.

Section 7.12. *Collateral Agent.*

(a) Trustee is hereby appointed to act as the Collateral Agent under the Security Documents, with such powers, rights and obligations as are expressly delegated to the Collateral Agent by the terms of this Indenture and by the Security Documents. The Trustee may, from time to time, appoint another financial institution to act as Collateral Agent so long as such institution meets the requirements of Section 7.09. The Collateral Agent, acting in its capacity as such, shall have only such duties with respect to the Collateral as are set forth in the Security Documents.

(b) Subject to the appointment and acceptance of a successor Collateral Agent as provided in this subsection, the Collateral Agent (if other than the Trustee) may resign at any time by notifying the Trustee and the Issuer. Upon any such resignation, the Trustee shall have the right to appoint a successor Collateral Agent. If no successor shall have been so appointed by the Trustee and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of its resignation, then the Required Holders shall appoint a successor Collateral Agent which shall meet the eligibility requirements of Section 7.09 and shall accept and comply in all material respects with the Security Documents. Upon a successor's acceptance of its appointment as Collateral Agent hereunder, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent hereunder and under the Security Documents, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder and under the Security Documents. If the Trustee shall be acting at any time as the Collateral Agent, then it will be deemed to have

resigned as Collateral Agent upon its replacement as Trustee pursuant to Section 7.07, and the successor Trustee shall select (or may act as) the replacement Collateral Agent.

(c) At all times when the Trustee is not itself the Collateral Agent, the Issuer will deliver to the Trustee copies of all Security Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Security Documents.

(d) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 7.13. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 7.14. *Trustee, Note Registrar And Agents May Own Notes.* The Trustee, the Collateral Agent, any Paying Agent or any other Agent, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee.

Section 7.15. *Conflicting Interests Of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 7.16. Calculations. Except as otherwise provided herein, the Issuer will be responsible for making all calculations called for under this Indenture and the Notes. The Issuer will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on the Holders. The Issuer will provide a schedule of its calculations to the Trustee and the Trustee is entitled to rely conclusively upon the accuracy of the Issuer's calculations without independent verification. The Trustee shall deliver a copy of such schedule to any Holder upon the written request of such Holder.

ARTICLE 8.
MODIFICATION AND WAIVER

Section 8.01. *Without Consent of Holders.* Notwithstanding Section 8.02, without the consent of any Holder of the Notes, the Issuer and the Trustee (and in the case of the Security Documents, the Collateral Agent) may amend or supplement the Indenture, the Notes and/or the Security Documents to:

(a) cure any ambiguity, omission, defect or inconsistency in any manner that is not adverse in any material respect to any Holder of the Notes;

(b) provide for the assumption by a Surviving Person of the obligations of the Issuer under the Indenture and the Security Documents in accordance with Section 5.01 hereof;

(c) provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(ii)(B) of the Code);

(d) add Guarantees with respect to the Notes and release any Guarantees in accordance with the Indenture;

(e) further secure the Notes;

(f) add to the covenants of the Issuer and/or Restricted Subsidiaries for the benefit of the Holders of the Notes or to surrender any right or power conferred upon the Issuer;

(g) comply with any requirement of the Commission in connection with the qualification of the Indenture under the TIA;

(h) make any change that does not adversely effect, in any respect, the rights of any Holder of the Notes or Trustee; or

(i) evidence and provide for the acceptance of the appointment of a successor Trustee under the Indenture and/or to evidence and provide for the acceptance of the appointment of a successor Collateral Agent under the Security Documents.

Section 8.02. *With Consent of Holders.*

(a) Subject to Section 8.02(b) hereof, the Indenture, the Notes and/or the Security Documents may be amended or supplemented by the Issuer and the Trustee (and in the case of the Security Documents, the Collateral Agent) with the consent of the Required Holders (including consents obtained in connection with a tender offer or exchange offer for the Notes) and any past default or compliance with any provisions may also be waived (except a default in the payment of principal, premium, interest, fees, costs or expenses and any default with respect to any provision referenced in Section 8.02(b) below, in which case, the consent of all Holders shall be required) with the consent of the Required Holders.

(b) Without the consent of each Holder of an outstanding Note, no amendment may:

(i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of, or change the time for, payment of interest on any Note;

(iii) reduce the principal of or fees under the Notes, or extend the Stated Maturity of, any Note;

(iv) make any Note payable in money other than that stated in the Note;

(v) impair the right of any Holder of the Notes to receive payment of principal of, premium and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(vi) release any Guarantor's Note Guaranty (other than as permitted herein);

(vii) release any security interest that may have been granted in favor of the Collateral Agent and/or Holders of the Notes other than in accordance with the provisions hereof and/or the Security Documents;

(viii) subordinate the Notes in right of payment to any other Obligation of the Issuer and/or Obligors or subordinate the Liens securing the Notes to any other Liens (other than as expressly permitted herein or in the Intercreditor Agreement);

(ix) reduce the premium or any other amounts payable upon a Change of Control or, at any time after a Change of Control has occurred, change the time at which the Change of Control Offer relating thereto must be made or at which the Notes must be repurchased pursuant to such Change of Control Offer;

(x) at any time after the Issuer is obligated to make a Prepayment Offer with the Excess Proceeds, change the time at which such Prepayment Offer must be made or at which the Notes must be repurchased pursuant thereto;

(xi) effect a release of all or substantially all of the Collateral; or

(xii) revise Section 6.11 hereof or make any change in the provisions of the Security Documents dealing with the application of the proceeds of Collateral that would adversely affect the Holders of the Notes.

(c) The consent of the Holders of the Notes shall not be necessary to approve the particular form of any proposed amendment. It shall be sufficient if such consent approves the substance of the proposed amendment.

(d) After an amendment that requires the consent of the Holders of Notes becomes effective, the Issuer is required to mail to each registered Holder of the Notes at such Holder's address appearing in the Note register a notice briefly describing such amendment. However, the failure to give such notice to all Holders of the Notes, or any defect therein, shall not impair or affect the validity of the amendment.

(e) Upon the written request of the Issuer accompanied by a Board Resolution authorizing the execution of any such Supplemental Indenture, and upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders as

aforesaid and upon receipt by the Trustee of the documents described in Section 8.06, the Trustee shall join with the Issuer in the execution of such Supplemental Indenture unless such Supplemental Indenture affects the Trustee's own rights, duties or immunities under the Indenture, in which case the Trustee may, but shall not be obligated to, enter into such Supplemental Indenture.

Section 8.03. *Compliance with Trust Indenture Act*. Every amendment or supplement to the Indenture, the Note Guarantees or the Notes shall comply with the TIA as then in effect.

Section 8.04. *Revocation and Effect of Consents.*

(a) After an amendment, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Note is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Note or portion thereof, and of any Note issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Note.

(b) The Issuer 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 Person(s) continue to be a Holder after such Record Date. No such consent shall be valid or effective for more than 90 days after such record date unless the consent of the requisite number of Holders has been obtained by such time.

Section 8.05. *Notation on or Exchange of Notes*. If an amendment, supplement or waiver changes the terms of a Note, the Trustee (in accordance with the specific written direction of the Issuer) shall request the Holder of the Note (in accordance with the specific written direction of the Issuer) to deliver it to the Trustee. In such case, the Trustee shall place an appropriate notation on the Note about the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. 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 8.06. *Trustee to Sign Amendments, Etc*. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article Eight if the amendment, supplement or waiver does not affect the rights, duties, liabilities or immunities of the Trustee. If it does affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may, but need not, sign such amendment, supplement or waiver. In signing or refusing to sign such amendment, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.01, shall be fully protected in relying upon an Officer's Certificate and an Opinion of Counsel (other than from Trustee's counsel) stating, in addition to the documents required by Section 12.04, that such amendment, supplement or waiver is authorized or permitted by the Indenture and is a legal, valid and binding obligation of the Issuer and the Guarantors, enforceable against the Issuer and the Guarantors in accordance with its terms (subject to customary exceptions).

ARTICLE 9.
DISCHARGE OF INDENTURE; DEFEASANCE

Section 9.01. *Discharge of Liability on Notes; Defeasance.*

(a) The Indenture will be discharged and will cease to be of further effect as to all Notes, issued hereunder when:

(i) either (x) all Notes that have been authenticated (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid by the Issuer) have been delivered to the Trustee for cancellation, or (y) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. Government Obligations, or a combination of cash in U.S. dollars and U.S. Government Obligations, in amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes (not theretofore delivered to the Trustee for cancellation) for principal, premium, if any, and accrued interest to the date of maturity;

(ii) no Default or Event of Default has occurred and is continuing on the date of such deposit or will occur as a result of the deposit and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer is a party or by which the Issuer is bound;

(iii) the Issuer has paid or caused to be paid all sums payable by them under the Indenture;

(iv) in the event of a deposit as provided in clause (i)(y) set forth in this Section 9.01(a), the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity; and

(v) Trustee receives an opinion from a nationally recognized firm of independent public accountants (upon which the Trustee may conclusively rely) which indicates that such amounts on deposit and in trust with Trustee are sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes (not delivered to the Trustee for cancellation) for principal, premium, if any, and accrued interest to the date of maturity.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

(b) Subject to Section 9.01(e) and 9.02, the Issuer at any time may terminate all of its obligations under the Notes and the Indenture, and the Note Guarantees by each Guarantor ("**Legal Defeasance**"). The Issuer at any time may terminate (i) its obligations under Section

4.08 through 4.17 and Section 4.19; (ii) Sections 6.01(v), (vi), (vii) and (viii) (with respect only to the Significant Subsidiaries in the case of Sections 6.01(vii) and (viii)); and (iii) Section 5.01(a)(iv) ("**Covenant Defeasance**") and thereafter any omission to comply with any covenant referred to in clause (i) or (iii) above will not constitute a Default or an Event of Default with respect to the Notes. Each Note Guaranty and the Liens under the Security Documents will be released upon Covenant Defeasance. The Issuer may exercise its Legal Defeasance option notwithstanding its prior exercise of its Covenant Defeasance option.

(c) If the Issuer exercises its Legal Defeasance option, payment of the Notes may not be accelerated after Legal Defeasance because of an Event of Default with respect thereto. If the Issuer exercises its Covenant Defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in Section 6.01(iv) (with respect to the covenants listed under Section 9.01(b)(i)), or Section 6.01(a)(v), (vi), (vii) or (viii) (with respect only to Significant Subsidiaries in the case of Sections 6.01(vii) and (viii)) or because of a failure to comply with Section 5.01(a)(iv).

(d) Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

(e) Notwithstanding clauses (a) and (b) above, the Issuer's obligations in Sections 2.02, 2.03, 2.04, 2.06, 2.07, 2.08, 2.16, 7.06, 9.03, 9.04, 9.05 and 9.06 shall survive until such time as the Notes have been paid in full in cash. Thereafter, the Issuer's obligations in Sections 7.06, 9.03, 9.04, 9.05 and 9.06 shall survive.

Section 9.02. *Conditions to Defeasance.* The Legal Defeasance option or the Covenant Defeasance option may be exercised only if:

(a) the Issuer irrevocably deposits in trust with the Trustee, for the sole benefit of the Holders of the Notes, money or U.S. Government Obligations, or a combination thereof, for the payment of principal, premium and interest and all other amounts outstanding with respect to the Notes to maturity;

(b) the Issuer delivers to the Trustee a certificate from an internationally recognized firm of independent certified public accountants expressing their opinion that the payments of principal, premium, if any, and interest (and all other amounts outstanding with respect thereto) when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest (and all of such other amounts) when due on all the Notes to maturity;

(c) 91 days pass after the deposit is made and during the 91-day period no Default described in Section 6.01(vii) and (viii) occurs with respect to the Issuer or any other Person making such deposit which is continuing at the end of the period;

(d) no Default or Event of Default has occurred and is continuing on the date of such deposit and after giving effect thereto;

(e) such deposit does not constitute a default under any other material agreement or instrument binding on the Issuer or any Obligor;

(f) the Issuer delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or qualify as, a regulated investment company under the Investment Company Act of 1940;

(g) in the case of the Legal Defeasance option, the Issuer delivers to the Trustee an Opinion of Counsel stating that: (i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or (ii) since the date of the Indenture there has been a change in the applicable U.S. federal income tax law,

to the effect, in either case, that, and based thereon such Opinion of Counsel shall confirm that, the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such 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 defeasance had not occurred;

(h) in the case of the Covenant Defeasance option, the Issuer delivers to the Trustee an Opinion of Counsel to the effect that the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such 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 defeasance had not occurred; and

(i) the Issuer delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes have been complied with as required by the Indenture.

Section 9.03. *Deposited Money and Government Obligations to be Held in Trust; Other Miscellaneous Provisions*. All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Sections 9.01(a)(i) and/or 9.02(a) in respect of the outstanding Notes shall be held in trust, for the sole benefit of the Holders of the Notes, and applied by the Trustee, in accordance with the provisions of such Notes and the Indenture, to the payment, either directly or through any Paying Agent, to the Holders of such Notes, of all sums due and to become due thereon in respect of principal, premium, if any, and accrued interest (and all other amounts outstanding with respect thereto), but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Sections 9.01(a)(i) and/or 9.02(a) or the principal, premium, if any, 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 Nine to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon a request of the Issuer any money or U.S. Government Obligations held by it as provided in Section 9.02(a) which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof

delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 9.04. *Reinstatement*. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Sections 9.01 and/or 9.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under the Indenture and the Notes (and the Pledge and Security Agreement and the Liens thereunder and under the other Security Documents) shall be revived and reinstated as though no deposit had occurred pursuant to this Article Nine until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Sections 9.01 and/or 9.02; provided that if the Issuer has made any payment of principal of, premium, if any, or accrued interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Obligations held by the Trustee or Paying Agent.

Section 9.05. *Moneys Held by Paying Agent.* Upon the satisfaction and discharge of the Indenture, all moneys then held by any Paying Agent under the provisions of the Indenture shall, upon written demand of the Issuer, be paid to the Trustee, or if sufficient moneys have been deposited pursuant to Sections 9.01(a)(i) and/or 9.02(a), to the Issuer upon a request of the Issuer, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

Section 9.06. *Moneys Held by Trustee*. Any moneys deposited with the Trustee or any Paying Agent or then held by the Issuer in trust for the payment of the principal of or premium, if any, or interest on any Note that are not applied but remain unclaimed by the Holder of such Note for two years after the date upon which the principal of or premium, if any, or interest on such Note shall have respectively become due and payable shall be repaid to the Issuer upon a request of the Issuer, or if such moneys are then held by the Issuer in trust, such moneys shall be released from such trust and the Holder of such Note entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Issuer for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; provided that the Trustee or any such Paying Agent, before being required to make any such repayment, shall, at the expense of the Issuer, either mail to each Holder affected, at the address shown in the Note register maintained by the Registrar pursuant to Section 2.04, or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in the City of New York, New York, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such moneys then remaining will be repaid to the Issuer provided further that such time periods shall be tolled during any period in which the Trustee is prohibited from releasing the funds held by Trustee by operation of law, court order or other legal impediment. After payment to the Issuer or the release of any money held in trust by the Issuer, Holders entitled to the money must look only to the Issuer for payment as general creditors unless applicable abandoned property law designates another Person.

ARTICLE 10.
NOTE GUARANTIES

Section 10.01. *The Note Guaranties*. Subject to the provisions of this Article 10, each Guarantor hereby irrevocably and unconditionally guarantees, jointly and severally, on a senior secured basis, to the Holders and to the Trustee (i) the full and punctual payment (whether at Stated Maturity, purchase pursuant to a Change of Control Offer or Prepayment Offer, upon acceleration, upon a scheduled interest payment due date or otherwise) of the principal of, premium, if any, and interest on, and all other amounts payable (including any interest accruing at the Default Rate) under, the Notes, (ii) the full and punctual payment of all other amounts payable by the Issuer under the Indenture, the Notes and the Security Documents, and (iii) the full and prompt performance of each of the Issuer's obligations and covenants under this Indenture, the Notes and the other Security Documents. Upon failure by the Issuer to pay punctually any such amount, each Guarantor shall forthwith on demand pay the amount not so paid at the place and in the manner specified in the Indenture. Upon the failure by the Issuer to perform punctually any such obligation or covenant specified in the Indenture, the Note or the other Security Documents, each Guarantor forthwith on demand shall perform such obligation or comply with such covenant at the place in the manner specified in the Indenture, the Note or other Security Document, as applicable.

Section 10.02. *Guaranty Unconditional*. The obligations of each Guarantor hereunder are unconditional and absolute and, without limiting the generality of the foregoing, will not be released, discharged or otherwise affected by

(a) any extension, renewal, settlement, compromise, waiver, concession, release or any other indulgence in respect of any obligation of the Issuer under the Indenture, any Security Document or any Note, by operation of law or otherwise;

(b) any modification or amendment of or supplement to the Indenture, any Security Document or any Note;

(c) any change in the corporate existence, structure or ownership of the Issuer, or any insolvency, bankruptcy, reorganization, liquidation or other similar proceeding affecting the Issuer or its assets or any resulting release or discharge of any obligation of the Issuer contained in the Indenture, any Security Document or any Note;

(d) the existence of any valid defenses, claim, set-off or other rights which the Guarantor may have at any time against the Issuer, the Trustee or any other Person, whether in connection with the Indenture or any unrelated transactions, provided that nothing herein prevents the assertion of any such claim by separate suit or compulsory counterclaim;

(e) any invalidity or unenforceability relating to or against the Issuer for any reason of the Indenture, any Security Document or any Note, or any provision of applicable law or regulation purporting to prohibit the payment by the Issuer of the principal of or interest on any Note or any other amount payable by the Issuer under the Indenture;

(f) any limitation of status or power or other circumstance relating to the Issuer or any other Person;

(g) any failure by the Issuer or any Guarantor, whether or not the fault of the Issuer or such Guarantor, to perform or comply with any of the provisions of the Indenture, any Security Document or any Note;

(h) the taking or enforcing or exercising or the refusal to neglect to take or enforce or exercise any right or remedy from or against the Issuer or any other Person or their respective assets or the release or discharge of such right or remedy;

(i) the occurrence of any change in laws, rules, regulations, ordinances of any jurisdiction by any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting or purporting to amend, vary, reduce, or otherwise affect any of the obligations of the Issuer or Guarantor(s);

(j) the recovery of any judgment against the Issuer;

(k) the failure to perfect any security interest of the Collateral Agent and/or the Holders or record any Security Document;

(l) the accuracy or inaccuracy of any representations, warranties or covenants made by the Issuer or any other Person in the Indenture, Security Documents and/or Notes;

(m) any of the Security Documents, Notes or Indenture being irregular or not genuine or authentic; or

(n) any other act or omission to act or delay of any kind by the Issuer, the Trustee or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to such Guarantor's obligations hereunder.

Section 10.03. *Discharge; Reinstatement.* Each Guarantor's obligations hereunder will remain in full force and effect until the principal of, premium, if any, and interest on (and all other amounts outstanding with respect to) the Notes and all other amounts payable by the Issuer under the Indenture and the Security Documents have been paid in full. If at any time any payment of the principal of, premium, if any, or interest on any Note or any other amount payable by the Issuer under the Indenture is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Issuer or otherwise, each Guarantor's obligations hereunder with respect to such payment (as well as the Guarantor's obligations with respect to the performance of each of the Issuer's obligations and covenants under this Indenture, the Note and the other Security Documents) will be reinstated as though such payment had been due but not made at such time (or such performance of such obligation or covenant had been due but not made at such time).

Section 10.04. *Waiver by the Guarantors*. Each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken (whether first or otherwise) by any Person against the Issuer or any other Person.

Section 10.05. *Subrogation and Contribution*. Upon making any payment with respect to any obligation of the Issuer under this Article, the Guarantor making such payment will be subrogated to the rights of the payee against the Issuer with respect to such obligation, provided that such Guarantor may not enforce either any right of subrogation, or any right to receive payment in the nature of contribution, or otherwise, from any other Guarantor or the Issuer, with respect to such payment so long as any amount payable by the Issuer hereunder or under the Notes remains unpaid.

Section 10.06. *Stay of Acceleration*. If any payment or acceleration of the time for payment of any amount payable by the Issuer under the Indenture or the Notes is stayed upon the insolvency, bankruptcy or reorganization of the Issuer, all such amounts and all other amounts otherwise subject to acceleration under the terms of the Indenture are nonetheless payable by the Guarantors hereunder forthwith on demand by the Trustee or the Holders.

Section 10.07. *Limitation on Amount of Guaranty*. Notwithstanding anything to the contrary in this Article (but subject to Section 10.10 hereof), each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guaranty of such Guarantor not constitute a fraudulent conveyance under applicable fraudulent conveyance provisions of the United States Bankruptcy Code or any comparable provision of state law. To effectuate that intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor under its Note Guaranty are limited to the maximum amount that would not render the Guarantor's obligations subject to avoidance under applicable fraudulent conveyance provisions of the United States Bankruptcy Code or any comparable provision of state law.

Section 10.08. *Execution and Delivery of Guaranty*. The execution by each Guarantor of the Indenture (or a Supplemental Indenture substantially in the form of Exhibit B) evidences the Note Guaranty of such Guarantor, whether or not the person signing as an officer of the Guarantor still holds that office at the time of authentication of any Note. The delivery of any Note by the Trustee after authentication constitutes due delivery of the Note Guaranty set forth in the Indenture on behalf of each Guarantor.

Section 10.09. *Release of Guaranty*. The Note Guaranty of a Guarantor will terminate upon

(a) in the case of a Restricted Subsidiary of the Issuer, a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor, in each case, permitted by the Indenture;

(b) in the case of a Restricted Subsidiary of the Issuer, the designation in accordance with the Indenture of the Guarantor as an Unrestricted Subsidiary;

(c) in the case of a Foreign Subsidiary of the Issuer that ceases to be a Material Foreign Subsidiary, the cessation of such Foreign Subsidiary to be a Material Foreign Subsidiary; or

(d) defeasance or discharge of the Notes, as provided in Article Nine hereto.

Upon delivery by the Issuer to the Trustee of an Officer's Certificate and an Opinion of Counsel to the foregoing effect, the Trustee will execute any documents reasonably required in order to evidence the release of the Guarantor from its obligations under its Note Guaranty.

Section 10.10. *Contribution by Guarantors*. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under the Note Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under the Note Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under the Note Guaranty in respect of the obligations guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under the Note Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 10.10, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments"** means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of Note Guaranty (including in respect of this Section 10.10), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 10.10. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 10.10 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 10.10.

ARTICLE 11.
SECURITY ARRANGEMENTS

Section 11.01. *Security*.

(a) In order to secure the Obligations of the Issuer under this Indenture and the Notes, the Issuer will execute and deliver to the Trustee and Collateral Agent on or prior to the Issue Date each Security Document to which it is or is to be a party that is intended to be effective upon the Issue Date and create the Liens intended to be created thereunder, with the priority set

forth therein and in the Intercreditor Agreement, on the Collateral. In order to secure the Obligations of each Guarantor under its Note Guaranty, this Indenture and the Notes, each Guarantor will execute and deliver to the Collateral Agent and Trustee on or prior to the Issue Date each Security Document to which it is or is to be a party that is intended to be effective upon the Issue Date and create the Liens intended to be created thereunder, perfected and with the priority set forth therein and in the Intercreditor Agreement, on the Collateral.

(b) Within forty-five (45) days after the Issuer or any Guarantor acquires any property in which Collateral Agent is entitled to a perfected security interest pursuant to the Security Documents that is not automatically subject to a perfected security interest under the Security Documents, the Issuer or Guarantor shall notify the Collateral Agent thereof and, in each case at the sole cost and expense of the Issuer or Guarantor, within forty-five (45) days (or, in the case of real property, Foreign Intellectual Property (as defined in the Pledge and Security Agreement) and Foreign Assets (as defined in the Pledge and Security Agreement), **[ninety (90) days])** after obtaining such property, execute and deliver to the Collateral Agent such mortgages, security agreement supplements and other documentation (in form and scope, and covering such Collateral on such terms, in each case consistent with the mortgages, security agreements and other security documents in effect on the Issue Date), and take such additional actions (including any of the actions described in Section 4.19(b)), as may be reasonably appropriate or advisable to create and fully perfect in favor of the secured parties under the Security Documents a valid and enforceable security interest in (and in the case of real property, mortgage lien on) such Collateral, which shall be free of any other Liens except for Permitted Liens (including, in the case of the Secondary Collateral, the first-priority Lien of the holders of Bank Obligations). Any security interest provided pursuant to this Section 11.01(b) shall be accompanied with such Opinions of Counsel to the Issuer and/or Guarantors (as applicable) as customarily given by the Issuer's and/or Guarantors' (as applicable) counsel in the relevant jurisdiction, in form and substance customary for such jurisdiction. In addition, the Issuer shall deliver an Officer's Certificate to the Collateral Agent certifying that the necessary measures have been taken to perfect the security interest in such property.

(c) Notwithstanding any other provisions set forth herein or in the Security Documents, the Obligors shall not be required to grant or perfect any Liens in Excluded Property.

(d) Each Holder, by accepting a Note, agrees to all of the terms and provisions of the Security Documents, as the same may be amended from time to time pursuant to the provisions of the Indenture and the Security Documents.

(e) As among the Holders, the Collateral as now or hereafter constituted shall be held for the equal and ratable benefit of the Holders without preference, priority or distinction of any kind over any other by reason of differences in time of issuance, sale or otherwise, as security for the Obligations under this Indenture and the Notes.

(f) To the extent applicable, the Issuer will comply with Section 313(b) of the Trust Indenture Act, relating to reports, and Section 314(d) of the Trust Indenture Act, relating to the release of property and to the substitution therefor of any property to be pledged as Collateral for the Notes. Any certificate or opinion required by Section 314(d) of the Trust Indenture Act may

be made by an Officer of the Issuer except in cases where Section 314(d) of the Trust Indenture Act requires that such certificate or opinion be made by an independent engineer, appraiser or other expert, who shall be reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary herein, the Issuer and its Subsidiaries will not be required to comply with all or any portion of Section 314(d) of the Trust Indenture Act if they determine, in good faith based on advice of outside counsel, that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the Commission and its staff, including "no action" letters or exemptive orders, all or any portion of Section 314(d) of the Trust Indenture Act is inapplicable to the released Collateral.

(g) Notwithstanding any other provisions set forth herein, solely to the extent that any Obligor owns, as of the Issue Date, any real property, fixtures or other property at any location (or series of adjacent, contiguous or related locations, and regardless of the number of parcels) that has a fair market value in an amount equal to or greater than [$500,000], such Obligor shall execute and deliver to Collateral Agent, on or before the Issue Date, a mortgage or deed of trust for the benefit of Collateral Agent, in form and substance satisfactory to Required Holders, encumbering such real property, fixtures and other property ("**Closing Date Mortgages**"). Notwithstanding any other provisions set forth herein, solely to the extent that any Obligor hereafter acquires any real property, fixtures or any other related property that is adjacent to, contiguous with or necessary or related to or used in connection with any property subject to any of the Closing Date Mortgages (or any other mortgages or deeds of trust entered into for the benefit of Collateral Agent), or if such real property is not adjacent to, contiguous with or related to or used in connection with property subject to any of the Closing Date Mortgages (or any other mortgages or deeds of trust entered into for the benefit of Collateral Agent), then if such real property, fixtures or other property at any location (or series of adjacent, contiguous or related locations, and regardless of the number of parcels) has a fair market value in an amount equal to or greater than [$500,000], within ninety (90) days after acquiring such real property, fixtures and/or other related property, such Obligor shall execute and deliver to Collateral Agent a mortgage or deed of trust, in form and substance substantially similar to the Closing Date Mortgages and as to any provisions relating to specific state laws satisfactory to required Holders and in form appropriate for recording in the real estate records of the jurisdiction in which such real property or other property is located granting to Collateral Agent a first lien and mortgage on and security interest in such real property, fixtures or other property (except as such Obligor would otherwise be permitted to incur hereunder or under the Closing Date Mortgages) and such other agreements, documents and instruments as Collateral Agent may require in connection therewith.

Section 11.02. *Cash Collateral Account.*

(a) All Casualty Proceeds received by the Trustee, the Collateral Agent, the Issuer or any Guarantor in respect of Primary Collateral shall be deposited and held in the Cash Collateral Account and be released from that account as provided in Section 11.02(b) below.

(b) Amounts held in the Cash Collateral Account may only be released to the Issuer or the applicable Guarantor for use as permitted by Section 4.12(b) or Section 4.12(c) (as if such

amounts consisted of Net Available Cash from an Asset Sale) and, in the case of Section 4.12(c), will be released to the Issuer or the applicable Guarantor if remaining after the consummation of the Prepayment Offer.

(c) Notwithstanding the foregoing, the Issuer will not be required to so deposit any Casualty Proceeds to the extent that it furnishes the Collateral Agent and the Trustee with an Officer's Certificate certifying that it has invested an amount in compliance with Section 4.12(b) or Section 4.12(c) equal to, or in excess of, the amount of such proceeds in anticipation of receipt of such funds.

(d) The Issuer and Guarantors will be required to comply with the requirements of Section 11.05 before any Collateral held in the Cash Collateral Account may be released from the Lien of the Security Documents.

Section 11.03. *Authorization of Actions to Be Taken.*

(a) Each Holder of a Note, by its acceptance thereof, is deemed to have authorized and empowered the Trustee to enter into the Security Documents, whether as Trustee or Collateral Agent, and to receive for the benefit of the Holders of Notes any funds collected or distributed under the Security Documents to which the Trustee and/or Collateral Agent is a party and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

(b) Subject to the provisions of Article 7 and the Intercreditor Agreement, the Trustee, in its sole discretion and without the consent of the Holders of Notes, may, or at the direction of the Required Holders, the Trustee shall, direct on behalf of the Holders of Notes, the Collateral Agent to take all actions it deems necessary or appropriate in order to:

(i) during the existence of an Event of Default, foreclose upon and take possession of all Collateral pursuant to, or take any other action to enforce, the provisions of the Security Documents;

(ii) enforce any of the terms of the Intercreditor Agreement and the Security Documents to which the Trustee or the Collateral Agent is a party; or

(iii) collect and receive payment of all obligations in respect of the Notes, the Note Guaranties and this Indenture.

Subject to the Intercreditor Agreement and Article 7, the Trustee is authorized and empowered to institute and maintain such suits and proceedings as it may deem expedient to protect or enforce the Liens on the Collateral or the other rights under the Security Documents to which the Trustee or the Collateral Agent is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of such Security Documents or this Indenture, and such suits and proceedings as the Trustee or the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral, including 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 Liens or

other rights under such Security Documents or hereunder or be prejudicial to the interests of Holders or the Trustee.

Section 11.04. *Determinations Relating to Collateral*. In the event (i) the Trustee shall receive any written request from the Issuer, a Guarantor or the Collateral Agent under any Security Document for consent or approval with respect to any matter or thing relating to any Collateral or the Issuer's or such Guarantor's obligations with respect thereto, (ii) there shall be due to or from the Trustee or the Collateral Agent under the provisions of any Security Document any material performance or the delivery of any material instrument or (iii) the Trustee shall become aware of any nonperformance by the Issuer or a Guarantor of any covenant or any breach of any representation or warranty of the Issuer or such Guarantor set forth in any Security Document, any Notes or this Indenture, then, in each such event, the Trustee shall be entitled to hire experts, consultants, agents and attorneys to advise the Trustee on the manner in which the Trustee should respond, or direct the Collateral Agent to respond, to such request or render any requested performance or respond, or direct the Collateral Agent to respond, to such nonperformance or breach; provided that the Trustee's right to direct the Collateral Agent to respond shall be subject to the terms of the Security Documents. The Trustee shall be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney or agreed to by the Required Holders or the Notifying Holders, as applicable.

Section 11.05. *Release of Liens*.

(a) The Liens on the Collateral securing the Notes will be released:

(i) upon payment in full in cash of principal, interest and all other Obligations on the Notes issued under the Indenture or discharge or defeasance thereof (in accordance with Article 9);

(ii) upon release of a Note Guaranty in accordance with this Indenture (with respect to the Liens securing such Note Guaranty granted by such Guarantor); and

(iii) in connection with any disposition of Collateral to any Person other than the Issuer or any of its Restricted Subsidiaries (and also excluding any transaction subject to Section 5.01 or Section 5.02 where the recipient is required to become an Obligor) that is permitted by the Indenture (solely with respect to the Lien on such Collateral); and

(iv) in the case of Secondary Collateral, **[as described in Section ___ of the Intercreditor Agreement.]**

(b) Upon delivery to the Trustee of an Officer's Certificate requesting execution of an instrument confirming the release of the Liens pursuant to Section 11.05(a), accompanied by:

(i) an Opinion of Counsel confirming that such release is permitted by Section 11.05(a);

(ii) all instruments requested by the Issuer to effectuate or confirm such release; and

(iii) such other certificates and documents as the Trustee may reasonably request to confirm the matters set forth in Section 11.05(a), the Trustee will, if such instruments and confirmation are reasonably satisfactory to the Trustee, promptly execute and deliver, such instruments.

(c) All instruments effectuating or confirming any release of any Liens will have the effect solely of releasing such Liens as to the Collateral described therein, on customary terms and without any recourse, representation, warranty or liability whatsoever.

(d) The Issuer will bear and pay all reasonable costs and expenses associated with any release of Liens pursuant to this Section 11.05, including all reasonable fees and disbursements of any attorneys or representatives acting for the Trustee and/or for the Collateral Agent.

(e) Any release of Collateral in accordance with the provisions of this Indenture, the Security Documents and the Trust Indenture Act will not be deemed to impair the security under this Indenture, and any engineer or appraiser may rely on this Section 11.05(e) in delivering a certificate requesting release so long as all other provisions of this Indenture and the Trust Indenture Act with respect to such release have been complied with.

Section 11.06. *Replacement of Revolving Credit Agreement.* If the Issuer at any time discharges its obligations under the Revolving Credit Agreement or the lenders thereunder release all Liens thereunder, and then the Issuer subsequently enters into a new Credit Facility, the Obligations under which are secured by Liens on assets of the Issuer and the Guarantors that do not (in whole or in part) constitute Permitted Liens (excluding for this purpose Permitted Liens under clauses (b) or (p) of the definition thereof), then (i) the new Credit Facility will be afforded the same priorities vis-à-vis the holders of the Notes with respect to the Liens as set forth in the existing Intercreditor Agreement (subject to compliance with the limits otherwise set forth in this Indenture (including Section 4.11) and the Intercreditor Agreement) and (ii) each Holder of a Note, by its acceptance thereof, is deemed to have authorized and empowered the Collateral Agent to enter into a new intercreditor agreement with such new creditors on terms and conditions substantially similar to the Intercreditor Agreement.

Section 11.07. *Agreement for the Benefit of Holders of First Priority Liens.* The Trustee and each Holder of Notes by accepting a Note agrees, that:

(a) The Liens on the Secondary Collateral securing the Obligations under this Indenture and the Notes are, to the extent and in the manner provided in the Intercreditor Agreement, subject to and subordinate in ranking to all present and future Liens on the Secondary Collateral securing the Revolving Credit Obligations; and the Intercreditor Agreement will be enforceable by the holders of the Liens securing the Revolving Credit Obligations, until the satisfaction pursuant to the terms thereof of all such Obligations outstanding at the time of such release.

(b) Without the necessity of any consent of the Trustee or any Holder of the Notes, the holders of the Bank Obligations may change, waive, modify or vary any Revolving Credit Security Document relating to Secondary Collateral with respect to which such holders have a

first priority Lien, subject to the limitations set forth in the Intercreditor Agreement; provided, that the Trustee shall be given notice of any such change, waiver, modification or variance by the Issuer within thirty (30) days after such change, waiver or modification.

(c) As among the agent under the Revolving Credit Agreement, the Trustee and the Holders of the Notes and the holders of the Bank Obligations, the holders of the Bank Obligations and the agent under the Revolving Credit Agreement will have the sole ability to control and obtain remedies with respect to all Secondary Collateral without the necessity of any consent or of any notice to the Trustee, or any such Holder, subject to the limitations set forth in the Intercreditor Agreement.

(d) To the extent so required under the Intercreditor Agreement, any or all Liens as set forth in, and granted under the Security Documents relating to the Secondary Collateral (but not the proceeds thereof) for the benefit of the Holders will be automatically (to the extent permitted by law) and simultaneously released, without the necessity of any consent of the Trustee or any Holders, upon a release of the first priority Liens on such Collateral, subject to the exceptions and limitations set forth in the Intercreditor Agreement including without limitation any release of the first priority Liens from the Secondary Collateral upon payment in full of the Bank Obligations (in which case, the Liens granted under the Security Documents in the Secondary Collateral shall not be released pursuant to this Section 11.07(d) or otherwise).

Section 11.08. *Notes and Note Guaranties Not Subordinated*. The provisions of Sections 11.05 and 11.06 are intended solely to set forth the relative ranking, as Liens, of the Liens on the Secondary Collateral as against the Liens on the Primary Collateral. The Notes and the Note Guaranties are senior unsubordinated obligations of the Issuer and the Guarantors. Neither the Notes and the Note Guaranties nor the exercise or enforcement of any right or remedy for the payment or collection thereof (other than the exercise of rights and remedies in respect of the Collateral, which are subject to the Intercreditor Agreement) are intended to be, or will ever be by reason of the provisions of Sections 11.05 and 11.06, in any respect subordinated, deferred, postponed, restricted or prejudiced.

ARTICLE 12.
MISCELLANEOUS

Section 12.01. *Trust Indenture Act Controls*. If any provision of the Indenture limits, qualifies or conflicts with another provision which is required to be included in the Indenture by the TIA, the required provision shall control. If any provision of the Indenture modifies any TIA provision that may be so modified, such TIA provision shall be deemed to apply to the Indenture as so modified. If any provision of the Indenture excludes any TIA provision that may be so excluded, such TIA provision shall be excluded from the Indenture.

The provisions of TIA §§310 through 317 that impose duties on any Person (including the provisions automatically deemed included unless expressly excluded by the Indenture) are a part of and govern the Indenture, whether or not physically contained herein.

Section 12.02. *Notices*. Except for notice or communications to Holders, any notice or communication shall be given in writing and when received if delivered in person, when receipt

is acknowledged if sent by facsimile, on the next Business Day if timely delivered by a nationally recognized courier service that guarantees overnight delivery or two Business Days after deposit if mailed by first-class mail, postage prepaid, addressed as follows:

If to the Issuer:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Fax: (408) 774-7443
Attn: Chief Financial Officer

With a copy to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Fax: (650) 463-2600
Telephone: (650) 328-4600
Attn: Tad J. Freese, Esq.

If to the Trustee, Registrar (to the extent that Trustee is acting as Registrar) or Paying Agent (to the extent that Trustee is acting as Paying Agent):

Law Debenture Trust Company of New York
400 Madison Avenue, 4th Floor
New York, New York 10017
Fax: (212) 750-1361
Attn: Corporate Trust Administration

All notices or communications delivered by means other than provided in this Section 12.02 shall be effective when received.

Notices or communications to a Guarantor will be deemed given if given to the Issuer.

The Issuer or the Trustee by written 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 it by first-class mail, postage prepaid, at his address shown on the Note 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 to a Holder is mailed in the manner provided above, it shall be deemed duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by the Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

Section 12.03. *Communications by Holders with Other Holders*. Holders may communicate pursuant to TIA §312(b) with other Holders with respect to their rights under the Indenture or the Notes. The Issuer, the Trustee, the Registrar and anyone else shall have the protection of TIA §312(c).

Section 12.04. *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Issuer to the Trustee to take any action under the Indenture (except for the issuance of Notes on the Issue Date), the Issuer shall furnish to the Trustee: (i) an Officer's Certificate (which shall include the statements set forth in Section 12.05 below) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in the Indenture relating to the proposed action have been complied with; and (ii) an Opinion of Counsel (which shall include the statements set forth in Section 12.05 below) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.05. *Statements Required in Certificate and Opinion*. Each certificate (other than certificates provided pursuant to Section 4.06) and opinion with respect to compliance by or on behalf of the Issuer with a condition or covenant provided for in the Indenture shall include: (a) a statement that the Person delivering 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, it or he has made such examination or investigation as is necessary to enable it or him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with.

Section 12.06. *Rules by Trustee and Agents*. The Trustee may make reasonable rules for action by or meetings of Holders. The Registrar and Paying Agent may make reasonable rules for their functions.

Section 12.07. *Legal Holiday*s. A "**Legal Holiday**" is a Saturday, a Sunday or other day on which (i) commercial banks in the City of New York are authorized or required by law to close or (ii) the New York Stock Exchange is not open for trading. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, provided that interest shall accrue for the intervening period.

Section 12.08. *Governing Law; Submission to Jurisdiction, Waiver of Trial by Jury, etc*.

(a) THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES ARE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW, SECTION 5-1401).

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF SUCH STATE, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES SHALL AFFECT ANY RIGHT THAT THE TRUSTEE OR ANY HOLDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES AGAINST THE ISSUER OR ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) THE PARTIES HERETO AND EACH HOLDER HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS INDENTURE, THE NOTE GUARANTEES AND THE NOTES. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY HERETO AND EACH HOLDER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE OR EXIST. EACH OF THE PARTIES TO THIS INDENTURE AND EACH HOLDER ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE PARTIES HERETO AND THE HOLDERS.

(d) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(e) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 12.02. NOTHING

IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(f) THE INDENTURE, THE NOTE GUARANTEES AND THE NOTES REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES OR BY PRIOR OR CONTEMPORANEOUS WRITTEN AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF.

Section 12.09. *No Adverse Interpretation of Other Agreements*. The Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Issuer or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

Section 12.10. *Successors*. All agreements of the Issuer or any Guarantors in the Indenture and the Notes shall bind their respective successors. All agreements of the Trustee, any additional trustee and any Paying Agents in the Indenture shall bind its successor.

Section 12.11. *Multiple Counterparts*. The parties may sign multiple counterparts of the Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and 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 12.12. *Separability*. Each provision of the Indenture shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purpose of the Indenture or 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 12.13. *Table of Contents, Headings, Etc.* The table of contents, cross-reference sheet and headings of the Articles and Sections of the Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.14. Section 12.15 *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 in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused the Indenture to be duly executed all as of the date and year first written above.

SPANSION INC.,
as Issuer

By: _____
Name: _____
Title: _____

SPANSION LLC,
as Guarantor

By: _____
Name: _____
Title: _____

SPANSION TECHNOLOGY LLC,
as Guarantor

By: _____
Name: _____
Title: _____

SPANSION INTERNATIONAL, INC.,
as Guarantor

By: _____
Name: _____
Title: _____

CERIUM LABORATORIES LLC,
as Guarantor

By: _____
Name: _____
Title: _____

LAW DEBENTURE TRUST COMPANY OF NEW YORK,
as Trustee

By: _____
Name:
Title:

EXHIBIT A

CUSIP: [] [] []

SPANSION INC

No.

$**[237,500,000]** SENIOR SECURED NOTE DUE 2015

SPANSION INC., a Delaware corporation, as issuer (the "Issuer"), for value received, promises to _____ or registered assigns the principal sum of $_____ on [ ] 1, 2015.

Interest Payment Dates: July 31 and January 31

Record Dates: July 15 and January 15

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect set forth at this place.

IN WITNESS WHEREOF, the Issuer has caused this Note to be signed manually or by facsimile by one of its duly authorized officers.

SPANSION INC.,
as the Issuer

By: _____
Name:
Title:

Certificate of Authentication

This is one of the Senior Secured Notes Due 2015 referred to in the within-mentioned Indenture.

LAW DEBENTURE TRUST COMPANY OF NEW YORK,
as Trustee

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

SPANSION INC.

SENIOR SECURED NOTE DUE 2015

1. Interest. SPANSION INC., a Delaware corporation, as issuer (the "**Issuer**"), promises to pay, until the principal hereof is paid in full in cash, interest on the principal amount then outstanding at a rate of 10.75% per annum. Interest hereon will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid or, if no interest has been paid, from and including [ ], 20__ to but excluding the date on which interest is paid. Interest shall be payable semi-annually in arrears on each July 31 and January 31, commencing July 31, 2010. Interest on this Note will be computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding any other provisions set forth herein or in the Indenture, interest shall accrue at 12.75% per annum, at Trustee's option or at the direction of the Notifying Holders, without notice, (i) either (A) for the period on and after the date of termination hereof until such time as all Obligations hereunder and under the Indenture and the Security Documents are indefeasibly paid and satisfied in full in immediately available funds, or (B) for the period from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Trustee. All dollar amounts used in or resulting from any calculations set forth herein shall be rounded to the nearest cent (with one half cent being rounded upwards).

The interest rate on the Notes will in no event be higher than the maximum rate permitted by New York law as the same may be modified by United States law of general application.

2. Method of Payment. The Issuer will pay interest hereon (except defaulted interest) to the Persons who are registered Holders at the close of business on July 15 or January 15 immediately preceding the interest payment date (whether or not a Business Day). Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuer will make all payments hereunder in accordance with the Indenture.

3. Paying Agent and Registrar. Initially, Law Debenture Trust Company of New York (the "**Trustee**") will act as a Paying Agent and Registrar. The Issuer may change any Paying Agent or Registrar without notice to the Holders. The Issuer may act as Paying Agent or Registrar.

4. Indenture; Note Guaranty. The Issuer issued the Notes under an Indenture dated as of [ ], 2010 (the "**Indenture**"), among the Issuer, Spansion LLC, a Delaware limited liability company, as guarantor, Spansion Technology LLC, a Delaware limited liability company, as guarantor, Spansion International, Inc., a Delaware corporation, as guarantor, Cerium Laboratories LLC, a Delaware limited liability company, as guarantor, the other guarantors party hereto, and the Trustee. This is one of an issue of Notes of the Issuer issued, or to be issued, under the Indenture. The terms of the Notes include those stated in the Indenture those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§77aaa-77bbbb), as amended from time to time. The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of them. Each Holder of a Note agrees to

and shall be bound by such provisions. Capitalized and certain other terms herein and not otherwise defined herein have the meanings set forth in the Indenture.

The Notes are general obligations of the Issuer, secured by Liens on the Collateral pursuant to the Security Documents. The Indenture limits the original aggregate principal amount of the Notes to $**[237,500,000].** The Notes shall vote together for all purposes as a single class. This Note is guaranteed as set forth in the Indenture.

5. Optional Redemption. The Notes are not redeemable at the option of the Issuer.

6. [Intentionally Omitted].

7. Offers To Purchase. The Indenture provides that upon the occurrence of a Change of Control or an Asset Sale and subject to further limitations contained therein, the Issuer shall make an offer to purchase outstanding Notes in accordance with the procedures set forth in the Indenture, (i) in the case of a Change in Control, at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to the date of repurchase and (ii) in the case of an Asset Sale, at a purchase price equal to the lesser of (a) 100% of their principal amount, plus accrued and unpaid interest and any other amounts outstanding under the Notes, if any, to the date of repurchase and (b) the Net Available Cash from such Asset Sale (with the balance of the Obligations under the Indenture and Notes after giving effect to such Asset Sale (and the subsequent purchase of Notes, if any), if any, remaining outstanding and payable by Obligors under the Indenture and Notes).

8. Denominations, Transfer, Exchange. The Notes are in registered form without coupons in denominations of $1,000 and integral multiples of $1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay to it any taxes and other amounts required by law or the Indenture.

9. Persons Deemed Owners. The registered Holder of this Note may be treated as the owner of this Note for all purposes.

10. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Issuer at its written request. After that, Holders entitled to the money must look to the Issuer for payment as general creditors unless an "abandoned property" law designates another Person.

11. Amendment, Supplement, Waiver, Etc. All amendments, supplements and waivers with respect to the Notes shall be made in accordance with the provisions of the Indenture.

12. Restrictive Covenants. The Indenture imposes certain limitations on the ability of the Issuer and its Restricted Subsidiaries to, among other things, incur additional Debt, pay dividends on, redeem or repurchase its Capital Stock, make certain investments, sell assets, create restrictions on the payment of dividends or other amounts to the Issuer from any Restricted Subsidiaries, enter into transactions with Affiliates, expand into unrelated businesses, create liens or consolidate or merge or sell all substantially all of the assets of the Issuer and its

Restricted Subsidiaries and requires the Issuer to provide certain reports to Holders of the Notes. Such limitations are subject to a number of important qualifications and exceptions. Pursuant to the Indenture, the Issuer must annually report to the Trustee on compliance with such limitations.

13. Successor Obligor. When a successor Obligor assumes all the obligations of its predecessor under the Notes and Indenture and the transaction complies with the terms of Article Five of the Indenture, the predecessor Obligor will, except as provided in Article Five, be released from those obligations.

14. Defaults and Remedies. Events of Default are set forth in the Indenture. Subject to certain limitations in the Indenture, if an Event of Default (other than an Event of Default specified in Section 6.01(vii) or 6.01(viii) of the Indenture with respect to the Issuer, SLLC or Significant Subsidiary) occurs and is continuing, the Trustee or the Notifying Holders may, and the Trustee at the written request of such Holders shall, declare due and payable, if not already due and payable, the principal of and any accrued and unpaid interest on (and all other amounts outstanding with respect to) all of the Notes by notice in writing to the Issuer and Trustee specifying the applicable Event of Default and that it is a "notice of acceleration", and the same shall immediately become due and payable. If an Event of Default specified in Section 6.01(vii) and 6.01(viii) of the Indenture occurs with respect to Issuer, SLLC or any of Significant Subsidiaries then the principal of and any accrued and unpaid interest on all of the Notes (and all other amounts outstanding on account of the Notes) shall immediately become due and payable without any declaration or other act on the part of the Trustee or any Holder. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnification satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Required Holders may direct the Trustee in its exercise of any trust or power. Subject to the applicable provisions of the Indenture, the Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal of, or interest on, the Notes) if it determines that withholding notice is in their best interests.

15. Trustee Dealings with the Issuer. Subject to certain limitations imposed by the Trust Indenture Act, the Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Issuer or its Affiliates, may otherwise deal with the Issuer or its Affiliates, as if it were not Trustee.

16. No Recourse Against Others. No past, present or future director, officer, employee, member or stockholder of the Issuer (solely in its capacity as a stockholder and not in its capacity as an Obligor), as such, shall have any liability for any obligations of the Issuer under the Notes, the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liabilities. The waiver and release are part of the consideration for issuance of the Notes.

17. Discharge. The Issuer's obligations pursuant to the Indenture will be discharged, except for obligations that survive pursuant to certain sections thereof, subject to the terms of the Indenture, upon the payment of all the Notes or upon defeasance in accordance with Section 9 of the Indenture.

18. Authentication. This Note shall not be valid until the Trustee signs the certificate of authentication on the other side of the Note.

19. Governing Law, etc. Section 12.08 of the Indenture is hereby incorporated herein by reference.

20. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TENANT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be to:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Fax: (408) 774-7443
Telephone: (408) 749-4000
Attn: Legal Department

With a copy to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, California 94025
Fax: (650) 463-2600
Telephone: (650) 328-4600
Attn: Tad J. Freese, Esq.

ASSIGNMENT FORM

I or we assign and transfer this Note to:

_____

(Insert assignee's social security or tax I.D. number)

_____

(Print or type name, address and zip code of assignee)

and irrevocably appoint: _____

as Agent to transfer this Note on the books of the Issuer. The Agent may substitute another to act for him.

Date: _____ Your signature: _____

(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee: _____

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

SCHEDULE OF INCREASES OR DECREASES
IN THE PRINCIPAL AMOUNT OF THIS GLOBAL NOTE

The following increases or decreases in the principal amount of this Global Note have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such increase or decrease	Signature of authorized signatory of Trustee

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have all or any part of this Note purchased by the Issuer pursuant to Section 4.08 or Section 4.12 of the Indenture, check the appropriate box:

☐ Section 4.08 ☐ Section 4.12

If you want to have only part of the Note purchased by the Issuer pursuant to Section 4.08 or Section 4.12 of the Indenture, state the amount you elect to have purchased:

$ _____

Date: _____ Your signature: _____

(Sign exactly as your name appears on the other side of this Note)

Signature Guarantee: _____

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT B

FORM OF SUPPLEMENTAL INDENTURE

THIS SUPPLEMENTAL INDENTURE (the "Supplemental Indenture") dated as of [ ], among [insert name of each Guarantor executing this Supplemental Indenture and its jurisdiction of incorporation] (each an "Undersigned"), SPANSION INC., a Delaware corporation (the "Issuer"), and LAW DEBENTURE TRUST COMPANY OF NEW YORK, as trustee under the indenture referred to below (the "Trustee").

W I T N E S S E T H :

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an indenture (as amended, restated, supplemented and/or otherwise modified, the "Indenture") dated as of [ ], 2010, providing for the issuance of the Issuer's Senior Secured Notes due 2015 (the "Notes"), initially in the aggregate principal amount of $**[237,500,000];**

WHEREAS, Section 4.14 of the Indenture provides that under certain circumstances the Issuer is required to cause the Undersigned to execute and deliver to the Trustee a supplemental indenture pursuant to which the Undersigned shall unconditionally guarantee all the Issuer's Obligations under the Notes and the Indenture pursuant to a Note Guaranty on the terms and conditions set forth herein and therein; and

WHEREAS, pursuant to Section 8.02 of the Indenture, the Trustee and the Issuer are 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 Undersigned, the Issuer and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined.

2. Agreement to Guarantee. The Undersigned hereby agrees, jointly and severally with all existing guarantors, to unconditionally guarantee the Issuer's Obligations under the Notes and the Indenture on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes and to perform all of the obligations and agreements of a guarantor under the Indenture.

3. Notices. All notices or other communications to the Undersigned shall be given as provided in Section 12.02 of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture and Security Documents are in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture and Security Documents for all purposes, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby.

5. Governing Law. Section 12.08 of the Indenture is hereby incorporated herein by reference.

6. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

7. 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.

8. Effect of Headings. The section headings herein are for convenience only and shall not effect the construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

[GUARANTOR]

By: _____
Name:
Title:

LAW DEBENTURE TRUST
COMPANY OF NEW YORK, as Trustee

By: _____
Name:
Title:

SPANSION INC.,
as Issuer

By: _____
Name:
Title:

Schedule 1

Unrestricted Subsidiaries

Schedule 2

Outstanding Indebtedness

Schedule 3

Existing Liens

Schedule 4.26(m)

Material Adverse Change

1708153 v1 - APSTEIEG - 028114/0001

Exhibit 8

New Spansion Debt Documents

D&L Draft
1/19/10

CREDIT AGREEMENT

Dated as of [_____], 2010

among

SPANSION LLC,
as the Borrower,

SPANSION INC.,
and SPANSION TECHNOLOGY LLC,
as Guarantors,

BARCLAYS BANK PLC,
as Administrative Agent and Collateral Agent,

The Lenders Party Hereto

and

BARCLAYS CAPITAL
and
MORGAN STANLEY SENIOR FUNDING, INC.

as Joint Lead Arrangers and Joint Book Runners

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CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of [_____ __,] 2010, among SPANSION LLC, a Delaware limited liability company (the "Borrower"), SPANSION INC., a Delaware corporation ("Holdings"), Spansion Technology LLC, a Delaware limited liability company ("Spansion Technology"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BARCLAYS BANK PLC, as Administrative Agent ("Administrative Agent") and Collateral Agent ("Collateral Agent").

RECITALS:

WHEREAS, on March 1, 2009, the Borrower, Holdings, Spansion Technology and two of their Affiliates (collectively with the Borrower, Holdings and Spansion Technology the "Debtors"), commenced voluntary bankruptcy cases under the Bankruptcy Code (as defined below) in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), and their cases are jointly administered under case No. 09-10690 (the "Cases");

WHEREAS, the Debtors filed their Second Amended Joint Plan of Reorganization, Dated December 16, 2009 (as amended and supplemented to the date hereof, the "Plan").

WHEREAS, the Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan commencing on February 11, 2010, and, if the Bankruptcy Court enters the Confirmation Order (as defined below) at the conclusion of such hearing, it is currently anticipated that the Borrower's emergence from bankruptcy and the Plan Effective Date (as defined below) shall occur in February or March 2010 (the "Emergence"). Upon satisfaction of the conditions precedent set forth in Section 4.01, the parties hereto shall enter into this Agreement (the "Closing") and the Lenders shall fund the Loans and the gross proceeds thereof (together with the Accrued Interest Amount (as defined herein)) shall be held in the Escrow Account (as defined herein) and upon the earlier of (i) satisfaction of all conditions precedent set forth in Section 4.02 and (ii) the Termination Date, the proceeds of the Escrow Account will be released and distributed in accordance with Section 6.11;

WHEREAS, on the date that all conditions to the effective date of the Plan have either been satisfied or waived, (the "Plan Effective Date"), in addition to the proceeds from the Escrow Account, the Borrower intends to utilize the proceeds of (i) an asset based revolving credit facility in an aggregate principal amount of up to $65,000,000 (the "Revolving Facility") and (ii) approximately $105,400,000 pursuant to an offering of rights (the "Rights Offering") for shares of common stock in Reorganized Spansion Inc. (as such term is defined in the Plan) in accordance with the Plan and Section 6.11.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"2007 FRN Documents" means (i) that certain indenture, dated as of May 18, 2007, as amended among the Borrower, the guarantors named therein and Wells Fargo Bank, National Association, as trustee and collateral agent (together with [HSBC] as its successor in interest as trustee and collateral agent, and any hereafter duly appointed successor thereto) under which the Borrower issued $625,000,000 aggregate principal amount of senior secured floating rate notes due 2013, and (ii) the other documents related thereto.

"Acceptance Date" has the meaning specified in Section 2.12(b).

"Acceptable Price" has the meaning specified in Section 2.12(c).

"Account Control Agreements" has the meaning specified in the Security Agreement.

"Account Release Date" means the date on which the aggregate proceeds of the Escrow Account are released therefrom to the Borrower, upon the satisfaction (or waiver in accordance with Section 11.01) of the conditions precedent set forth in Section 4.02, which date, in no event, shall not be later than the Termination Date.

"Account Release Date Representations" means the representations and warranties set forth in Sections 5.18, 5.23 and 5.24.

"Accrued Interest Amount" means $5,917,809, subject to the increases set forth in Section 2.01.

"Acquisition" by any Person, means the purchase or acquisition in a single transaction or a series of related transactions by any such Person, individually or, together with its Affiliates, of (a) any Equity Interest of any other Person (other than an existing Subsidiary of the Borrower) which are sufficient such that such other Person becomes a direct or indirect Subsidiary of the Borrower or (b) all or a substantial portion of the property, including, without limitation, all or a substantial portion of the property comprising a division, business unit or line of business, of any other Person (other than a Subsidiary of the Borrower), whether involving a merger or consolidation with such other Person. "Acquire" has a meaning correlative thereto.

"Administrative Agent" has the meaning specified in the introductory paragraph hereto.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agents" means each of the Administrative Agent, Collateral Agent, Syndication Agent and Documentation Agent.

"Aggregate Commitments" means the Commitments of all the Lenders.

"Agreement" means this Credit Agreement.

"Applicable Discount" has the meaning specified in Section 2.12(c).

"Applicable Percentage" means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Facility represented by the principal amount of such Lender's Loans at such time.

"Applicable Rate" means 4.50% *per annum* for any Base Rate Loan and 5.50% *per annum* for any Eurodollar Rate Loan.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) (i) an entity or an Affiliate of an entity that administers or manages a Lender or (ii) an entity or an Affiliate of an entity that is the investment advisor to a Lender.

"Arrangers" means Barclays Capital and Morgan Stanley, in their capacity as joint lead arrangers and joint book runners.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, without duplication, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

"Audited Financial Statements" means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 28, 2008, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

"Backstop Parties" means Silver Lake Sumera, L.P. and/or its Affiliates and managed accounts, or a third party selected by the Debtors and reasonably acceptable to the Arrangers.

"Bankruptcy Code" means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and certified as 11 U.S.C. Section 101 *et seq*.

"Bankruptcy Court" has the meaning specified in the first Recital hereto.

"Barclays Capital" means Barclays Capital, the investment banking division of Barclays Bank PLC and its successors.

"Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Rate in effect on such day plus ½ of 1%. For purposes hereof: "Prime Rate" shall mean the prime lending rate as set forth on the Reuters Screen RTRTSY1 Page (or such other comparable publicly available page as may, in the reasonable opinion of the Administrative Agent after notice to the Borrower, replace such page for the purpose of displaying such rate if such rate no longer appears on the Reuters Screen RTRTSY1 Page), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Rate, respectively. Notwithstanding the foregoing, if the rate described in the preceding sentence would be less than 3.50%, then the "Base Rate" will be deemed to be 3.50%.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Benefit Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Borrowing Date" means the date on which the Loans to be made pursuant to this Agreement are funded.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's office is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Capital Expenditures" means all payments due (whether or not paid during any fiscal period) in respect of the cost of any fixed asset or improvement, or replacement, substitution, or addition thereto, which has a useful life of more than one year, including, without limitation, those costs arising in connection with the direct or indirect acquisition of such asset by way of increased product or service charges or in connection with a Capitalized Lease.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"Capitalized Leases" means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cases" has the meaning specified in the first recital hereto.

"Cash Equivalents" means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Liens created under the Collateral Documents and other Liens permitted hereunder):

(a) readily marketable obligations issued or directly and fully and unconditionally guaranteed or insured as to interest and principal by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the Laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the Laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, and (ii) has combined capital and surplus of at least $500,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a) and (b) of this definition;

(d) United States Dollars or euros; and

(e) any money market fund with assets of at least $5,000,000,000, at least ninety-five percent (95%) of its which are invested continuously in the types of investments referred to in clauses (a) through (e) above and that has the highest rating obtainable from either S&P or Moody's.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of 35% or more of the equity securities of Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis; or

(b) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Holdings, or control over the equity securities of Holdings entitled to elect a majority of members of the board of directors or equivalent governing body of Holdings; or

(c) Holdings shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in the Borrower or Spansion Technology; provided, that if Spansion Technology is dissolved in accordance with the terms of this Agreement and Holdings becomes the sole shareholder of the Borrower such dissolution shall not result in a Change of Control; or

(d) for any reason whatsoever (other than in connection with and as described in the Plan), from and after the date of Emergence, a majority of the board of directors of the Borrower ceases to be occupied by Persons who either (i) were members of the board of directors of the Borrower on the date of Emergence, or (ii) were nominated for election or appointed by the board of directors the Borrower, a majority of whom were directors on the date of Emergence or whose election or nomination for election was previously approved by a majority of such directors; or

(e) a "change of control" or any comparable term under, and as defined in, the Revolving Credit Agreement and the UBS Credit Line Documents, if applicable, shall have occurred (but only so long as any such document or agreement remains in effect and only to the extent not waived under any such document or agreement).

"Closing" has the meaning specified in the third recital hereto.

"Closing Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 11.01).

"Closing Fee" means a fully earned, non-refundable closing fee equal to ***REDACTED***.

"Code" means the Internal Revenue Code of 1986.

"Collateral" means all of the "Collateral" and "Mortgaged Property" referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Obligations.

"Collateral Agent" has the meaning specified in the introductory paragraph hereto.

"Collateral Documents" means, collectively, the Security Agreement, the Mortgages, the Account Control Agreements, mortgages, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties to secure the Obligations.

"Commitment" means the commitment of a Lender to make or otherwise fund a Loan, and "Commitments" means such commitments of all Lenders. The amount of each Lender's Commitment, if any, is set forth opposite such Lender's name on the Lender Addendum delivered by such Lender, or, as the case may be, in the applicable Assignment and Assumption, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is $450,000,000.

"Committed Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Confirmation Order" means the order entered by the Bankruptcy Court confirming the Plan.

"Consolidated EBITDA" means, at the date of determination, an amount equal to Consolidated Net Income of Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following without duplication and in each case to the extent deducted in calculating Consolidated Net Income, for such Measurement Period: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income Taxes payable, (iii) depreciation and amortization expense (excluding amortization

expense attributable to a cash item that was paid in a prior period, but including amortization of deferred financing fees and costs and amortization of intangibles), (iv) cash and non-cash fees, expenses or charges directly related to the restructuring and Emergence of the Debtors (provided that, the aggregate amount of cash fees, charges or expenses added back pursuant to this clause (vi) shall not exceed $[_____] in the aggregate; and provided further that no such cash fees, charges or expenses shall be added back for any Measurement Period ending after June 27, 2010,) and (v) other expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (but excluding (x) any non-cash charge in respect of an item that was included in Consolidated Net Income in a prior period and (y) any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash items in any prior period), in each case of or by Holdings and its Subsidiaries for such Measurement Period and minus (b) without duplication and in each case to the extent deducted in calculating Consolidated Net Income for such Measurement Period, the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and refunds for any period, (ii) interest income and (iii) all non-cash items increasing Consolidated Net Income, in each case of or by Holdings and its Subsidiaries for such Measurement Period. For the purpose of determining the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio, Consolidated EBITDA shall be calculated on a pro forma basis in accordance with the provisions of Section 1.03(c).

For purposes of calculating the Consolidated EBITDA for any Measurement Period that includes any Fiscal Quarter that ended prior to June 27, 2010, the deemed Consolidated EBITDA for such Fiscal Quarter prior to any *pro forma* adjustments pursuant to Section 1.03(c) shall be as set forth below:

Fiscal Quarter Ending	**Deemed Consolidated EBITDA**
June 28, 2009	$[_____]
September 27, 2009	$[_____]
December 27, 2009	$[_____]

"Consolidated Funded Indebtedness" means, as of any date of determination, for Holdings and its Subsidiaries on a consolidated basis, the sum (without duplication) of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services, without duplication (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any Subsidiary, (g) the greater of the aggregate liquidation value and maximum fixed repurchase price (without regard to any Change of Control or redemption premiums) of all Disqualified Capital Stock of

Holdings and its Subsidiaries determined on a consolidated basis (but not including stock that is deemed to be Disqualified Capital Stock solely under clause (d) of the definition thereof) and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary. For the purpose of determining the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio, Consolidated Funded Indebtedness shall be calculated on a pro forma basis in accordance with the provisions of Section 1.03(c). For the avoidance of doubt, Consolidated Funded Indebtedness shall not include the Exempt Japan Payment or Purchase Commitments.

"Consolidated Interest Charges" means, at any date of determination, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations, (c) dividends or similar distributions on Disqualified Capital Stock and (d) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by Holdings and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period. For the purpose of determining the Consolidated Leverage Ratio and the Consolidated Interest Coverage Ratio, Consolidated Interest Charges shall be calculated on a pro forma basis in accordance with the provisions of Section 1.03(c).

"Consolidated Interest Coverage Ratio" means, at any date of determination, the ratio of (a) Consolidated EBITDA to (b) the Consolidated Interest Charges of or by Holdings and its Subsidiaries for the most recently completed Measurement Period.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA.

"Consolidated Net Income" means, at any date of determination, the net income (or loss) of Holdings and its Subsidiaries determined on a consolidated basis in accordance with GAAP for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period (including (i) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (ii) condemnation awards (and payments in lieu thereof) and (iii) proceeds of insurance, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that Holdings' equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, (c) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Holdings or any of its Subsidiaries, and (d) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that Holdings' equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person

during such Measurement Period to Holdings or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to Holdings as described in clause (b) of this proviso).

"Consolidated Parties" means Holdings and each of its Subsidiaries (regardless of whether or not consolidated with Holdings for purposes of GAAP), collectively, and "Consolidated Party" means any one of them.

"Consolidated *pro forma* EBITDA" means Consolidated EBITDA for the last three fiscal quarters ended December 27, 2009, multiplied by four and divided by three and calculated after giving *pro forma* effect to the Emergence in accordance with Regulation S-X subject to such additions or deletions from Regulation S-X as reasonably determined by the Arrangers and including only those additional adjustments that the Arrangers agree are appropriate.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Credit Extension" means a Borrowing.

"Debt Rating" means, as of any date of determination, the corporate family rating as determined by Moody's and the corporate credit rating as determined by S&P.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Debtors" has the meaning specified in the first recital hereto.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans under the Facility plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, unless the subject of a good faith dispute (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (c) has become the subject of a bankruptcy or insolvency proceeding.

"Disclosed Litigation" has the meaning specified in Section 5.06.

"Discounted Prepayment Option Notice" has the meaning specified in Section 2.12(b).

"Discounted Voluntary Prepayment" has the meaning specified in Section 2.12(a).

"Discounted Voluntary Prepayment Notice" has the meaning specified in Section 2.12(e).

"Discount Range" has the meaning specified in Section 2.12(b).

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith. For the avoidance of doubt, a Disposition shall not include the granting of non-exclusive licenses of IP Rights by Borrower, Holdings, Spansion Technology or any of their respective Subsidiaries in the ordinary course of business and substantially consistent with past practice.

"Disqualified Capital Stock" means Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock referred to in clause (a) above, in each case at any time prior to the date that is 91 days after the Maturity Date, (c) contains any repurchase obligation that may come into effect prior to payment in full of all Obligations, (d) requires cash dividend payments prior to the date that is 91 days after the Maturity Date, (e) is not common stock and does not provide that any claims of any holder of such Capital Stock may have against the issuer of such Capital Stock or its subsidiaries (including any claims as judgment creditor or other creditor in respect of claims for the breach of any covenant contained therein) shall be fully subordinated (including a full remedy bar) to the Obligations in a manner satisfactory to Administrative Agent, (f) provides the holders of such Capital Stock thereof with any rights to receive any cash upon the occurrence of a Change of Control unless the rights to receive such cash are contingent upon the Obligations being irrevocably paid in full, or (g) is prohibited by the terms of this Agreement.

"Documentation Agent" means Barclays Bank PLC.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the Laws of any jurisdiction within the United States.

"Eligible Assignee" means (a) any Lender, any Affiliate of any Lender and any Approved Fund (any two or more Approved Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933) and which extends credit or buys loans as one of its businesses, or (c) any other Person (other than a natural Person) approved by Administrative Agent; provided, (i) none of the persons identified by the Borrower to the Administrative Agent in writing from time to time to be competitors of the Borrower and its Subsidiaries and ineligible to be an Eligible Assignee and (ii) none of the Borrower, Holdings, Spansion Technology nor any of their respective Affiliates, shall be an Eligible Assignee.

"Elpida Sale" means the acquisition by [Elpida Memory Inc.] of certain assets of [the Borrower], as filed with [the Bankruptcy Court, docket numbers 2138 and 2345].]

"Emergence" means has the meaning specified in the third recital hereto.

"Environmental Laws" means all Laws relating to pollution, the environment, natural resources, or the manufacture, distribution in commerce, use or Release of, or exposure of humans or other living organisms to, Hazardous Substances.

"Environmental Liability" means any Liability directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which any Liability is assumed or imposed with respect to any of the foregoing.

"Environmental Lien" means a Lien in favor of any Governmental Authority for any Liability under Environmental Liability.

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"Equity Interests" means, with respect to any Person, all of the shares of Capital Stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of Capital Stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of Capital Stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and

whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 4001(a) of ERISA or which is treated as a single employer with the Borrower under Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Benefit Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; or (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan.

"Escrow Account" means that certain interest bearing deposit account in the name of the Escrow Agent at Barclays Wealth or an affiliate thereof into which the gross proceeds of the Loans will be funded by the Lenders and the Accrued Interest Amount will be deposited by the Borrower, each on the Closing Date and held by the Collateral Agent for the benefit of the Lenders until the earlier of (x) the Account Release Date and (y) the Termination Date.

"Escrow Agent" means Barclays Capital Inc. or an affiliate thereof

"Escrow Agreement" means that certain escrow agreement, dated as of the Closing Date between the Borrower, the Escrow Agent and the Collateral Agent.

"Escrow Deposit Amount" means the Accrued Interest Amount plus an amount equal to one-quarter of the Closing Fee.

"Eurodollar Rate" means with respect to each day during each Interest Period, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Reuters Page LIBOR01 as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on Reuters Page LIBOR01 (or otherwise on the Reuters screen), the "Eurodollar Rate" for purposes of this definition shall be determined by reference to such other comparable publicly available service for displaying LIBOR rates as may be reasonably selected by the Administrative Agent. Notwithstanding the foregoing, if the rate described in the preceding sentence would be less than 2.50%, then the "Eurodollar Rate" will be deemed to be 2.50%.

"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on the Eurodollar Rate.

"Event of Default" has the meaning specified in Section 8.01.

"Excess Cash Flow" means, for any fiscal year of the Borrower, the excess (if any) of:

(a) the sum, without duplication, of (i) Consolidated EBITDA for such fiscal year, plus (ii) any foreign, United States, state and/or local tax refunds for any period, plus (iii) extraordinary cash income (other than Extraordinary Receipts), if any, business interruption insurance proceeds, if any, and Net Cash Proceeds attributable to Dispositions out of the ordinary course of business if any, of the Consolidated Parties during such period, in each case to the extent not included in Consolidated EBITDA for such period and not utilized in connection with a payment or reinvestment made or to be made pursuant to Section 2.03(b)(ii), minus;

(b) the sum (for such fiscal year) of (i) Consolidated Interest Charges actually paid in cash by the Borrower and its Subsidiaries, plus (ii) all income taxes actually paid in cash by the Borrower and its Subsidiaries, plus (iii) Capital Expenditures of Holdings and its Subsidiaries for such period paid in cash except to the extent the Capital Expenditures were financed with the proceeds of additional Indebtedness of Holdings or any of its Subsidiaries, plus (iv) the aggregate amount of all required principal payments or redemptions or similar acquisitions for value of outstanding Consolidated Funded Indebtedness (including the Loans), but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02, plus (v) the Exempt Japan Payment, plus (vi) the aggregate principal amount of all optional prepayments made in cash pursuant to Section 2.03(a) hereof with internally generated funds during such period, plus (vii) the aggregate amount of all Restricted Payments paid in cash during such period in accordance with Section 7.06, plus (viii) the cash amount of all fees, expenses or charges directly related to the restructuring and Emergence of the Debtors (provided that the aggregate amount of such cash fees, charges or expenses deducted from Excess Cash Flow shall not exceed $[_____] for the fiscal year ended December 26, 2010); plus

(c) the amount, if any, by which Net Working Capital decreased during such fiscal year; minus

(d) the amount, if any, by which Net Working Capital increased during such fiscal year.

"Excluded Debt Issuance" by any Person means any Indebtedness issued or incurred up to and including the date of Emergence in connection with and as described in the Plan.

"Excluded Equity Issuance" by any Person means (i) Equity Interests (other than Disqualified Capital Stock) issued in connection with and as described in the Plan (including, without limitation, the Rights Offering) and (ii) an issuance and sale of an Equity Interest (other than Disqualified Capital Stock) in such Person in connection with employment agreements and stock option or employee compensation agreements approved by the board of directors of

Holdings or an issuance of shares of Capital Stock (other than Disqualified Capital Stock) of (or other ownership or profit interests in) such Person upon the exercise of warrants, options or other rights for the purchase of such Capital Stock (or other ownership or profit interest).

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, Participant or any other recipient of any payment to be made by or on account of any Obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or otherwise as a result of a present or former connection between the recipient and the jurisdiction imposing such tax other than a connection arising solely from such recipient having executed or received a payment under, or enforced, this Agreement, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01(a) and (d) in the case of any non-Foreign Lender which changes its Lending Office with respect to the Loans to an office outside the United States, any taxes that are in effect and would apply to a payment to such Lender as of the date of the change of the Lending Office.

"Exempt Japan Payment" has the meaning specified in Section 4.01(j).

"Extraordinary Receipts" means any Net Cash Proceeds received by or paid to or for the account of Holdings or any of it Subsidiaries not in the ordinary course of business, provided that the following shall not constitute Extraordinary Receipts: (i) proceeds of judgments, settlements or other consideration payments made in connection with the resolution of litigation or other causes of action if, and only if, the Consolidated Leverage Ratio as of the most recent Measurement Period at the time of receipt of such proceeds was less than or equal to 1.75 to 1.00, (ii) proceeds from Dispositions of property by any Loan Party and (iii) proceeds received by any Loan Party as a result of the exercise of the put option related to the UBS Credit Line Documents.

"Facility" means, at any time, the aggregate principal amount of the Loans of all Lenders outstanding at such time.

"Federal Funds Rate" means for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"Fee Letter" means the letter agreement, dated January 11, 2010, among the Borrower, Barclays Capital Inc. and the Arrangers.

"Final Approval Order" means a Final Order, in form and substance acceptable to the Arrangers, authorizing and approving on a final basis (i) the payment of the costs, fees, expenses and other compensation and commitment fees (including costs, fees and expense arising under the Lenders' and Arrangers' right to indemnification) to the Lenders, the Agents and the Arrangers, and (ii) authorizing the Debtors to take all actions reasonably necessary to enter into and consummate the financings and transactions contemplated under the Transaction Documents.

"Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in any Chapter 11 Case or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or hearing has been denied or resulted in no modification of such order, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such order, shall not cause such order not be a Final Order.

"Foreign Government Scheme or Arrangement" has the meaning specified in Section 5.12(d).

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Plan" has the meaning specified in Section 5.12(d).

"Fractional Share Payments" has the meaning specified in Section 7.06(f).

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or

pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, any (a) obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means, collectively, Holdings, Spansion Technology, the Domestic Subsidiaries of Holdings listed on Schedule 6.12 and each other Domestic Subsidiary of Holdings that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

"Guaranty" means, collectively, the Guarantees made by Holdings and Spansion Technology under Article X in favor of the Secured Parties and the Guaranty made by the other Guarantors in favor of the Secured Parties, substantially in the form of Exhibit E, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling, or arrangement with respect to any of the foregoing, of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hazardous Substance" means any pollutant, contaminant, hazardous substance, hazardous waste, medical waste, special waste, toxic substance, petroleum or petroleum-derived substance, waste or additive, asbestos, polychlorinated biphenyl (PCB), radioactive material, or

other compound, element or substance in any form (including products) regulated, restricted or addressed by or under any Environmental Law.

"Holdings" has the meaning specified in the introductory paragraph hereto.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than 90 days after the date on which such trade account was created) [and obligations that are subject to treatment under the Plan];

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, limited liability company or similar legal entity) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Indemnified Liabilities" means, collectively, any and all Liabilities (including Environmental Liabilities) and (including the reasonable fees and disbursements of one common counsel for Indemnitees provided that an Indemnitee will have the right to retain separate counsel to represent such Indemnitee who may be subject to liability arising out of any claim in respect of which indemnified coverage may be sought hereunder if and to the extent the representation of two or more Indemnitees by the same counsel would be inappropriate due to actual or potential differing interests between them in connection with any investigative, administrative, regulatory or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any reasonable fees or expenses incurred by Indemnitees in enforcing this indemnity) that may be imposed on, incurred by, or asserted against any such Indemnitee, whether brought by Holdings, the Borrower, any other Loan Party, any of their respective Affiliates or any other Person or entity, in any manner relating to or arising out of (i) this Agreement or the other Loan Documents or the Transaction contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)) or any action taken or omitted by any such Person under or in connection with respect to the foregoing, including with respect to the exercise by any Secured Party of its respective rights or remedies under any of the Loan Documents and any investigation by or before any Governmental Authority, litigation, or proceeding (including any bankruptcy, insolvency, reorganization or other similar proceeding or appellate proceeding) related to this Agreement or any other Loan Document or the Loans, or the use of proceeds thereof, whether or not any Indemnitee is party thereto; or (ii) any Environmental Liabilities relating to or arising from, directly or indirectly, any action, omission, operation, asset, or practice of any Loan Party or any of their Subsidiaries, including any Release or threatened Release of any Hazardous Materials at, on, under or from any property owned, leased or operated at any time by any Loan Party or any of their Subsidiaries or any location at which any Hazardous Materials used, possessed, generated or disposed by or on behalf of any Loan Party or any of their Subsidiaries have come to be located.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 11.04(b).

"Independent Financial Advisor" means an investment banking firm of national standing or any third-party appraiser with national standing in the United States; provided that such firm of appraiser is not an Affiliate of Holdings.

"Information" has the meaning specified in Section 11.07.

"Intercreditor Agreement" means an intercreditor agreement dated as of the date hereof among the Administrative Agent and the Revolving Credit Agent, and acknowledged and agreed to by the Borrower, Holdings, and the other Loan Parties, substantially in the form of hereto.

"Interest Payment Date" means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which

such Loan was made; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date, provided that the first Interest Payment Date will occur on the first such date to occur after the Account Release Date.

"Interest Period" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months or (with the consent of all the Lenders) nine or twelve months thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging the interest rate exposure of any Loan Party, (ii) approved by Administrative Agent, and (iii) not for speculative purposes.

"Interim Approval Order" has the meaning specified in Section 4.01(g).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution (including, without limitation, a loan, advance or capital contribution consisting of IP Rights) to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.17.

"IRS" means the United States Internal Revenue Service.

"Joinder Agreement" means a Joinder Agreement executed and delivered in accordance with the provisions of Section 6.12, substantially in the form of Exhibit H hereto.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" has the meaning specified in the introductory paragraph hereto.

"Lender Addendum" means, with respect to any initial Lender, a Lender Addendum, substantially in the form of Exhibit J, to be executed and delivered by such Lender on the Closing Date as provided in Section 11.20.

"Lender Counterparties" means each Lender or any Affiliate of a Lender or an Arranger or an Affiliate of an Arranger counterparty to an Interest Rate Agreement (including any Person who was a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into an Interest Rate Agreement, ceases to be a Lender) provided such Affiliate appoints Collateral Agent as its agent and agrees to be bound by the Loan Documents as a Secured Party.

"Lender Participation Notice" has the meaning specified in Section 2.12(c).

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Liabilities" means all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits charges, reasonable costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action to remove, remediate, clean up or abate any Hazardous Materials), reasonable expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan" means an advance made by any Lender under Article II.

"Loan Documents" means, collectively, this Agreement, the Notes, the Guaranty, any Joinder Agreement, any of the Collateral Documents, the Escrow Agreement, the Intercreditor Agreement, the Fee Letter and each Interest Rate Agreement.

"Loan Parties" means, collectively, the Borrower and each Guarantor.

"Margin Stock" means margin stock within the meaning of Regulation U and Regulation X.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of any Loan Party to perform any of its obligations under any Loan Document to which it is a party; (c) a material adverse effect on the Collateral, or the Collateral Agent's Liens (on behalf of itself and the Lenders) on the Collateral or the priority of such Liens; or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Material Contract" means, with respect to any Person, each contract to which such Person is a party which is material to the business, condition (financial or otherwise), operations, performance or properties of such Person.

"Material Subsidiary" means the Borrower, Spansion Technology and any other direct or indirect Domestic Subsidiary of Holdings which (a) has total assets equal to or greater than 5.0% of Total Assets (calculated as of the most recent fiscal period with respect to which the Lenders shall have received financial statements required to be delivered pursuant to Sections 6.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated with respect to the year end financial statements referenced in Section 5.05(a)) (the "Required Financial Information")) or (c) has income equal to or greater than 2% of Consolidated Net Income (calculated for the most recent period for which the Lenders have received the Required Financial Information); provided, however, that notwithstanding the foregoing, the term "Material Subsidiary" shall mean each of those Domestic Subsidiaries that together with Holdings and each other Material Subsidiary (i) have assets equal to not less than 95% of Total Assets (calculated as described above) and (ii) generate not less than 95% of Consolidated Net Income of the Consolidated Parties; provided, further, that if more than one combination of Subsidiaries satisfies such threshold, then those Subsidiaries so determined to be "Material Subsidiaries" shall be specified by the Borrower.

"Maturity Date" means the date that is the fifth anniversary of the Closing Date; provided, however, that, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"Measurement Period" means, at any date of determination, the most recently completed four fiscal quarters of Holdings.

"MNPI" has the meaning specified in Section 2.12(a).

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Morgan Stanley" means Morgan Stanley Senior Funding, Inc.

"Mortgage" has the meaning specified in Section 4.01(c)(iii).

"Mortgage Policy" has the meaning specified in Section 4.02(c)(iii)(B).

"Mortgaged Properties" means the properties listed on Schedule 5.08(c) as to which the Collateral Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Net Cash Proceeds" means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith; and

(c) with respect to the receipt of any Extraordinary Receipt, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such Extraordinary Receipt over (ii) the sum of (A) the reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith and (B) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to subclause (B) exceeds the amount of taxes actually required to be

paid in cash in respect of such Extraordinary Receipts, the aggregate amount of such excess shall constitute Net Cash Proceeds.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any cash payments or proceeds received by any Loan Party or any of their respective Subsidiaries (a) under any casualty or "key man" insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of any Loan Party or any of their respective Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by any Loan Party or any of their respective Subsidiaries in connection with the adjustment or settlement of any claims of any Loan Party or such Subsidiary in respect thereof, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on, any Indebtedness or other financing obligation permitted hereunder that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such taking and (c) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including income taxes paid or payable as a result of any gain recognized in connection therewith (after taking into account any available tax credits or deductions and any tax-sharing arrangements).

"Net Working Capital" means, the excess of (a) the sum of all amounts (other than cash and Investments permitted under Section 7.03(a)) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of Holdings and its consolidated Subsidiaries at such date over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of Holdings and its consolidated Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Consolidated Funded Indebtedness, (ii) all Indebtedness consisting of loans and letters of credit under the Revolving Credit Agreement to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income taxes.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"OFAC Blocked Person" means any Person identified on or designated for inclusion on the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC or designed under the Anti-Terrorism Order.

"OFAC Compliance Certificate" means a compliance certificate in form and substance satisfactory to Administrative Agent. The OFAC Compliance Certificate shall specify, at minimum, that the certifying Person is in full compliance with the OFAC Measures.

"OFAC Measures" means all statutes, executive orders, regulations and other legal measures that are administered by OFAC, enforced by OFAC or both. An **"**OFAC Measure" is one such measure.

"Offered Loans" has the meaning specified in Section 2.12(c).

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means the aggregate outstanding principal amount of Loans on any date after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"Participant" has the meaning specified in Section 11.06(c)(i).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Perfection Certificate" has the meaning given such term in Section 1.03 of the Security Agreement.

"Permitted Encumbrances" [has the meaning specified in the Mortgages].

"Permitted Tax Payment" means the payment of any dividend or distribution to Holdings in an amount not to exceed the combined federal, state and local income tax liabilities of Holdings attributable to net taxable income of the Borrower and its Subsidiaries to the extent such income is included in a consolidated, combined or similar return of Holdings. Each tax distribution shall be calculated and distributed so that Holdings shall receive a tax distribution sufficient to pay the income taxes required to be paid (after giving effect to any income tax credits, losses carried forward, or similar reductions to income taxes due) in respect of the relevant period.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" has the meaning specified in the second recital hereto.

"Plan Effective Date" has the meaning specified in the fourth recital hereto.

"Platform" has the meaning specified in Section 6.02.

"Pledged Debt" has the meaning specified in Section 2.01 of the Security Agreement.

"Pledged Equity" has the meaning specified in Section 2.01 of the Security Agreement.

"Post-Petition" means the time period beginning immediately upon the filing of the Cases.

"Prime Rate" has the meaning specified in the definition of "Base Rate."

"Principal Office" means, for any applicable Person, such Person's "Principal Office" as set forth on Schedule 11.02, Administrative Questionnaire or Lender Addendum, as applicable, or such other office as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender.

"pro forma basis" has the meaning specified in Section 1.03(c).

"Proposed Discounted Prepayment Amount" has the meaning specified in Section 2.12(b).

"Public Lender" has the meaning specified in Section 6.02.

"Purchase Commitments" means unconditional purchase commitments for goods and services incurred in the ordinary course of business and consistent with past practice.

"Qualifying Lenders" has the meaning specified in Section 2.12(d).

"Qualifying Loans" has the meaning specified in Section 2.12(d).

"Regulation S-X" means Regulation S-X, as promulgated by the SEC (or any successor provision thereto).

"Register" has the meaning specified in Section 11.06(b)(iv).

"Registered Public Accounting Firm" has the meaning specified by the Securities Laws and shall be independent of Holdings as prescribed by the Securities Laws.

"Release" means any release, spill, leak, flow, emission, leaking, pumping, pouring, emptying, injection, escaping, deposit, disposal, discharge, dispersal, dumping, seepage, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Required Lenders" means, as of any date of determination, Lenders holding more than 50% of the Outstanding Amount; provided that the portion of the Outstanding Amount held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Capital Stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment, but not including interest payments on any convertible debt before conversion occurs.

"Revolving Credit Agent" means Bank of America, N.A., in its capacity as agent for the lenders under the Revolving Credit Agreement.

"Revolving Credit Agreement" means that certain Credit Agreement dated as of [_____], 2010 among the Borrower, Holdings, the Revolving Credit Agent, and a syndicate of lenders.

"Revolving Credit Loan Documents" means the Revolving Credit Agreement and the other ["Loan Documents"] as defined therein.

"Revolving Facility" has the meaning specified in the fourth recital hereto.

["Rights Agreement" means that certain Rights Offering Agreement dated as of the date hereof by and among the Borrower, [_____] and [_____].]

"Rights Offering" has the meaning specified in the fourth recital hereto.

"Rights Offering Documents" means the [Rights Agreement] and the documents related thereto.

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

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Parties" means, collectively, the Collateral Agent, the Lenders, the Lender Counterparties, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means the pledge and security agreement, in substantially the form of Exhibit F, together with each other pledge and security agreement and pledge and security agreement supplement delivered pursuant to Section 6.12.

"Security Agreement Supplement" has the meaning specified in Section 1.01 of the Security Agreement.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such

Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Spansion Technology" has the meaning specified in the introductory paragraph hereto.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of Holdings.

"Super Majority Lenders" means, as of any date of determination, Lenders holding more than $66^{2/3}\%$ of the Outstanding Amount; provided that the portion of the Outstanding Amount held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Super Majority Lenders.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Syndication Agent" means Morgan Stanley.

"Synthetic Debt" means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of "Indebtedness" or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means, unless the Account Release Date has previously occurred, the date that is the earliest of (a) 60 days from the Closing Date (subject to any extensions consented to in accordance with Section 11.01(a)(II), (b) the date which the Borrower notifies the Lenders in writing that the conditions set forth in Section 4.02 shall not be met, (c) the date on which the Loans become due pursuant to Section 8.02 and (d) the date the Bankruptcy Court's Final Approval Order approving the Transaction and the fees to be paid in connection therewith is overturned, vacated or stayed; provided that a Termination Date shall not be deemed to have occurred pursuant to this clause (d) unless the Arrangers shall have given the Borrower one day prior written notice of the occurrence of a Termination Date hereunder, which notice shall not be provided if (x) such Final Approval Order was overturned, vacated or stayed over the objections of the Debtors and the Debtors are continuing to contest such matters before the Bankruptcy Court and (y) the rights and interests of the Lenders and the Arrangers are not adversely affected by such Final Approval Order being overturned, vacated or stayed as reasonably determined by the Arrangers; provided, further, that for the avoidance of doubt nothing in this proviso shall extend the time limit set forth in clause (a) above.

"Terrorism Laws" means any of the following (a) Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, 66 Fed. Reg. 49,089 (2001), as amended, issued by the President of the United States (the "Anti-Terrorism Order"), (b) the Global Terrorism Sanctions Regulations (Title 31 Part 594 of the U.S. Code of Federal Regulations), (c) the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), (d) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), (e) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), (f) the Patriot Act (as it may be subsequently codified), (g) all other present and future legal requirements of any Governmental Authority addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and (h) any

regulations promulgated pursuant thereto or pursuant to any legal requirements of any Governmental Authority governing terrorist acts or acts of war.

"Total Assets" means, with respect to any date of determination, Holdings' total consolidated assets shown on its consolidated balance sheet in accordance with GAAP on the last day of the fiscal quarter prior to the date of determination.

"Transaction" means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party and (b) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

"Transaction Documents" means the Loan Documents, the Rights Offering Documents and the Revolving Loan Credit Documents.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"UBS Credit Line Documents" means the Credit Line Agreement entered into by the Borrower with UBS Bank USA on December 29, 2008 providing up to an aggregate amount of $85,000,000 in the form of an uncommitted revolving line of credit, secured by auction rate securities currently owned by the Borrower.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Unfunded Pension Liability" means an "accumulated funding deficiency" within the meaning of Section 302 of ERISA or Section 412 of the Code.

"United States" and "U.S." mean the United States of America.

"Unrestricted Cash" means as of any date, unrestricted cash and Cash Equivalents owned by Holdings and its Subsidiaries that are not, and are not presently required under the terms of any agreement or other arrangement binding on Holdings or any Subsidiary on such date to be, (a) pledged to or held in one or more accounts under the control of one or more creditors of Holdings or any Subsidiary (other than to secure the Obligations) or (b) otherwise segregated from the general assets of Holdings and its Subsidiaries, in one or more special accounts or otherwise, for the purpose of securing or providing a source of payment for Indebtedness or other obligations that are or from time to time may be owed to one or more creditors of Holdings or any Subsidiary (other than to secure the Obligations). It is agreed that cash and Cash Equivalents held in ordinary deposit or security accounts and not subject to any existing or contingent restrictions on transfer by Holdings or a Subsidiary will not be excluded from Unrestricted Cash by reason of setoff rights or other Liens created by law or by applicable account agreements in favor of the depositary institutions or security intermediaries.

"U.S. Loan Party" means any Loan Party that is organized under the Laws of one of the states of the United States of America and that is not a CFC.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein and provided that notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial

Accounting Standards 159, "The Fair Value Option for Financial Assets and Financial Liabilities", or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Indebtedness of Holdings or any Subsidiary at "fair value", as defined therein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any provision (including, any definition, financial ratio or requirement set forth in any Loan Document), and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Pro Forma Calculations. Notwithstanding anything herein to the contrary, any calculation of the Consolidated Leverage Ratio for any period during which an Acquisition or Disposition shall have occurred (or shall be deemed to have occurred for the purposes described in clause (ii) of this Section 1.03(c)) shall each be made on a pro forma basis for purposes of making the following determinations:

(i) determining compliance with the Consolidated Leverage Ratio (other than whether the conditions precedent for a proposed transaction have been satisfied as contemplated by subsection (ii) of this Section 1.03(c));

(ii) determining whether the conditions precedent have been satisfied for a proposed transaction which is permitted hereunder only so long as no Default will result from the consummation thereof, including, without limitation, any Disposition or any Investment which results in an Acquisition; and

(iii) determining whether a mandatory prepayment is required to be made by the Borrower pursuant to Section 2.03(b)(i) or (iii).

"pro forma basis" means, for purposes of calculating any financial ratio (including the Consolidated Leverage Ratio and Consolidated Interest Coverage Ratio) or financial amount for any Measurement Period (including Consolidated EBITDA) for any of the purposes specified in this Section 1.03(c) (but not for purposes of calculating Excess Cash Flow or EBITDA in Section 4.01(h)), and with respect to each proposed Acquisition or Disposition and each such transaction actually consummated in such Measurement Period, that such financial ratio or financial amount shall be calculated on a pro forma basis based on the following assumptions: (a) each such transaction shall be deemed to have occurred on the first day of such Measurement Period; (b) any funds to be used by any Person in consummating any such transaction will be assumed to have been used for that purpose as of the first day of such Measurement Period; (c) any Indebtedness to be incurred by any Person in connection with the consummation of any such transaction will be assumed to have been incurred on the first day of such Measurement Period;

(d) the gross interest expenses, determined in accordance with GAAP, with respect to such Indebtedness assumed to have been incurred on the first day of such Measurement Period that bears interest at a floating rate shall be calculated at the current rate (as of the date of such calculation) under the agreement governing such Indebtedness (including this Agreement if the Indebtedness is incurred hereunder); and (e) any gross interest expense, determined in accordance with GAAP, with respect to Indebtedness outstanding during such Measurement Period that was or is to be refinanced with proceeds of a transaction assumed to have been incurred as of the first day of the Measurement Period will be excluded from such calculations (and to the extent not already excluded pursuant to clause (a) or (b) above, the principal amount of such Indebtedness shall be excluded). "pro forma basis" may also include such adjustments for expected cost savings as are permitted under Regulation S-X of the SEC and reasonably satisfactory to the Administrative Agent.

1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York, New York time (daylight or standard, as applicable).

1.06 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.06, the "Spot Rate" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 1:00 p.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency. Notwithstanding the foregoing, for purposes of any determination under Article VI, Article VII (other than Section 7.11) or Article VIII or any determination under any other provision of this Agreement expressly requiring the use of a current exchange rate, all amounts incurred, outstanding or proposed to be incurred or outstanding in currencies other than Dollars shall be translated into Dollars at currency exchange rates in effect on the date of such determination; provided, however, that for purposes of determining compliance with Article VII with respect to the amount of any Indebtedness, Investment, Disposition or Restricted Payment in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred or Disposition or Restricted Payment made; provided that, for the avoidance of doubt, the foregoing provisions of this Section 1.06 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred or Disposition or Restricted Payment

made at any time under such Sections. For purposes of Section 7.11, amounts in currencies other than Dollars shall be translated into Dollars at the currency exchange rates used in preparing Holding's most recently delivered financial statements.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans and the Accrued Interest Amount. (i) Subject to the terms and conditions set forth herein, each Lender severally agrees to make a single Loan in an amount not to exceed such Lender's Commitment and to make the gross proceeds of such Loan available to the Administrative Agent on the Closing Date to be deposited by the Administrative Agent into the Escrow Account and (ii) immediately prior to the deposit referred to in clause (i), the Borrower agrees to deposit the Escrow Deposit Amount in the Escrow Account. Immediately after such deposits are made, (i) the Borrower will pay (with funds other than those deposited in the Escrow Account) the fees payable to the Arrangers and the administrative agency fee payable to the Administrative Agent each payable on the Closing Date as set forth in the Fee Letter and (ii) the Escrow Agent shall release funds from the Escrow Account in accordance with the terms of the Escrow Agreement to pay one-quarter of the Closing Fee to the Lenders on a pro rata basis. In the event that (A) the Base Rate increases at any time from the Closing Date to the Account Release Date such that the Accrued Interest Amount deposited into the Escrow Account would not be sufficient (as determined by the Administrative Agent) to pay the amount of interest that could accrue on the Loans through and including the 60th day after the Closing Date (as calculated using such higher Base Rate) or (B) the 60-day period set forth in clause (a) of the definition of "Termination Date" is extended in accordance with Section 11.01(a)(II), the Borrower shall make any necessary additional deposits into the Escrow Account (as determined by the Administrative Agent) to increase the Accrued Interest Amount to such amount as is sufficient to pay the amount of interest that could accrue on the Loans for the relevant maximum time periods set forth in clauses (A) or (B) above at such higher Base Rate and/or for such extended time period. Upon the earlier of the Account Release Date and the Termination Date, the Escrow Agent will release the Loans for application in accordance with Section 6.11 hereof. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein; provided, however, that prior to and until the Account Release Date all Loans shall be Base Rate Loans.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Borrowings, Conversions and Continuations Generally. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of

$5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Notice to Lenders and Borrowings. Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the Facility of the Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's office not later than 1:00 p.m. on the Business Day specified in the Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01, the Administrative Agent shall deposit all funds so received with the Collateral Agent in the Escrow Account. If the Account Release Date occurs, the Escrow Agent at the direction of the Collateral Agent in accordance with the terms of the Escrow Agreement will release all funds held in the Escrow Account to (i) first, pay the balance of the Closing Fee to the Lenders on a pro rata basis and the fees payable on the Account Release Date set forth in the Fee Letter and (ii) immediately thereafter, to the Borrower in like funds either by (x) crediting the account of the Borrower on the books of Barclays Bank PLC with the amount of such funds or (y) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower. If the Termination Date occurs, the Escrow Agent at the direction of the Collateral Agent in accordance with the terms of the Escrow Agreement will release all funds held in the Escrow Account to (i) first, pay the fees payable on the Termination Date set forth in the Fee Letter, (ii) second to repay the full principal amount of all Loans and all accrued interest thereon, and (iii) third to distribute to the Borrower any remaining funds either by (x) crediting the account of the Borrower on the books of Barclays Bank PLC with the amount of such remaining funds or (y) wire transfer of such remaining funds, in each case in accordance with instructions provided to the Administrative Agent by the Borrower.

(c) Eurodollar Rate Loans. Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) Notice of Interest Rate. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate.

(e) Maximum Interest Periods. After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than five (5) Interest Periods in effect in respect of the Facility.

2.03 Prepayments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part (i) at any time prior to the first anniversary of the Closing Date at a price equal to 101% of the principal amount of the Loans being prepaid (plus all accrued and unpaid interest and breakage costs, if any, payable pursuant to Section 3.05) and (ii) thereafter at any time without premium or penalty (other than breakage costs, if any, payable pursuant to Section 3.05); provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) one Business Day prior to the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, the Facility to which such prepayment shall apply and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.03(a) shall be applied to the remaining scheduled principal repayment installments of the Loan on a pro-rata basis, and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the Facility.

(b) Mandatory.

(i) Excess Cash Flow. Commencing with the fiscal year ending December 26, 2010 (calculated from the first full fiscal quarter immediately following Emergence in the case of the fiscal year ending December 26, 2010), within five Business Days after financial statements have been delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been delivered pursuant to Section 6.02(a), the Borrower shall prepay an aggregate principal amount of Loans equal to (A) if Holdings' Consolidated Leverage Ratio at the end of such fiscal year is greater than or equal to 1.5

to 1.0, 50% of Excess Cash Flow *minus* the amount expended by the Borrower to prepay any Loans pursuant to Section 2.12 during such fiscal year to the extent such prepayments are funded with internally generated cash or (B) if Holdings' Consolidated Leverage Ratio at the end of such fiscal year is less than 1.5 to 1.0, 25% of Excess Cash Flow *minus* the amount expended by the Borrower to prepay any Loans pursuant to Section 2.12 during such fiscal year to the extent such prepayments are funded with internally generated cash; in each case, for the fiscal year covered by such financial statements (such prepayments to be applied as set forth in clause (vii) below).

(ii) Dispositions and Extraordinary Receipts. If any Loan Party or any of its Subsidiaries, after Emergence, (i) Disposes of any property (other than any Disposition of any property permitted by Section 7.05(b), (c), (d), (e), (f) or (h) (but solely with respect to the Disposition of IP Rights permitted under Section 7.05(h)) in a single or series of related transactions which results in the realization by such Person of Net Cash Proceeds in excess of $5,000,000 per fiscal year or (ii) receives Extraordinary Receipts in excess of $5,000,000 per fiscal year, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds or Extraordinary Receipts, as the case may be, above such threshold amounts promptly following receipt thereof by such Person (such prepayments to be applied as set forth in clause (vii) below); provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition or Extraordinary Receipts described in this Section 2.03(b)(ii), at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of such Disposition or promptly (but in no event no later than ten Business Days) following receipt of such Extraordinary Receipt), and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Cash Proceeds or Extraordinary Receipts, as the case may be, in operating assets so long as (i) within 270 days after the receipt of such Net Cash Proceeds or Extraordinary Receipts, as the case may be, such purchase shall have been consummated or (ii) within 270 days after the receipt of such Net Cash Proceeds or Extraordinary Receipts such Loan Party has entered into a binding commitment to consummate such purchase and within 365 days after the receipt of such Net Cash Proceeds or Extraordinary Receipts, such purchase shall have been consummated, (in each case as certified by the Borrower in writing to the Administrative Agent); and provided, further, however, that any Net Cash Proceeds or Extraordinary Receipts not so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.03(b)(ii).

(iii) Equity Issuance. Upon the sale or issuance by any Loan Party or any of its Subsidiaries of any of its Equity Interests (other than (A) Excluded Equity Issuances and (B) any sales or issuances of Equity Interests to another Loan Party), the Borrower shall prepay an aggregate principal amount of Loans equal to (A) if Holdings' Consolidated Leverage Ratio for the most recently ended Measurement Period is greater than or equal to 1.5 to 1.0, 50% of all Net Cash Proceeds received therefrom or (B) if Holdings' Consolidated Leverage Ratio for the most recently ended Measurement Period is less than or equal to 1.5 to 1.0, 25% of all Net Cash Proceeds received therefrom, in each case immediately upon receipt thereof, by such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clause (vii) below).

(iv) Debt Issuance. Upon the incurrence or issuance by (A) any Loan Party or any of its Subsidiaries of any Indebtedness (other than (x) Excluded Debt Issuances and (y) Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party or such Subsidiary (such prepayments to be applied as set forth in clause (vii) below), and (B) Spansion Nihon Limited of any Indebtedness permitted under Section 7.02(j), the Borrower shall prepay an aggregate principal amount of Loans equal to 50% of all Net Cash Proceeds received therefrom immediately upon receipt thereof provided that with respect to the Spansion Nihon Limited credit facility only, the aggregate amount of such prepayments under this clause (B) shall in no event exceed an amount equal to 50% of the excess of (1) maximum amount ever outstanding under the Spansion Nihon Limited credit facility, over (2) $10,000,000, and once the first prepayment has been made, additional prepayments shall only be required if and when the maximum amount ever drawn under the facility exceeds the previous maximum amount by $5,000,000 or more (with such prepayments to be applied as set forth in clause (vii) below).

(v) Insurance/Condemnation Proceeds. Promptly (but in no event later than ten Business Days) following the date of receipt by any Loan Party or any of their respective Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds in excess of $5,000,000 individually or in the aggregate, Borrower shall prepay the Loans as set forth in clause (vii) below in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided that (x) at the election of the Borrower (as notified by the Borrower to the Administrative Agent promptly (but in no event later than ten Business Days) following receipt of such Net Insurance/Condemnation Proceeds), and so long as no Default shall have occurred and be continuing, such Loan Party or such Subsidiary may reinvest all or any portion of such Net Insurance/Condemnation Proceeds in operating assets so long as (i) within 270 days after the receipt of such Net Insurance/Condemnation Proceeds, such purchase shall have been consummated or (ii) within 270 days after the receipt of such Net Insurance/Condemnation Proceeds such Loan Party has entered into a binding commitment to consummate such purchase and within 365 days after the receipt of such Net Insurance/Condemnation Proceeds, such purchase shall have been consummated, (in each case as certified by the Borrower in writing to the Administrative Agent); and provided, further, however, that any Net Insurance/Condemnation Proceeds not subject to such definitive agreement or so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this Section 2.03(b)(v).

(vi) Termination Date Occurrence. Upon the occurrence of the Termination Date, 100% of the Loans (including all accrued and unpaid interest through such Termination Date) shall become due and payable in full and the Collateral Agent and the Administrative Agent shall (without any direction from the Borrower) immediately use the proceeds of the Escrow Account to repay in full (including all accrued and unpaid interest) the Loans outstanding (such prepayments to be applied as set forth in clause (vii) below); it being understood that any (x) remaining balance in the Escrow Account after all payments are made in accordance herewith and with the terms

of the Escrow Agreement will be distributed to the Borrower and (y) that to the extent any amounts in the Escrow Agreement are insufficient to repay the Loans in full (including all accrued and unpaid interest) the Borrower shall be obligated to pay such amounts.

(vii) Application of Prepayments Generally. Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.03(b) or Section 6.07(b) shall be applied to the remaining scheduled principal repayment installments of the Facility on a pro-rata basis. Notwithstanding the foregoing, each Lender shall have the right to reject its pro-rata share of any prepayment made in accordance with this Section 2.03(b), (other than a prepayment as a result of the occurrence of the Termination Date) in which case the amounts so rejected shall be offered to each non-rejecting Lender. The Borrower shall give the Administrative Agent written notice of any prepayment made in accordance with this Section 2.03(b) no later than 1:00 p.m. five business days prior to the date of the proposed prepayment indicating the amount of such prepayment to be applied to the Loans and, upon receiving such notice from the Borrower, the Administrative Agent shall promptly forward such notice of proposed prepayment to all Lenders. Any Lender who is exercising its right to reject its pro-rata share of any prepayment made in accordance with this Section 2.03(b) shall so advise the Administrative Agent no later than 4:00 p.m. on the date that is two Business Days after the date of such notice from the Administrative Agent and the Administrative Agent shall promptly thereafter notify the Borrower thereof. If any Lender does not reply to the Administrative Agent within such two Business Day period, such Lender will be deemed not to have waived any part of such prepayment. Any amounts or proceeds remaining may be retained by the Borrower.

2.04 Termination or Reduction of Commitments. The aggregate Commitments shall be automatically and permanently reduced to zero immediately after the Borrowing Date.

2.05 Repayment of Loans. The Borrower shall repay to the Lenders the aggregate principal amount of all Loans in equal quarterly installments of 1.0% *per annum* of the aggregate principal amount of all Loans made on the Borrowing Date on the last Business Day of each March, June, September and December (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.03) beginning June 30, 2010; provided, however, that the final principal repayment installment of the Loans shall be repaid on the Maturity Date for the Facility and in any event shall be in an amount equal to the aggregate principal amount of all Loans outstanding on such date.

2.06 Interest. (a) Interest Rates. Subject to the provisions of Section 2.08, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) Default Rate. Upon the occurrence and during the continuance of any Event of Default,

(i) if any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then the outstanding principal on any Loans and all other unpaid amounts due and payable hereunder shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws;

(ii) if any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount due and payable hereunder shall thereafter bear interest until paid at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; and

(iii) accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payment Date. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and on the Maturity Date and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 Fees. The Borrower shall pay to (i) the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter and (ii) each Lender or their designated Affiliates, for their respective accounts, one-quarter of the Closing Fee on the Closing Date and the balance of the Closing Fee on the Account Release Date.

2.08 Computation of Interest and Fees. All computations of interest for Base Rate Loans, which are calculated on the basis of the Prime Rate, shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.09 Evidence of Debt. (a) Accounts and Records of Credit Extensions. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in

doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Accounts and Records of Purchases and Sales. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.10 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's office in Dollars and in immediately available funds not later than 1:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 1:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be. Upon written or verbal authorization from the Borrower, the Administrative Agent may automatically deduct from any deposit account designated by the Borrower and held with the Administrative Agent the amount of any principal, interest or fees when due hereunder or under the other Loan Documents. All payments hereunder shall be made in Dollars.

(b) Borrowing Presumptions.

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender three Business Days prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, one Business Day prior to 1:00 p.m. on the date of any Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02)

and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower (through the Escrow Account) severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to any Borrowing set forth in Section 4.01 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The

failure of any Lender to make any Loan or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 11.04(c). Notwithstanding anything set forth herein to the contrary, a Defaulting Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be, or have its Loans and Commitments, included in the determination of "Required Lenders" or "Lenders entitled to such payment" pursuant to Section 11.01) for any voting or consent rights under or with respect to any Loan Document, except that (i) the Commitment of such Defaulting Lender may not be increased and the principal amount and rate of interest of any Loan of such Defaulting Lender may not be reduced without the consent of such Defaulting Lender and (ii) such Defaulting Lender shall have such voting or consent rights with respect to any matter that causes a Material Adverse Effect or disproportionate impact on such Defaulting Lender. Moreover, for the purposes of determining Required Lenders, the Loans and Commitments held by Defaulting Lenders shall be excluded from the total Loans and Commitments outstanding.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

2.11 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of the Facility due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time, to (ii) the aggregate amount of the Obligations in respect of the Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of the Facility owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time, to (ii) the aggregate amount of the Obligations in respect of the Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and

(B) purchase (for cash at face value) participations in the Loans, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably (except as set forth in Section 2.12) in accordance with the aggregate amount of Obligations in respect of the Facility then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or Participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.12 Discounted Voluntary Prepayment.

(a) Notwithstanding anything to the contrary in Sections 2.03, 2.05, 2.10, 2.11 and 11.08 (which provisions shall not be applicable to this Section 2.12), Borrower shall have the right at any time and from time to time to prepay the Loans to the Lenders at a discount to the par value of such Loans and on a non pro rata basis (each, a "Discounted Voluntary Prepayment") pursuant to the procedures described in this Section 2.12; provided that (A) any Discounted Voluntary Prepayment shall be offered to all Lenders with Loans on a pro rata basis and (B) Borrower shall deliver to the Administrative Agent a certificate stating that (1) no Default or Event of Default has occurred and is continuing or would result from the Discounted Voluntary Prepayment, (2) each of the conditions to such Discounted Voluntary Prepayment contained in this Section 2.12(a) has been satisfied, (3) Borrower does not have any material non-public information ("MNPI") with respect to any Loan Party that either (a) has not been disclosed to the Lenders (other than Lenders that do not wish to receive MNPI with respect to any Loan Party) prior to such time or (b) if not disclosed to the Lenders, could reasonably be expected to have a material effect upon, or otherwise be material, (i) to a Lender's decision to participate in any Discounted Voluntary Prepayment or (ii) to the market price of the Loans.

(b) To the extent Borrower seeks to make a Discounted Voluntary Prepayment, Borrower will provide written notice to the Administrative Agent substantially in the form of Exhibit K hereto (each, a "Discounted Prepayment Option Notice") that Borrower desires to prepay the Loans in an aggregate principal amount specified therein by Borrower (each, a "Proposed Discounted Prepayment Amount"), in each case at a discount to the par value

of such Loans as specified below. The Proposed Discounted Prepayment Amount of the Loans shall not be less than $5,000,000. The Discounted Prepayment Option Notice shall further specify with respect to the proposed Discounted Voluntary Prepayment: (A) the Proposed Discounted Prepayment Amount of Loans, (B) a discount range (which may be a single percentage) selected by the Borrower with respect to such proposed Discounted Voluntary Prepayment (representing the percentage of par of the principal amount of Loans to be prepaid) (the "Discount Range"), and (C) the date by which Lenders are required to indicate their election to participate in such proposed Discounted Voluntary Prepayment which shall be at least five Business Days following the date of the Discounted Prepayment Option Notice (the "Acceptance Date").

(c) Upon receipt of a Discounted Prepayment Option Notice in accordance with Section 2.12(b), the Administrative Agent shall promptly notify each Lender thereof. On or prior to the Acceptance Date, each such Lender may specify by written notice substantially in the form of Exhibit L hereto (each, a "Lender Participation Notice") to the Administrative Agent (A) a minimum price (the "Acceptable Price") within the Discount Range (for example, 80% of the par value of the Loans to be prepaid) and (B) a maximum principal amount (subject to rounding requirements specified by the Administrative Agent) of Loans with respect to which such Lender is willing to permit a Discounted Voluntary Prepayment at the Acceptable Price ("Offered Loans"). Based on the Acceptable Prices and principal amounts of Loans specified by the Lenders in the applicable Lender Participation Notice, the Administrative Agent, in consultation with the Borrower, shall determine the applicable discount for Loans (the "Applicable Discount"), which Applicable Discount shall be (A) the percentage specified by the Borrower if the Borrower has selected a single percentage pursuant to Section 2.12(c) for the Discounted Voluntary Prepayment or (B) otherwise, the lowest Acceptable Price at which the Borrower can pay the Proposed Discounted Prepayment Amount in full (determined by adding the principal amounts of Offered Loans commencing with the Offered Loans with the lowest Acceptable Price); provided, however, that in the event that such Proposed Discounted Prepayment Amount cannot be repaid in full at any Acceptable Price, the Applicable Discount shall be the highest Acceptable Price specified by the Lenders that is within the Discount Range. The Applicable Discount shall be applicable for all Lenders who have offered to participate in the Voluntary Discounted Prepayment and have Qualifying Loans (as defined below). Any Lender with outstanding Loans whose Lender Participation Notice is not received by the Administrative Agent by the Acceptance Date shall be deemed to have declined to accept a Discounted Voluntary Prepayment of any of its Loans at any discount to their par value within the Applicable Discount.

(d) The Borrower shall make a Discounted Voluntary Prepayment by prepaying those Loans (or the respective portions thereof) offered by the Lenders ("Qualifying Lenders") that specify an Acceptable Price that is equal to or lower than the Applicable Discount ("Qualifying Loans") at the Applicable Discount; provided that if the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would exceed the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Borrower shall prepay such Qualifying Loans ratably among the Qualifying Lenders based on their respective principal amounts of such Qualifying Loans (subject to rounding requirements specified by the Administrative Agent). If the aggregate proceeds required to

prepay all Qualifying Loans (disregarding any interest payable at such time) would be less than the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Borrower shall prepay all Qualifying Loans.

(e) Each Discounted Voluntary Prepayment shall be made within four Business Days of the Acceptance Date (or such other date as the Administrative Agent shall reasonably agree, given the time required to calculate the Applicable Discount and determine the amount and holders of Qualifying Loans), without premium or penalty (but subject to Section 3.05), upon irrevocable notice substantially in the form of Exhibit M hereto (each a "Discounted Voluntary Prepayment Notice"), delivered to the Administrative Agent no later than 11:00 a.m., three Business Days prior to the date of such Discounted Voluntary Prepayment, which notice shall specify the date and amount of the Discounted Voluntary Prepayment and the Applicable Discount determined by the Administrative Agent. Upon receipt of any Discounted Voluntary Prepayment Notice, the Administrative Agent shall promptly notify each relevant Lender thereof. If any Discounted Voluntary Prepayment Notice is given, the amount specified in such notice shall be due and payable to the applicable Lenders, subject to the Applicable Discount on the applicable Loans, on the date specified therein together with accrued interest (on the par principal amount) to but not including such date on the amount prepaid.

(f) To the extent not expressly provided for herein, each Discounted Voluntary Prepayment shall be consummated pursuant to reasonable procedures (including as to timing, rounding and calculation of Applicable Discount in accordance with Section 2.12(c) above) established by the Administrative Agent in consultation with the Borrower.

(g) Prior to the delivery of a Discounted Voluntary Prepayment Notice, upon written notice to the Administrative Agent, (A) the Borrower may withdraw its offer to make a Discounted Voluntary Prepayment pursuant to any Discounted Prepayment Option Notice and (B) any Lender may withdraw its offer to participate in a Discounted Voluntary Prepayment pursuant to any Lender Participation Notice.

(h) With respect to Discounted Voluntary Prepayments made by the Purchasing Borrower Parties pursuant to this Section 2.12, (A) the applicable Purchasing Borrower Parties shall pay all accrued and unpaid interest, if any, on the purchased Loans to the date of purchase of such Loans (to the extent agreed between the Borrower and the applicable assignor of the purchased Loans), (B) such purchase shall not be deemed to be voluntary prepayments pursuant to Section 2.03(a), Section 2.10, Section 2.11 and Section 11.08 hereunder, (C) no such purchases and cancellations shall change the scheduled amortization required by Section 2.05, except to reduce the amount outstanding and due and payable on the Maturity Date (and such reduction, for the avoidance of doubt, shall only apply, on a non-pro rata basis, to the Loans purchased by the Purchasing Borrower Parties and deemed cancelled pursuant to Section 2.12(i).

(i) Following a Discounted Voluntary Prepayment pursuant to this Section 2.12, any Loans so purchased shall be deemed cancelled for all purposes and no longer outstanding (and may not be resold by the Borrower), for all purposes of this Agreement and all other Transaction Documents (notwithstanding any provisions herein or therein to the contrary),

including, but limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Loan Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Loan Document, (C) the providing of any rights to the Borrower as a Lender under this Agreement or any other Loan Document or (D) the determination of Required Lenders or for any similar or related purpose, under this Agreement or any other Loan Document. Any payment made by the Borrower in connection with a purchase permitted by this Section 2.12 shall not be subject to the provisions of Section 2.11 and 11.08. Failure by the Borrower to make any payment to a Lender permitted by this Section 2.12 shall not constitute an Event of Default under Section 8.01.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or Holdings hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the Borrower or Holdings shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or Holdings, as the case may be, shall make such deductions and (iii) the Borrower or Holdings, as the case may be, shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) Payment of Other Taxes by the Borrower and Holdings. Without limiting the provisions of subsection (a) above, the Borrower and Holdings shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Indemnification by the Borrower and Holdings. The Borrower and Holdings shall, jointly and severally, indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by or on behalf of the Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as reasonably practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or Holdings, as the case may be, to a Governmental Authority, the Borrower or Holdings, as the case may be, shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental

Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and Holdings (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested in writing by the Borrower, Holdings or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested in writing by the Borrower, Holdings or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower, Holdings or the Administrative Agent as will enable the Borrower, Holdings or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time that it determines that it is no longer in a position to provide any previously delivered documentation or that any previously delivered documentation is no longer valid or applicable.

Without limiting the generality of the foregoing, any Foreign Lender shall deliver to the Borrower, Holdings and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the written request of the Borrower, Holdings or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any successor form),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower or Holdings within the meaning of section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form), or

(iv) any other form prescribed by applicable Law (including Internal Revenue Service Form W-8IMY (or any successor form)) as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of or credit against its liability for any Taxes or Other Taxes as to which it has been indemnified by the Borrower or Holdings, as the case may be, or with respect to which the Borrower or Holdings, as the case may be, has paid additional amounts pursuant to this Section (a "Tax Benefit"), it shall pay to the Borrower or Holdings, as the case may be, an amount equal to such Tax Benefit (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Holdings under this Section with respect to the Taxes or Other Taxes giving rise to such Tax Benefit), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such Tax Benefit); provided that the Borrower or Holdings, as the case may be, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such Tax Benefit to such Governmental Authority or such Tax Benefit is rescinded by such Governmental Authority or otherwise is determined to be inapplicable or unavailable to the Administrative Agent or such Lender. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower, Holdings or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the

Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

(ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Rate Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan; provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the

London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders. (a) Mitigation Obligations. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any material additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous or cause hardship to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. Nothing contained in this Section 3.06 shall affect or postpone the obligations of the Borrower and Holdings pursuant to Sections 3.01(a), 3.01(b) and 3.01(c).

(d) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions to Closing. The effectiveness of this Agreement and the obligation of each Lender to fund its Applicable Percentage of the Loans into the Escrow Account is subject to satisfaction (or waiver in accordance with Section 11.01) of the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article V (other than the Account Release Date Representations) or any other Loan Document shall be true and correct on and as of the date of hereof, except that for purposes of this Section 4.01, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the Audited Financial Statements.

(b) No Default. No Default or Event of Default shall exist under any of the Loan Documents.

(c) Documents, Certificates, Opinions and Other Instruments. The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a

Responsible Officer of the signing Loan Party, each dated the Borrowing Date (or, in the case of certificates of governmental officials, a recent date before the Borrowing Date) and each in form and substance satisfactory to the Administrative Agent:

(i) (x) executed counterparts of this Agreement, the Intercreditor Agreement, the Escrow Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower and (y) a Note executed by the Borrower in favor of each Lender requesting a Note;

(ii) a Security Agreement and Account Control Agreements for the deposit or investment accounts identified on Schedule 4.01(c)(ii), to be effective as of the Account Release Date, duly executed by each Loan Party, together with:

(A) financing statements (including fixture filings) executed and in proper form for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement, the Mortgages and the other Collateral Documents (as applicable), covering the Collateral described in the Security Agreement, the Mortgages and the other Collateral Documents (as applicable), and all other documents and instruments required to perfect or evidence the Collateral Agent's security interest in the Collateral executed and in proper form for filing, in each case to be held in escrow by the Collateral Agent and to be filed or recorded, as applicable, on the Account Release Date; provided, that perfection steps with respect to foreign intellectual property will not be required where the Administrative Agent determines in its reasonable discretion that the costs of perfection materially outweigh the benefits provided; and

(B) completed requests for information listing all effective financing statements filed in the jurisdictions referred to in clause (A) above that name any Loan Party as debtor, together with copies of such other financing statements,

(iii) deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust, in substantially the form of Exhibit G (with such changes as may be satisfactory to the Administrative Agent and its counsel to account for local law matters) duly executed and in form for recording and covering the properties listed on Schedule 4.01(c)(iii) (together with the Assignments of Leases and Rents referred to therein in each case as amended, the "Mortgages"), in each case to be held in escrow by the Administrative Agent and to be filed or recorded, as applicable, on the Account Release Date, together with:

(A) if required by the Administrative Agent, American Land Title Association/American Congress on Surveying and Mapping form surveys, for which all necessary fees (where applicable) have been paid, and dated no more than 30 days before the Closing Date, certified to the Administrative Agent in a manner satisfactory to the Administrative Agent by a land surveyor duly registered and licensed in the states in which the property described in such surveys is located and acceptable to the Administrative Agent, showing all

buildings and other improvements, any off-site improvements, the location of any easements, parking spaces, rights of way, building set-back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects acceptable to the Administrative Agent,

(B) if required by the Administrative Agent, engineering, soils and other reports as to the properties described in the Mortgages, in form and substance and from professional firms acceptable to the Administrative Agent, and

(C) if required by the Administrative Agent, an appraisal of each of the properties described in the Mortgages complying with the requirements of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require (i) certifying the resolutions of its board of directors, members or other body authorizing the execution, delivery and performance of the Transaction Documents, (ii) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party and (iii) containing appropriate attachments, including the Organization Documents of each Loan Party and, if applicable, a true and correct copy of its by-laws or operating, management or partnership agreement;

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed and is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) copies of the financial statements referred to in Sections 5.05(a) and (b);

(viii) a certificate signed by a Responsible Officer of the Borrower and each other Loan Party, as of the Closing Date, as to: (A) the absence of any Default or Event of Default, (B) the truth of the representations and warranties contained in Article V (other than the Account Release Date Representations) or any other Loan Document,

(C) the satisfaction of all the conditions precedent to the Closing set forth in Section 4.01 and that the Credit Agreement is effective, the proceeds of the Rights Offering have been deposited into an escrow or similar account and the Rights Offering Documents have been executed and delivered and upon the effective date of the Plan, the Rights Offering will be effective, (D) the payment in full of all fees and expenses due in respect of the Loan Documents as of the Closing Date and (E) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect other than as a consequence of the Cases and as reflected in the Borrower's filings with the SEC;

(ix) a favorable opinion of Latham & Watkins LLP, counsel to the Loan Parties, dated as of the Closing Date and addressed to the Administrative Agent and each Lender, in a form reasonably acceptable to the Administrative Agent;

(x) if required by the Administrative Agent, an environmental assessment report, in form and substance satisfactory to the Lenders, from an environmental consulting firm acceptable to the Lenders, which report shall identify existing and potential environmental concerns, and shall quantify related costs and liabilities, associated with the operations facilities of Holdings, the Borrower and their respective Subsidiaries, and the Administrative Agent shall be satisfied with the nature and amount of any such matters and with Holdings' and the Borrower's plans with respect thereto;

(xi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(xii) fully executed copies of the Rights Offering Documents and copies of the Revolving Credit Loan Documents in final form, in each case in form and substance reasonably satisfactory to the Arrangers; and

(xiii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent reasonably may require.

(d) Lender Fees. Substantially simultaneously with the deposit of the gross proceeds of the Loans and the Accrued Interest Amount into the Escrow Account and in accordance with the terms of the Escrow Agreement (i) all fees required to be paid to the Agents and the Arrangers on or before the Closing Date as set forth in the Fee Letter shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(e) Counsel Fees. Substantially simultaneously with the deposit of the gross proceeds of the Loans and the Accrued Interest Amount into the Escrow Account and in accordance with the terms of the Escrow Agreement, the Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date.

(f) Ratings. The Borrower shall have used commercially reasonable efforts to be assigned a corporate family rating by Moody's and a corporate credit rating by S&P.

(g) Bankruptcy Related Conditions. The Bankruptcy Court shall have entered an interim order (the "Interim Approval Order"), in form and substance acceptable to the Arrangers, authorizing and approving (i) the payment of the costs, fees, expenses and other compensation and commitment fees (including costs, fees and expense arising under the Lenders' and Arrangers' right to indemnification) to the Lenders, the Agents and the Arrangers, (ii) authorizing the Debtors to take all actions reasonably necessary to enter into and consummate the financings and transactions contemplated under the Transaction Documents.

(h) Financial Conditions. The Consolidated *pro forma* EBITDA of the Borrower shall not be less than $255,000,000.

(i) Rights Offering. The Borrower shall have entered into a commitment with the Backstop Parties, evidencing such parties' commitment to act as a backstop purchaser to purchase any remaining Rights Offering Shares (as defined in the Plan) and the terms of the Backstop Party's commitment shall satisfy the requirements of Exhibit D to the Plan and shall be reasonably satisfactory in form and substance to the Arrangers. Proceeds of approximately $105,400,000 from the Rights Offering shall have been deposited into an escrow or similar account, subject to release terms reasonably satisfactory to the Arrangers and no more restrictive than those in Section 4.02.

(j) Spansion Japan. The total consideration required to resolve any legal disputes related to Spansion Japan Limited's administrative expense claims shall not exceed ***REDACTED***, and not more than ***REDACTED*** (the "Exempt Japan Payment") of such amount shall be payable within the first 90 days after the Account Release Date. The total cash consideration required to resolve any other legal disputes related to Spansion Japan Limited shall not exceed ***REDACTED***.

(k) Patriot Act. The Administrative Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act.

(l) OFAC Certificate. The Administrative Agent shall have received an OFAC Compliance Certificate dated as of the Closing Date.

(m) UBS Documents. The UBS Credit Line Documents shall be in full force and effect and any modification or amendment thereto necessitated by the Plan shall be in form and substance reasonably satisfactory to the Arrangers.

(n) Pro Forma Consolidated Financial Statements. The Administrative Agent shall have received a *pro forma* consolidated balance sheet and related *pro forma* consolidated statement of income of the Borrower and its Subsidiaries for, and as of the end of, the four-quarter period most recently ended prior to the Closing Date for which financial statements are required hereunder after giving *pro forma* effect to the Emergence and any other material transactions effected during or subsequent to such period.

(o) No Material Adverse Effect. There has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect other than as a consequence of the Cases and as reflected in the Borrower's filings with the SEC and in the Disclosure Statement for the Plan.

(p) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority with respect to the Transaction, or the transactions contemplated by the Transaction Documents, and the Transaction and the transactions contemplated by the Transaction Documents shall be in compliance, in all material respects, with all applicable foreign and U.S. federal, state and local laws and regulations.

(q) Other. The Administrative Agent shall have received such other reasonable and customary approvals, opinions or documents as the Administrative Agent shall request.

4.02 Conditions to Account Release. The Account Release Date is subject to the following conditions precedent (or waiver in accordance with Section 11.01):

(a) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct on and as of the Account Release Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the Audited Financial Statements.

(b) No Default. No Default or Event of Default shall exist under the Loan Documents or the other Transaction Documents, or would result from any Borrowing or from the application of the proceeds thereof.

(c) Documents, Certificates, Opinions and Other Instruments. The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Account Release Date (or, in the case of certificates of governmental officials, a recent date before the Account Release Date) and each in form and substance satisfactory to the Administrative Agent:

(i) in connection with the Security Agreement:

(A) certificates representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank,

(B) acknowledgment copies or stamped receipt copies of proper financing statements (including fixture filings), duly filed on or before the Account Release Date under the Uniform Commercial Code of all jurisdictions

that the Collateral Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement covering the Collateral described therein or such other evidence reasonably satisfactory to the Collateral Agent that such financing statements have been duly submitted for filing,

(C) completed bringdown requests for information, dated on or before the Account Release Date, listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements,

(D) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement and the other Collateral Documents that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby; provided, that perfection steps with respect to foreign intellectual property will not be required where the Administrative Agent determines in its reasonable discretion that the costs of perfection materially outweigh the benefits provided,

(E) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement and the other Collateral Documents has been taken (including commercially reasonable efforts to receive duly executed payoff letters, mortgage releases, UCC-3 termination statements and landlords' and bailees' waiver and consent agreements reasonably requested by the Administrative Agent) including covering any property (including fixtures) subject to Liens under the 2007 FRN Documents); provided, that perfection steps with respect to foreign intellectual property will not be required where the Administrative Agent determines in its reasonable discretion that the costs of perfection materially outweigh the benefits provided, and

(F) A duly prepared and completed Perfection Certificate dated the Account Release Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby;

(ii) in connection with the Mortgages:

(A) (i) acknowledgment copies or stamped receipt copies of proper financing statements (including fixture filings), duly filed on or before the Account Release Date under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Mortgages covering the Collateral described therein or such other evidence reasonably satisfactory to the Collateral Agent that such financing statements have been duly submitted for filing and (ii) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor

of the Administrative Agent for the benefit of the Secured Parties and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid,

(B) if required by the Administrative Agent, updates to the fully paid American Land Title Association Lender's Extended Coverage title insurance policies (the "Mortgage Policies") in form and substance, with endorsements and in amounts acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers acceptable to the Administrative Agent, insuring the Mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Permitted Encumbrances and other Liens created by or permitted under the Loan Documents, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents, for mechanics' and materialmen's Liens and for zoning of the applicable property, if available) and such coinsurance and direct access reinsurance as the Administrative Agent may deem necessary or desirable,

(C) if required by the Administrative Agent, updates to previously delivered or additional deliverables described in Sections 4.01(c)(iii)(A), (B) and (C), and Sections 4.01(c)(xi) and (xii),

(D) if required by the Administrative Agent, estoppel and consent agreements, in form and substance satisfactory to the Administrative Agent, executed by each of the lessors of the leased real properties listed on Schedule 5.08(d)(i), along with (1) a memorandum of lease in recordable form with respect to such leasehold interest, executed and acknowledged by the owner of the affected real property, as lessor, or (2) evidence that the applicable lease with respect to such leasehold interest or a memorandum thereof has been recorded in all places necessary or desirable, in the Administrative Agent's reasonable judgment, to give constructive notice to third-party purchasers of such leasehold interest, or (3) if such leasehold interest was acquired or subleased from the holder of a recorded leasehold interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form satisfactory to the Administrative Agent,

(E) evidence of the insurance required by the terms of the Mortgages, and

(F) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to create valid first and subsisting Liens on the property described in the Mortgages has been taken;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require (i) certifying the resolutions of its board of directors,

members or other body authorizing the execution, delivery and performance of the Transaction Documents (as applicable), (ii) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party and (iii) containing appropriate attachments, including the Organization Documents of each Loan Party and, if applicable, a true and correct copy of its by-laws or operating, management or partnership agreement;

(iv) such documents and certifications or bring downs of any such documents previously delivered as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed and is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vi) a certificate signed by a Responsible Officer of the Borrower and each other Loan Party, as of the Account Release Date, as to: (A) the absence of any Default or Event of Default under the Loan Documents and the other Transaction Documents, (B) the truth of the representations and warranties contained in the Loan Documents, (C) the satisfaction or waiver of all the conditions precedent to the Account Release Date set forth in Section 4.02, and that the Credit Agreement, the Rights Offering Documents and the Revolving Credit Agreement are effective, (D) the payment in full of all fees and expenses due in respect of the Loan Documents substantially simultaneously with the occurrence of the Account Release Date and (E) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect other than as a consequence of the Cases and as reflected in the Borrower's filings with the SEC or the Disclosure Statement for the Plan;

(vii) certificates attesting to the Solvency of each Loan Party after giving effect to the Transaction and the Emergence (including the distributions to occur upon Emergence), from its chief financial officer;

(viii) a favorable opinion of Latham & Watkins LLP, counsel to the Loan Parties, dated as of the Account Release Date and addressed to the Administrative Agent and each Lender in a form reasonably acceptable to the Administrative Agent;

(ix) any opinions of local counsel to the Loan Parties in each of the respective states in which the properties covered by the Mortgages executed and

delivered hereunder are located, as requested by the Administrative Agent, dated as of the Account Release Date and addressed to the Administrative Agent and each Lender in a form reasonably acceptable to the Administrative Agent;

(x) a duly completed Compliance Certificate as of the last day of the fiscal year of Holdings ended December 27, 2009[1], signed by chief executive officer, chief financial officer, treasurer or controller of Holdings;

(xi) fully executed copies of the Revolving Credit Loan Documents; and

(xii) such other customary assurances, certificates, documents, consents or opinions as the Administrative Agent reasonably may require.

(d) Lender Fees. Immediately prior to the release of the net proceeds of the Loans to the Borrower, (i) all fees required to be paid to the Agents and the Arrangers on or before the Account Release Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Account Release Date shall have been paid, in each case in accordance with the terms of the Escrow Agreement.

(e) Counsel Fees. Immediately prior to the release of the net proceeds of the Loans to the Borrower, the Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced after the Closing Date, but prior to or on the Account Release Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent), in each case in accordance with the terms of the Escrow Agreement.

(f) Ratings. The Borrower shall have used commercially reasonable efforts to have been assigned (i) a corporate family rating by Moody's and a corporate credit rating by S&P and (ii) a credit rating for the Facility by S&P and Moody's.

(g) Bankruptcy Related Conditions.

(i) The Bankruptcy Court shall have entered the Confirmation Order (in form and substance satisfactory to the Arrangers and otherwise consistent in all material respects with the Transaction) and the Final Approval Order, and each of the Confirmation Order and the Final Approval Order shall have become a Final Order; and

(ii) the terms and conditions of the Plan shall be in form and substance reasonably satisfactory to the Arrangers and the documentation to effect the Plan shall have terms and conditions reasonably satisfactory to the Arrangers and no material

[1] Compliance Certificate at Account Release Date to reflect Financial Conditions in clause (i) below.

provision of the Plan or such documentation shall have been waived, amended, supplemented or otherwise modified in any material respect that is adverse to the Lenders or the Arrangers in any respect without consent of the Arrangers, it being understood for the avoidance of doubt, that (x) any change regarding the fees or other compensation payable to the Lenders or the Arrangers shall be deemed adverse to such parties and shall be subject to their approval and (y) the terms and conditions of the Debtors' Second Amended Joint Plan of Reorganization dated December 16, 2009 are in form and substance satisfactory to the Arrangers.

(h) No Indebtedness. Upon Emergence, other than the (i) Loans and other extensions of credit under the Revolving Facility, (ii) obligations under Capitalized Leases, (iii) amounts payable to satisfy claims from Spansion Japan Limited not to exceed ***REDACTED*** (*less* the amount of payments made up to and including the date of the Emergence), (iv) certain intercompany Indebtedness (in the case of amounts owed by the Borrower or any Guarantor not to exceed $8,000,000) and (v) indebtedness under the UBS Credit Line Agreement and documents related thereto not to exceed $64,149,000, the Borrower and its Subsidiaries shall have no Consolidated Funded Indebtedness or preferred stock issued or outstanding and all Liens or security interests related thereto shall have been terminated or released, in each case on terms satisfactory to the Arrangers.

(i) Financial Conditions.

(i) The ratio of Consolidated Funded Indebtedness as of the Account Release Date (after giving pro forma effect to the Emergence, but excluding any deferred payments constituting indebtedness with respect to any claim payments related to a settlement with Spansion Japan Limited, not to exceed ***REDACTED***, *minus* the amount of payments made up to and including the date of Emergence) to Consolidated *pro forma* EBITDA shall not be greater than 2.10:1.00;

(ii) As of the Account Release Date, after giving effect to the Emergence, the Borrower shall have Unrestricted Cash, *plus* immediately available borrowings under the Revolving Facility of not less than $140,000,000 (excluding the effect of any claim payments related to a settlement with Spansion Japan Limited made within the first 90 days after the Account Release Date), and $100,000,000 after any claim payments related to a settlement with Spansion Japan Limited are made; and

(iii) Simultaneously with any Borrowing on the Account Release Date, the Borrower shall (i) have received (free and clear of any escrow arrangements) proceeds of approximately $105,400,000 from the consummation of the Rights Offering and (ii) have commitments of not less than $65,000,000 under the Revolving Facility, which proceeds and availability, together with the proceeds from borrowings made on the Account Release Date pursuant to the Facility and other cash available to the Borrower, shall be sufficient to consummate the transactions contemplated under the Plan, extinguish all existing Consolidated Funded Indebtedness (other than the Indebtedness described in clause (h) above) and pay all related fees, commissions and expenses. The terms of the Rights Offering and the Revolving Facility (including the exhibits and schedules) and all related documents shall be reasonably satisfactory to the Arrangers and

no amendment, modification or waiver of any term thereof or any condition to the Borrower's obligations thereunder as set forth in such documents in the form delivered on the Closing Date (other than any such amendment, modification or waiver that is not adverse to any interest of the Lenders) shall be made or granted, as the case may be, without the prior written consent of the Arrangers.

(j) Closing Conditions. All of the conditions to Closing set forth in Section 4.01 shall have been previously satisfied or waived by the Required Lenders and shall remain satisfied in full.

(k) OFAC Certificate. The Administrative Agent shall have received an OFAC Compliance Certificate dated as of the Account Release Date.

(l) Escrow Conditions.

(i) All conditions to release in the Escrow Agreement governing the Escrow Account shall have been met or waived in accordance with the Escrow Agreement; and

(ii) the Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower, as of the Account Release Date, as to: (A) the satisfaction or waiver of all the conditions precedent to the Escrow Agreement and (B) that the Borrower has requested that the Disbursement Authorization Notice (as defined in the Escrow Agreement) be delivered to the Escrow Account.

(m) No Material Adverse Effect. There has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect other than as a consequence of the Cases and as reflected in the Borrower's filings with the SEC and the Disclosure Statement for the Plan.

(n) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority with respect to the Transaction, or the transactions contemplated by the Transaction Documents, and the Transaction and the transactions contemplated by the Transaction Documents shall be in compliance, in all material respects, with all applicable foreign and United States federal, state and local laws and regulations.

(o) Other. The Administrative Agent shall have received such other reasonable and customary approvals, opinions or documents as the Administrative Agent may reasonably request.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders on the Closing Date (other than with respect to the Account Release Date Representations) and as of the Account Release Date that:

5.01 Existence, Qualification and Power. Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as now conducted and as proposed to be conducted, upon entry by the Bankruptcy Court of the Interim Approval Order and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transaction, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. (A) On the Closing Date, upon entry by the Bankruptcy Court of the Interim Approval Order, and (B) on the Account Release Date, upon entry by the Bankruptcy Court of the Final Approval Order, in each case, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.03 Governmental Authorization; Other Consents. (A) On the Closing Date, upon entry by the Bankruptcy Court of the Interim Approval Order, and (B) on the Account Release Date, upon entry by the Bankruptcy Court of the Final Approval Order, in each case, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the Transaction, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first or second priority nature thereof, as the case may be) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for the authorizations, approvals, actions, notices and filings listed on Schedule 5.03, all of which have been duly obtained, taken, given or made and are in full force and effect. All applicable waiting periods in connection with the Transaction have expired without any action having been taken by any

Governmental Authority restraining, preventing or imposing materially adverse conditions upon the Transaction or the rights of the Loan Parties or their Subsidiaries freely to transfer or otherwise Dispose of, or to create any Lien on, any properties now owned or hereafter acquired by any of them.

5.04 Binding Effect. (A) On the Closing Date, upon entry by the Bankruptcy Court of the Interim Approval Order, and (B) on the Account Release Date, upon entry by the Bankruptcy Court of the Final Approval Order, in each case, this Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Upon entry by the Bankruptcy Court of the Interim Approval Order, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.05 Financial Statements; No Material Adverse Effect; No Internal Control Event. (a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, by a Registered Public Accounting Firm of nationally recognized standing under the standards of the Public Company Accounting Oversight Board (United States); (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness, in each case to the extent required by GAAP.

(b) Unaudited Financial Statements. The unaudited consolidated and consolidating balance sheets of Holdings and its Subsidiaries dated December 27, 2009, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and reviewed by a Registered Public Accounting Firm of nationally recognized standing under the standards of the Public Company Accounting Oversight Board (United States) and (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05(b) sets forth all material Indebtedness and other liabilities, direct or contingent, of Holdings and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for Taxes, material commitments and Indebtedness.

(c) No Material Adverse Effect. Since the date of the Audited Financial Statements other than as a consequence of the Cases and as reflected in the Borrower's filings with the SEC and the Disclosure Statement for the Plan, there has been no event or circumstance,

either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) Other than any liabilities, claims and Indebtedness addressed pursuant to the Plan and as set forth on the claims register maintained in the Cases, Holdings, Spansion Technology, the Borrower and its Subsidiaries do not have any material contingent liabilities, material liabilities for Post-Petition Taxes, long-term lease or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transactions, or any unrealized or anticipated losses from any unfavorable commitments, which are not reflected in such financial statements as required by GAAP.

5.06 Litigation. Other than the Cases, there are no actions, suits, proceedings, claims, investigations or disputes pending or, to the knowledge of the Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document or the consummation of the Transaction, or (b) except as specifically disclosed in Schedule 5.06 (the "Disclosed Litigation"), either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect. Other than (x) the Interim Approval Order, upon entry by the Bankruptcy Court of such order, (y) the Final Order, upon entry by the Bankruptcy Court of such order and (z) as set forth on Schedule 5.06, neither Borrower nor any of its Subsidiaries is subject to any judicial or administrative judgment, order or decree.

5.07 No Default. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Post-Petition Contractual Obligation other than as a result of the filing of the Cases (and any payment default directly related to such filing) that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the Transaction.

5.08 Ownership of Property; Liens; Investments. (a) Title. Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) List of Liens. Schedule 5.08(b) sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the Account Release Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens set forth on Schedule 5.08(b), and as otherwise permitted by Section 7.01.

(c) Owned Real Property. Schedule 5.08(c) sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries, showing the accurate street address, county or other relevant jurisdiction, state, record owner and book

and market value thereof. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than [Permitted Encumbrances] and the other Liens created or permitted by the Loan Documents.

(d) Leased Real Property. (i) Schedule 5.08(d)(i) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessee, showing the accurate street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles (other than as a consequence of the Cases).

(ii) Schedule 5.08(d)(ii) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessor, showing the accurate street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles (other than as a consequence of the Cases).

(e) Investments. Schedule 5.08(e) sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party showing up to date amount, obligor or issuer and maturity, if any, thereof.

5.09 Environmental Compliance. (a) Generally. The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of Environmental Laws and any potential Environmental Liability on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that, except as specifically disclosed in Schedule 5.09, such Environmental Laws and potential Environment Liabilities could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) No NPL or CERCLIS Listing. Except as otherwise set forth in Schedule 5.09, none of the properties currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or Disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned, leased or operated by any Loan Party or any of its Subsidiaries; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been Released on

any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries.

(c) No Hazardous Materials. Except as otherwise set forth on Schedule 5.09, neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries; except as could not reasonably be expected to result in material liability to any Loan Party or any of its Subsidiaries, there has been no Release or threatened Release of any Hazardous Substance at, on, under or from any property currently or formerly owner, leased or operated by any Loan Party or any of its Subsidiaries or any other location.

5.10 Insurance. The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Subsidiary operates.

5.11 Taxes. Holdings, the Borrower and its Subsidiaries have filed all Federal, state and other material Tax returns and reports required to be filed, and have paid all Federal, state and other material Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or that are being compromised, cancelled or otherwise addressed pursuant to the Plan. There is no proposed Tax assessment against Holdings, the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

5.12 ERISA Compliance. (a) Generally. Each Benefit Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Borrower and each ERISA Affiliate have made all required contributions to each Benefit Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Benefit Plan.

(b) No Claims. There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with

respect to any Benefit Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Benefit Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) No ERISA Event, Unfunded Pension Liabilities, etc. (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any material liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such material liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

(d) Foreign Plans. With respect to each scheme or arrangement mandated by a government other than the United States (a "Foreign Government Scheme or Arrangement") and with respect to each material employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary of any Loan Party that is not subject to United States law (a "Foreign Plan"):

(i) any material employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is substantially sufficient to procure or provide for the accrued benefit obligations, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

5.13 Subsidiaries; Equity Interests; Loan Parties. No Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents. No Loan Party has any equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable and are owned by Holdings

and Spansion Technologies Inc. in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents. Set forth on Part (d) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. The copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(c)(iv) is a true and correct copy of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock. None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the Transaction contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished and when taken as a whole) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each Loan Party and each Subsidiary thereof is and at all times has been in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and is set forth on Schedule 5.16 or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, unless the failure to own or possess such right could not reasonably be expected to have a Material Adverse Effect. To the best knowledge of the Borrower and Holdings, no slogan or other advertising device, product,

process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any of their Subsidiaries infringes upon any rights held by any other Person, unless such infringement could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Solvency. As of the Account Release Date and immediately after the consummation of the transactions contemplated in the Transaction Documents and the Plan, each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

5.19 Casualty, Etc. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.20 Labor Matters. Other than as set forth on Schedule 5.20, there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

5.21 Transactions with Affiliates. Except as disclosed on Schedule 5.21, none of the Borrower or any Subsidiary is a party to any contract or agreement with, or has any other commitment of any nature or kind, to any Affiliate of the Borrower which would result in a breach of the Borrower's covenants and agreements set forth in Section 7.08.

5.22 Broker's Fees. No Loan Party has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with the Transaction contemplated by the Loan Documents other than as set forth in the Loan Documents.

5.23 Final Order. As of the Account Release Date, each of the Confirmation Order and Final Approval Order has become a Final Order and is in full force and effect and has not been stayed nor is subject to a motion to stay.

5.24 Security Interest in Collateral. (a) As of the Account Release Date, each of the Guarantee, each Account Control Agreement and the Security Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the [Pledged Stock] described (and as defined) in the Security Agreement, when stock certificates representing such Pledged Stock are delivered to the Collateral Agent, and in the case of the other Collateral described in the Security Agreement, when financing statements and other filings specified in Schedule 5.24(a) in appropriate form are filed in the offices specified in Schedule 5.24(a), the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all rights, title and interest of the Loan Parties in such Collateral and all proceeds thereof, as security for the Obligations, in each case subject to no other Liens other than the

Liens permitted under Section 7.01 and with the lien priority as specified in the Intercreditor Agreement.

(b) As of the Account Release Date, each of the Mortgages is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are recorded in the offices specified in Schedule 5.24(b), each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations, in each case subject to no other Liens other than (i) [Permitted Encumbrances, (ii)] Liens created by or permitted under the Loan Documents, including, without limitation, the Liens permitted under Section 7.01 and with the lien priority as specified in the Intercreditor Agreement and (iii) minor defects in title that do not materially interface with the applicable Loan Parties' ability to operate their business in the manner in which they are currently being conducted.

5.25 Regulation H. Each Mortgage states whether it encumbers improved real property that is located in an area identified by the Director of the Federal Emergency Management Agency as a special flood hazard zone described in 12 C.F.R. § 22.2 and the Borrower acknowledges that it has received, prior to the making of the Loans and the incurrence of any other Indebtedness constituting part of the Obligations secured by such Mortgage, the notice regarding Federal disaster relief assistance referred to in the Appendix to 12 C.F.R. Part 22.

5.26 Terrorism Laws and FCPA. Each Loan Party is in compliance, in all material respects, with the Terrorism Laws. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, based on the assumption that the Person taking action is subject to such statute.

5.27 Foreign Asset Control Regulations.

(a) None of (i) the execution and delivery of this Agreement or the other Loan Documents, (ii) the performance of any Transaction contemplated under this Agreement or the other Loan Documents, or (iii) the use of proceeds from any such transaction will result in a breach or violation of the rules and regulations administered by OFAC by the Borrower of any OFAC Measure.

(b) The Borrower is not and will not be an OFAC Blocked Person. The Borrower does not engage in and will not engage in any dealings or transactions, directly or indirectly, with an OFAC Blocked Person. To the Borrower's knowledge, the Borrower does not engage in and will not engage in any dealings or transactions, directly or indirectly, with Persons who are owned or controlled by OFAC Blocked Persons and is not and will not become otherwise associated with any such Persons.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower and Holdings shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders, each of the following:

(a) Annual Financials. As soon as available, but in any event within 90 days after the end of each fiscal year of Holdings [(except to the extent not available with respect to periods prior to the Account Release Date)], a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, and the related consolidated statement of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or with respect to the absence of any material misstatement.

(b) Quarterly Financials. As soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statement of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of Holdings' fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Holdings as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Holdings and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(c), neither Holdings nor the Borrower shall be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of Holdings to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02 Certificates; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders, each of the following:

(a) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Holdings, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, Holdings shall also provide, if necessary for the determination of compliance with Section 7.11, a statement of reconciliation conforming such financial statements to GAAP and (ii) a copy of management's discussion and analysis with respect to such financial statements.

(b) Audit Reports, Management Letters and Recommendations. Promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.

(c) Securities Filings. Promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Holdings, and copies of all annual, regular, periodic and special reports and registration statements which Holdings may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.

(d) Noteholder Reports. Promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02.

(e) Insurance Summary. Not later than June 30 of each year, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify.

(f) SEC Correspondence. Promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof.

(g) Environmental Notices. Promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect, (ii) result in any Environmental Lien or (iii) cause any property described in the Mortgages to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(h) Schedule Supplements. If there are any changes to any Schedule delivered pursuant to this Agreement on the Closing Date from the time of delivery to the Account Release Date, the Borrower will deliver updated Schedules on the Account Release Date. As soon as available, but in any event within 30 days after the end of each fiscal year of Holdings, (i) a report supplementing Schedules 5.08(c), 5.08(d)(i) and 5.08(d)(ii), including an identification of all owned and leased real property Disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of property, lessor, lessee, expiration date and annual rental cost thereof) of all real property acquired or leased during such fiscal year and a description of such other changes in the information included in such schedules as may be necessary for such schedules to be accurate and complete; and (ii) a report supplementing Schedules 5.08(e) and 5.13 and each schedule to the Security Agreement containing a description of all changes in the information included in such schedules as may be necessary for such schedules to be accurate and complete, each such report to be signed by a Responsible Officer of Holdings and to be in a form reasonably satisfactory to the Administrative Agent.

(i) Bankruptcy Effectiveness. Promptly after receipt thereof, copies of the Plan, the Confirmation Order and all other material orders of the Bankruptcy Court and any appellate court approving the Plan, this Agreement and the Transaction contemplated herein.

(j) Additional Reporting. Promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings or the Borrower posts such documents, or provides a link thereto on Holding's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on Holding's or the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) Holdings or the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests Holdings or the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance Holdings or the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(a) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC".

6.03 Notices. Notify the Administrative Agent and the Lenders in writing of the following matters at the following times:

(a) Promptly, but in any event within one Business Day, after becoming aware of any Default;

(b) Promptly after becoming aware of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary thereof; (ii) any violation of any law, statute, regulation, or ordinance of a Governmental Authority affecting Holdings, the Borrower or any of their Subsidiaries, (iii) any pending or threatened dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority; or (iv) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;

(c) Within ten (10) Business Days after Holdings or the Borrower or any ERISA Affiliate knows or has reason to know, of the occurrence of any ERISA Event;

(d) Promptly after becoming aware of any pending material change (other than a change required by GAAP or disclosed in filings with the SEC) in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(e) Any change in the Borrower's name, state of organization, locations of Collateral, or form of organization, or trade names under which the Borrower will sell inventory, in each case at least thirty (30) days prior thereto;

(f) The occurrence of (i) any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.03(b), (ii) any sale of Capital Stock or other Equity Interests for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.03(b), and (iii) any incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.03(b); and

(g) Promptly after becoming aware of any announcement by Moody's or S&P of any change or possible change in a Debt Rating.

Each notice pursuant to Section 6.03 (other than Section 6.03(f) or (g)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. (a) Prior to the Account Release Date, to the extent permitted by the Bankruptcy Code or otherwise provided by the Bankruptcy Court, pay and discharge as the same shall become due and payable in accordance with and as contemplated by the Plan, all its obligations and liabilities, including (i) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or that are being compromised, cancelled or otherwise addressed pursuant to the Plan; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness; and (b) after the Account Release Date, pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (i) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or that are being compromised, cancelled or otherwise addressed pursuant to the Plan; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (iii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except (i) as contemplated by the Plan, or (ii) in a transaction permitted by Section 7.04 or 7.05; provided, however, that the Borrower and its Subsidiaries may consummate any merger or consolidation permitted under Section 7.04; (b) take all reasonable action to maintain

all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

6.07 Maintenance of Insurance.

(a) Insurance Generally.

(i) Maintain with financially sound and reputable insurers having a rating of at least A-VII or better by Best Rating Guide, insurance against loss or damage by fire with extended coverage; theft, burglary, pilferage and loss in transit; larceny, embezzlement or other criminal liability; business interruption; public liability and third party property damage. Without limiting the foregoing, in the event that any improved real estate covered by the Mortgage(s) is determined to be located within an area that has been identified by the Director of the Federal Emergency Management Agency as a Special Flood Hazard Area ("SFHA"), the Borrower shall purchase and maintain flood insurance on the improved real estate and any equipment and inventory located on such real estate. The amount of said flood insurance shall, at a minimum, comply with applicable federal regulations as required by the Flood Disaster Protection Act of 1973, as amended.

(ii) The Borrower shall cause the Administrative Agent, for the ratable benefit of the Administrative Agent and the Lenders, to be named as secured party or mortgagee and lender's loss payee (as their interest may appear) on each policy insuring the Collateral or additional insured, on any liability policy, in each case, in a manner acceptable to the Administrative Agent. Each policy of insurance shall contain a clause or endorsement requiring that the insurer shall endeavor to give not less than thirty (30) days' prior written notice to the Administrative Agent in the event of cancellation of the policy for any reason whatsoever and a clause or endorsement stating that the interest of the Administrative Agent shall not be impaired or invalidated by any act or neglect of the Borrower or any of its Subsidiaries or the owner of any real estate (save for non-payment of premium) for purposes more hazardous than are permitted by such policy. All premiums for such insurance shall be paid by the Borrower when due, and, if requested by the Administrative Agent or any Lender, certificates of insurance shall be delivered to the Administrative Agent, in sufficient quantity for distribution by the Administrative Agent to each of the Lenders. If the Borrower fails to procure such insurance or to pay the premiums therefor when due, the Administrative Agent may procure such insurance or make such payments on behalf of the Borrower.

(b) Insurance/Condemnation Proceeds. The Borrower shall promptly notify the Administrative Agent and the Lenders of any loss, damage, or destruction to the Collateral,

whether or not covered by insurance, of any single occurrence in excess of $1,000,000. The Agent is hereby authorized to collect all insurance and condemnation proceeds (or if no Event of Default exists, proceeds in excess of $5,000,000) in respect of Collateral directly and to apply or remit them as provided in Section 2.03(b)(v).

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Holdings, the Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours not more than four times per year, upon reasonable advance notice to the Borrower; provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time and without limit with respect to the number of times during normal business hours and without advance notice.

6.11 Use of Proceeds. The gross proceeds of the Facility, together with the Accrued Interest Amount shall be deposited on the Borrowing Date in the Escrow Account and immediately thereafter funds will be released from the Escrow Account to pay the fees set forth in the Fee Letter and the Term Sheet attached thereto as Exhibit A to the extent due and payable on the Closing Date in accordance with the terms of the Escrow Agreement. Upon the Account Release Date, the proceeds of the Escrow Account, together with net cash proceeds from the Rights Offering, will be used by the Borrower, on the Account Release Date, as follows: (i) $633,000,000 to fully discharge the claims of holders of the Senior Secured Floating Rate Notes due 2013, (ii) amounts necessary to pay Administrative Expense Claims and Priority Claims (each as defined in the Plan) and (iii) amounts necessary to pay fees and expenses related to the Transaction described herein. Upon the occurrence of the Termination Date, the proceeds of the Escrow Account will be applied by the Collateral Agent and the Administrative Agent as set forth in Section 2.03(b)(vi).

6.12 Covenant to Guarantee Obligations and Provide Security Interests.

(a) Formation or Acquisition of New Subsidiary. Upon the formation or acquisition of any new direct or indirect Material Subsidiary by any Loan Party, then the Borrower shall, at the Borrower's expense:

(i) within 10 days after such formation or acquisition, cause such Material Subsidiary, and cause each direct and indirect parent of such Material Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent and Collateral Agent a Joinder Agreement, pursuant to which such other Loan Party shall guaranty the other Loan Parties' obligations under the Loan Documents and pledge a security interest in and to all of its assets in support of such guaranty in accordance with the terms and conditions of the Security Agreement,

(ii) within 10 days after such formation or acquisition, furnish to the Administrative Agent and Collateral Agent a description of the real and personal properties of such Material Subsidiary, in detail satisfactory to the Administrative Agent,

(iii) within 15 days after such formation or acquisition, cause such Material Subsidiary and each direct and indirect parent of such Material Subsidiary (if it has not already done so) to duly execute and deliver to the Administrative Agent and Collateral Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements and other security and pledge agreements, as specified by and in form and substance satisfactory to the Administrative Agent (including delivery of all Pledged Interests in and of such Material Subsidiary, and other instruments of the type specified in Section 4.01(c)(ii) and Section 4.02(c)(ii)), securing payment of all the Obligations of such Material Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real and personal properties,

(iv) within 30 days after such formation or acquisition, cause such Material Subsidiary and each direct and indirect parent of such Material Subsidiary (if it has not already done so) to take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms,

(v) within 60 days after such formation or acquisition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) as promptly as practicable after such formation or acquisition, deliver, upon the request of the Administrative Agent in its sole discretion, to the Administrative Agent with respect to each parcel of real property owned or held by the entity that is the subject of such formation or acquisition title reports, surveys and

engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance satisfactory to the Administrative Agent; provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent.

(b) Acquisition of Real Property. As promptly as practicable after any acquisition of a real property, deliver, upon the request of the Administrative Agent in its reasonable discretion, to the Administrative Agent with respect to such real property title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance satisfactory to the Administrative Agent; provided, however, that to the extent that any Loan Party or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Administrative Agent; and within 15 days after such acquisition, cause the applicable Loan Party to duly execute and deliver to the Administrative Agent deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements, and other security and pledge agreements, as specified by and in form and substance satisfactory to the Administrative Agent, securing payment of all the Obligations of the applicable Loan Party under the Loan Documents and constituting Liens on all such properties.

(c) Further Assurances Generally. At any time upon request of the Collateral Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Collateral Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages, leasehold deeds of trust, Security Agreement Supplements and other security and pledge agreements.

6.13 Compliance with Environmental Laws.

(a) Conduct their business in compliance with all applicable Environmental Laws, including those relating to the generation, handling, use, storage, and disposal of any Hazardous Materials and take prompt and appropriate action to respond to any non-compliance with Environmental Laws or Release or threatened Release of any Hazardous Materials and shall regularly report to the Administrative Agent on such response.

(b) Submit to the Administrative Agent and the Lenders annually, commencing on the first anniversary of the Account Release Date, and on each anniversary thereafter, an update of the status of each material environmental compliance or liability issue (including any Release or threatened Release of any Hazardous Materials). The Administrative Agent or any Lender may request copies of technical reports prepared by or on behalf of the Borrower or any of its Subsidiaries and any communications with any Governmental Authority to determine whether the Borrower or any of its Subsidiaries is proceeding reasonably to correct, cure or contest in good faith any alleged non-compliance or Environmental Liability. The Borrower shall, at the Administrative Agent's or the Required Lenders' reasonable request and at the Borrower's expense, (i) retain an independent environmental consultant acceptable to the Administrative Agent to evaluate, including tests if appropriate, the non-compliance or

environmental liability or alleged non-compliance or environmental liability and prepare and deliver to the Administrative Agent, in sufficient quantity for distribution by the Administrative Agent to the Lenders, a report setting forth the results of such evaluation, a proposed plan for responding to any issues described therein, and an estimate of the costs thereof, and (ii) provide to the Administrative Agent and the Lenders a supplemental report of such consultant whenever the scope of the issues, or the response thereto or the estimated costs thereof, shall increase in any material respect.

(c) The Administrative Agent and its representatives will have the right at any reasonable time to enter and visit any place where any property of the Borrower is located for the purposes of observing the property, taking and removing soil or groundwater samples, and conducting tests on any part of the property. The Administrative Agent is under no duty, however, to visit or observe the property or to conduct tests, and any such acts by the Administrative Agent will be solely for the purposes of protecting the Collateral Agent's Liens and preserving the Administrative Agent, Collateral Agent and the Lenders' rights under the Loan Documents. No site visit, observation or testing by the Administrative Agent and the Lenders will result in a waiver of any Default of the Borrower or impose any liability on the Administrative Agent or the Lenders. In no event will any site visit, observation or testing by the Administrative Agent be a representation that Hazardous Materials are or are not present in, on or under the property, or that there has been or will be compliance with any Environmental Law. Neither Holdings, nor the Borrower, nor any other party is entitled to rely on any site visit, observation or testing by the Administrative Agent. The Administrative Agent and the Lenders owe no duty of care to protect Holdings, the Borrower or any other party against, or to inform Holdings, the Borrower or any other party of, any Hazardous Materials or any other adverse condition affecting any property. The Administrative Agent may in its discretion disclose to Holdings, the Borrower or to any other party if so required by law any report or findings made as a result of, or in connection with, any site visit, observation or testing by the Administrative Agent. Holdings and the Borrower understand and agree that the Administrative Agent makes no warranty or representation to either of them or any other party regarding the truth, accuracy or completeness of any such report or findings that may be disclosed. Holdings and the Borrower also understand that depending on the results of any site visit, observation or testing by the Administrative Agent and disclosed to Holdings or the Borrower, it may have a legal obligation to notify one or more environmental agencies of the results, that such reporting requirements are site-specific, and are to be evaluated by Holdings or the Borrower without advice or assistance from the Administrative Agent. In each instance, the Administrative Agent will give the Borrower reasonable notice before entering any property the Administrative Agent is permitted to enter under this Section 6.13(c). The Administrative Agent will make reasonable efforts to avoid interfering with the Borrower's use of any property in exercising any rights provided hereunder.

6.14 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the

Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

6.15 Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations in respect of all leases of real property to which Holdings, the Borrower or any of their Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

6.16 Lien Searches. Promptly following receipt of the acknowledgment copy of any financing statements filed under the Uniform Commercial Code in any jurisdiction by or on behalf of the Secured Parties, deliver to the Collateral Agent completed requests for information listing such financing statement and all other effective financing statements filed in such jurisdiction that name any Loan Party as debtor, together with copies of such other financing statements.

6.17 Material Contracts. Perform and observe all the terms and provisions of each Material Contract, each of which as of the Account Release Date is listed on Schedule 6.17 hereto, to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its material terms, and upon the occurrence and during the continuance of a Default, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, in each case where failure to do so could reasonably be expected to have a Material Adverse Effect.

6.18 Hedging Arrangements. Maintain Interest Rate Agreements from no later than 60 days following the Account Release Date to the date that is the three year anniversary of the Account Release Date in an amount not less than 33.0% of the Loans on terms reasonably satisfactory to the Administrative Agent.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly, and solely in the case of Section 7.17, Holdings and Spansion Technology shall not:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following:

(a) Liens pursuant to any Loan Document;

(b) (i) Liens in favor of the Revolving Credit Agent securing obligations under the Revolving Credit Loan Documents and any renewals or extensions thereof and (ii) other Liens existing on the Account Release Date and listed on Schedule 5.08(b) and any renewals or extensions thereof; provided (x) that the property covered thereby is not changed, (y) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d), and (z) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d) and the terms of the Intercreditor Agreement;

(c) statutory Liens for Taxes in an amount not to exceed $500,000 in the aggregate; provided, that, the payment of such Taxes which are due and payable is being contested in good faith and by appropriate proceedings diligently pursued and as to which adequate financial reserves have been established on Borrower's or Holdings' books and records, as applicable, and a stay of enforcement of any such Lien is in effect;

(d) inchoate Liens securing the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons; provided, that, if any such Lien arises from the nonpayment of such claims or demand when due, such claims or demands do not exceed $500,000 in the aggregate;

(e) Liens consisting of deposits made in the ordinary course of business in connection with, or to secure payment of, obligations under worker's compensation, unemployment insurance, social security and other similar Laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of Indebtedness) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of Indebtedness) or to secure statutory obligations (other than liens arising under ERISA or Environmental Liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds;

(f) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(g) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(h) Liens securing Indebtedness permitted under Sections 7.02(f), 7.02(g) and 7.02(j); provided that (i) such Liens do not at any time encumber any property other than the property financed or acquired (as applicable) by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost of the property being financed or acquired (as applicable) on the date of such financing or acquisition (as applicable) and (iii) such Liens attach concurrently with or within 180 days after the purchase or financing (as applicable) of the property subject to such Liens;

(i) Liens on property of a Person existing at the time such Person is merged into, acquired or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower; provided that such Liens were not created in contemplation of such merger, acquisition, consolidation or Investment and do not extend to any assets or property other than those of the Person merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 7.02(g);

(j) Liens on any property of foreign Subsidiaries securing Indebtedness of such foreign Subsidiary permitted in Section 7.02(h) or (i);

(k) the replacement, extension or renewal of any Lien permitted by clauses (b), (h) and (i) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(l) Liens granted to third parties in connection with joint ventures between a Loan Party and a third party on the IP Rights permitted to be Disposed of pursuant to Section 7.05(h); and

(m) prior to Emergence, Liens as set forth on Schedule 7.01(m).

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) existing or arising under any Swap Contract; provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business or pursuant to Section 6.18 for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates to which the Borrower or its Subsidiaries have actual exposure and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(b) Indebtedness of a Loan Party to any other Loan Party and Indebtedness of any wholly-owned Subsidiary owing to any Loan Party which Indebtedness is permitted under the provisions of Section 7.03 and which is subordinated to the Obligations and pledged to the Lenders in accordance with the terms of the Collateral Documents;

(c) Indebtedness under the Loan Documents;

(d) Indebtedness under the Revolving Credit Loan Documents and other Indebtedness to be outstanding on the date of Emergence and listed on Schedule 7.02(d) and any refinancings, refundings, renewals or extensions thereof or amendments thereto; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal, extension or amendment except (A) with respect to the Indebtedness under the Revolving Credit Loan Documents, to an amount not in excess of the Cap Amount (as defined in the Intercreditor Agreement) and (B) with respect to all other such Indebtedness, by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, (ii) the direct or any contingent obligor with respect thereto is not changed as a result of or in connection with such refinancing, refunding, renewal, extension or amendment; (iii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewal or extension or amendment of Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed, extended or amended, and (iv) the interest rate applicable to any such refinanced, refunded, renewed, extended or amended Indebtedness does not exceed the then applicable market interest rate;

(e) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor;

(f) Capitalized Leases of equipment and secured Indebtedness incurred to purchase or finance equipment; provided, that, (i) any such Indebtedness is not in excess of the fair market value (evidenced by a resolution of the Board of Directors of the Borrower set forth in an officer's certificate delivered to Administrative Agent) of the equipment being leased or financed; (ii) the aggregate amount of all such Indebtedness does not exceed $15,000,000 at any one time outstanding; (iii) Liens securing the same attach only to the equipment being leased or financed, (iv) no Default exists or would result from the consummation of such Capitalized Lease or the incurrence of such Indebtedness and (v) such Indebtedness is incurred concurrently with or within 180 days after the applicable purchase or financing;

(g) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof in accordance with the terms of Section 7.03(h), which Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower (provided that such Indebtedness is not incurred in contemplation of such Person's becoming a Subsidiary of the Borrower); provided, that (i) the scheduled maturity date of such Indebtedness is at least 91 days after the Maturity Date hereunder and (ii) at the time of any such incurrence of Indebtedness and after giving effect thereto on a pro forma basis, the aggregate principal amount of Indebtedness that is outstanding in reliance on this clause (g) shall not exceed $25,000,000;

(h) Indebtedness of up to $5,000,000 in the aggregate at any one time outstanding of any foreign Subsidiary incurred in the ordinary course of business, so long as no

Loan Party is contractually obligated directly or indirectly to repay, guarantee, or secure any portion of such Indebtedness;

(i) Indebtedness incurred as part of the consideration for any acquisition permitted under Section 7.03(h) so long as (i) no Default exists or would result from the incurrence of such Indebtedness, (ii) such Indebtedness is subordinated on terms acceptable to the Administrative Agent and the Required Lenders and (iii) the scheduled maturity date of such Indebtedness is at least 90 days after the Maturity Date hereunder;

(j) subject to the provisions of Section 2.03(b)(vi), Indebtedness incurred by Spansion Nihon Limited either secured by its receivables or prohibiting liens on its receivables, not to exceed $50,000,000 in the aggregate;

(k) prior to the Emergence, Indebtedness outstanding and listed on Schedule 7.02(k); and

(l) Indebtedness under any Purchase Commitments.

7.03 Investments. Make, acquire or hold any Investments, except:

(a) Investments held by the Borrower and its Subsidiaries in the form of Cash Equivalents;

(b) loans and advances to employees (other than payroll, travel and similar advances to cover matters that are made in the ordinary course of business) made in the ordinary course of business consistent with past practices; provided, that, such loans and advances do not exceed $1,000,000 in the aggregate at any one time outstanding;

(c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the Account Release Date, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties (other than Holdings, Spansion Technology and any new Subsidiary that becomes a Loan Party as a result of such Investment, other than pursuant to clause (h) below), (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) Investments by the Loan Parties in joint ventures or Subsidiaries that are not Loan Parties in an amount (or value) not to exceed $25,000,000 in the aggregate;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.02(e);

(f) Investments existing on the Account Release Date (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 5.08(e);

(g) Investments by the Borrower in Swap Contracts permitted under Section 7.02(a);

(h) the purchase or other acquisition of all of the Equity Interests in any Person or all or any substantial portion of the property of any Person, or any line or lines of business or division of any Person that, upon the consummation thereof, will be wholly owned directly by the Borrower or one or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.03(h):

(i) any such newly-created or acquired Subsidiary shall become a Guarantor (if it is a Material Subsidiary) and shall comply with the requirements of Section 6.12;

(ii) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same lines of business as one or more of the principal businesses of the Borrower and its Subsidiaries in the ordinary course;

(iii) such purchase or other acquisition shall not include or result in any contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Borrower and its Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or the persons performing similar functions) of the Borrower or such Subsidiary if the board of directors is otherwise approving such transaction and, in each other case, by a Responsible Officer);

(iv) the total cash and noncash consideration (including all Indebtedness incurred in connection with such Investment, all indemnities, earnouts and other contingent payment obligations to, and the aggregate amounts paid or to be paid under noncompete, consulting and other affiliated agreements with, the sellers thereof, but excluding therefrom the value of any Equity Interests of Holdings issued or transferred to the sellers thereof), when aggregated with the total cash and noncash consideration (calculated as set forth in the parenthetical above) paid by or on behalf of the Borrower and its Subsidiaries for all other purchases and other acquisitions made by the Borrower and its Subsidiaries pursuant to this Section 7.03(h), shall not exceed $150,000,000 in the aggregate, provided that if after giving effect to such purchase or acquisition on a pro forma basis, the Consolidated Leverage Ratio is greater than 1.5 to 1.0 for the most recent Measurement Period immediately preceding the date of such acquisition, such amount shall not exceed $25,000,000 in the aggregate;

(v) (A) immediately before and immediately after giving pro forma effect to any such purchase or other acquisition, no Default shall have occurred and be continuing and (B) immediately after giving effect to such purchase or other acquisition, Holdings and its Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders

pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby; and

(vi) the Borrower shall have delivered to the Administrative Agent and each Lender, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, certifying that all of the requirements set forth in this Section 7.03(h) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(i) stock, obligations or other securities received in settlement of debts created in the ordinary course of business and owing to the Borrower or a Subsidiary or in satisfaction of judgments so long as Collateral Agent has a security interest in such Investments perfected in a manner satisfactory to Collateral Agent in its sole discretion; and

(j) Investments representing the non-cash portion of the consideration received in connection with a Disposition consummated in compliance with Section 7.05.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) Holdings or Spansion Technology may merge or consolidate with the Borrower provided the Borrower is the surviving entity;

(b) any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto, in the case of any such merger to which any Loan Party (other than the Borrower or any other Loan Party) is a party, such Loan Party is the surviving entity;

(c) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party (other than Holdings or Spansion Technology); provided that nothing in this clause (c) shall prevent the dissolution of Spansion Technology, as permitted by clause (f) below;

(d) any Subsidiary that is not a Loan Party may Dispose of all or substantially all of its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party if the Borrower determines in good faith that such Disposition is in the best interests of the Borrower and is not materially disadvantageous to the Lenders as certified by the Board of Directors in its good faith judgment as evidenced by a resolution of the Board of Directors;

(e) in connection with any acquisition permitted under Section 7.03, any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such

merger shall be a wholly-owned Subsidiary of the Borrower, (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person and (iii) the Borrower determines in good faith that such acquisition is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; and

(f) Spansion Technology may dissolve in accordance with the terms of this Agreement, so long as Holdings becomes the sole shareholder of the Borrower, and Spansion Technology may merge or consolidate with Holdings provided that after giving effect to such merger or consolidation, Holdings is the surviving entity.

7.05 Dispositions. Make any Disposition, including any sale and leaseback transaction, or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business consistent with past practice (including, without limitation, bulk sales, discounted sales and liquidations, in each case, of stale or obsolete inventory or inventory that is not of first-quality merchantability);

(c) a Disposition of the facility in Suzhou, China and the Elpida Sale;

(d) Dispositions of property by any Subsidiary to the Borrower or to a wholly-owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be the Borrower or a Guarantor; and provided, further, that any such sales, transfers or Dispositions involving a Subsidiary that is not a Loan Party shall be made in compliance with Section 7.08;

(e) Dispositions permitted by Section 7.04;

(f) non-exclusive licenses of IP Rights in the ordinary course of business and substantially consistent with past practice;

(g) sales of equipment in connection with sale and leaseback transactions permitted under Section 7.19; and

(h) Dispositions of assets (other than accounts receivable) by the Borrower and its Subsidiaries not otherwise permitted under this Section 7.05 not to exceed $150,000,000 in the aggregate; provided that (x) not more than $75,000,000 of such amount may in the aggregate consist of IP Rights and (y) not more than $25,000,000 of IP Rights Dispositions may occur in any one fiscal year (provided that any amounts not used in a fiscal year may be carried forward in the immediately succeeding fiscal year and IP Rights Dispositions made during any fiscal year shall be deemed made first, in respect of amounts permitted for such fiscal year as provided above and second, in respect of amounts carried over from the prior fiscal year as provided above); provided, further, that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition and (ii) at least 75% of the purchase price for such asset shall be paid to the Borrower or such Subsidiary solely in cash (other than with respect to Dispositions of IP Rights in accordance with clause (x) of the immediately preceding proviso).

provided, however, that any Disposition pursuant to Section 7.05(a) through Section 7.05(h) shall be for fair market value.

7.06 Restricted Payments. Directly or indirectly declare or make, or incur any liability to make, any Restricted Payment, or issue or sell any Equity Interests or accept any capital contributions, except:

(a) Restricted Payments to the Borrower by its Subsidiaries;

(b) Restricted Payments by Subsidiaries that are not Loan Parties (or required to become Loan Parties) to other Subsidiaries that are not Loan Parties;

(c) Restricted Payments, not otherwise permitted hereunder, to any Domestic Subsidiary by any of its Subsidiaries;

(d) Restricted Payments by the Borrower in an amount sufficient to repurchase Equity Interests of Holdings or the Borrower from current or former officers, directors or employees of Holdings or the Borrower, as applicable, pursuant to the terms of agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors of Holdings or the Borrower, as applicable, under which such individuals purchase or sell, or are granted the option to purchase or sell, common Equity Interests; provided, however, that (i) the aggregate amount of such repurchases shall not exceed $5,000,000 in any calendar year and (ii) at the time of such repurchase, no other Default or Event of Default shall have occurred and be continuing (or result therefrom);

(e) Restricted Payments by Holdings in the form of the conversion of its convertible Indebtedness into Equity Interests of Holdings or the conversion of the Equity Interests of Holdings into another class of its Equity Interests;

(f) Restricted Payments by Holdings in the form of cash payments in lieu of fractional shares in connection with any Restricted Payment permitted hereunder ("Fractional Share Payments") and Restricted Payments by Borrower to Holdings to permit Holdings to make such Fractional Share Payment;

(g) Restricted Payments by Holdings or Borrower consisting of the repurchase of Capital Stock (other than Disqualified Capital Stock) to the extent such repurchase is deemed to occur upon a cashless exercise of stock options, restricted stock units or warrants, so long as no Event of Default shall exist or would result therefrom;

(h) Restricted Payments by Borrower to Holdings [or Spansion Technology LLC] (i) consisting of Permitted Tax Payments, or (ii) for corporate overhead expenses in an amount not to exceed $[_____];

(i) Restricted Payments by Holdings with respect to the repurchase or redemption, and Restricted Payments by Borrower to Holdings to permit Holdings to repurchase or redeem, for nominal consideration, preferred stock purchase rights issued in connection with any shareholder rights plan of Holdings, so long as no Event of Default shall exist or would result therefrom; and

(j) [any Restricted Payments required by the Plan.]

7.07 Lines of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or proposed to be conducted by the Borrower and its Subsidiaries in connection with the Plan, or any business substantially related or incidental thereto.

7.08 Transactions with Affiliates. Except as set forth below and in Schedule 5.21 neither Holdings, nor the Borrower nor any of their Subsidiaries shall, sell, transfer, distribute, or pay any money or property, including, but not limited to, any fees or expenses of any nature (including, but not limited to, any fees or expenses for management services), to any Affiliate, or lend or advance money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or Indebtedness, or any property, of any Affiliate, or become liable on any Guaranty of the Indebtedness, dividends, or other obligations of any Affiliate. Notwithstanding the foregoing, (a) Holdings, the Borrower and their respective Subsidiaries may engage in transactions with Affiliates in the ordinary course of business consistent with past practices, in amounts and upon terms (such terms to be fully disclosed to the Administrative Agent and the Lenders for material Affiliate transactions) no less favorable to Holdings, the Borrower and their respective Subsidiaries than would be obtained in a comparable arm's-length transaction with a third party who is not an Affiliate; and (b) the Borrower and Holdings may (i) enter into Investments in Subsidiaries otherwise permitted hereunder and (ii) enter into any employment, indemnification or other similar agreement or employee benefit plan with any of its employees, officers or directors (and make payments pursuant thereto) in the ordinary course of business and consistent with past practice, that is not otherwise prohibited by this Agreement; provided, however, that if any such transaction set forth in (a) or (b) above involves aggregate payments or value in excess of $25,000,000, the Board of Directors of Holdings or Borrower, as applicable, (including at least a majority of the disinterested members of such Board of Directors) must approve the same and certify (as evidenced by a resolution of such Board of Directors), in its good faith judgment, that it believes that such transaction complies with the requirements set forth in this Agreement with respect to the foregoing permitted transactions with Affiliates; provided, further, that if such transaction involves aggregate payments or value in excess of $50,000,000, the Borrower obtains a written opinion from an Independent Financial Advisor to the effect that the consideration to be paid or received in connection with such transaction is fair, from a financial point of view, to the Borrower, Holdings, or any Subsidiary, as applicable.

7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Transaction Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to or invest in the Borrower or any Guarantor, except for any agreement in effect (A) on the Account Release Date as set forth on Schedule 7.09(a) and until the date of the Emergence and set forth on Schedule 7.09(b) or (B) at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of

Indebtedness permitted under Section 7.02(h) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.10 Use of Proceeds. Use the proceeds of the Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock in violation of Regulation U or X or to refund Indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) Consolidated Interest Coverage Ratio. From and after June 27, 2010, permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of Holdings to be less than [__] to 1.0.

(b) Consolidated Leverage Ratio. From and after June 27, 2010 to September 25, 2011, permit the Consolidated Leverage Ratio on the last day of any fiscal quarter of Holdings to be greater than [__] to 1.0 and from and after September 25, 2011, permit the Consolidated Leverage Ratio on the last day of any fiscal quarter of Holdings to be greater than [__] to 1.0.

7.12 Capital Expenditures. Make, become legally obligated to make or incur any Capital Expenditure, except for Capital Expenditures in the ordinary course of business not exceeding, in the aggregate for the Borrower and it Subsidiaries during each fiscal year set forth below, the amount set forth opposite such fiscal year:

Fiscal Year	Amount
2010	$ [_____]
2011	$ [_____]
2012	$ [_____]
2013	$ [_____]
2014	$ [_____]
2015	$ [_____]

provided that (a) any such amount referred to above, if not so expended in the fiscal year for which it is permitted, may be carried over for expenditure in the next succeeding fiscal year not to exceed $[___] in any fiscal year, (b) Capital Expenditures made pursuant to this Section during any fiscal year shall be deemed made, first, in respect of amounts permitted for such fiscal year as provided above and, second, in respect of amounts carried over from the prior fiscal year pursuant to clause (a) above, and (c) Capital Expenditures funded with the Net Cash Proceeds of Dispositions shall not be subject to the limitations of this Section 7.12 to the extent reinvested in accordance with Section 2.03(b)(ii).

7.13 Amendments of Organization Documents. Amend any of its Organization Documents in any manner which adversely affects the rights of the Administrative Agent or the Lenders.

7.14 Accounting Changes. (a) Make any material change in its accounting policies or reporting practices, except as required by GAAP, or (b) change its fiscal year.

7.15 Prepayments, Etc. of Indebtedness. Voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Consolidated Funded Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement, (b) repayment of outstandings under the Revolving Credit Agreement in accordance with its terms, (c) prepayments of Indebtedness of foreign Subsidiaries by such foreign Subsidiary; (d) refinancings and refundings of Indebtedness in compliance with Section 7.02(d), (e) prepayments occurring in connection with the Emergence and set forth on Schedule 7.15 and (f) the exercise of the put option permitted under the UBS Credit Line Documents.

7.16 Amendment, Etc. of Revolving Credit Loan Documents and other Indebtedness. (a) amend, modify or change in any material manner any term or condition of any Revolving Credit Loan Document or UBS Credit Line Document or give any consent, waiver or approval thereunder, (b) take any other action in connection with any Revolving Credit Loan Document or UBS Credit Line Document that would impair the value of the interest or rights of any Loan Party thereunder or that would impair the rights or interests of the Administrative Agent or any Lender or (c) amend, modify or change in any manner any term or condition of any Indebtedness set forth in Schedule 7.02 that would impair the value of the interest or rights of any Loan Party thereunder, that would impair the rights or interests of the Administrative Agent or any Lender, except for any refinancing, refunding, renewal, extension or amendment thereof permitted by Section 7.02(d) or that would, in any respect, be materially adverse to the Lenders.

7.17 Parent Companies. In the case of each of Holdings and Spansion Technology, engage in any business or activity other than (a) the ownership, collectively, of all outstanding Equity Interests in the Borrower and in the case of Holdings, Spansion Technology, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (e) in the case of Holdings, activities incidental to being a publicly traded company, (f) guaranteeing the obligations of its direct or indirect wholly-owned Subsidiaries, and (g) activities incidental to the businesses or activities described in clauses (a) through (f) of this Section.

7.18 Capital Structure. Make any change in its capital structure which could reasonably be expected to have a Material Adverse Effect.

7.19 Sale and Leaseback Transactions. Enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any fixed or capital assets by Holdings, the Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 180 days after Holdings, the

Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset; provided that the aggregate fair market value of property subject thereto shall not exceed at any time $15,000,000 at any time.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan, or (ii) pay within three Business Days after the same becomes due, any interest on any Loan hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.10, 6.11 or 6.12, or Article VII, (ii) any of the Guarantors fails to perform or observe any term, covenant or agreement contained in Section 10.01 hereof or [Section 2.01] of the Guaranty, as applicable, or (iii) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in [Section 2.04(i) or (j)] or [Section 5.01(a) or (i)] of the Security Agreement or [Section 3.1] of the respective Mortgages to which it is a party; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $25,000,000, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or

beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than $25,000,000; provided, however, that prior to the Emergence, no Event of Default shall be deemed to have occurred under this Section 8.01(e) with respect to defaults occasioned by the filing of the Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying or permits any Loan Party not to comply; or

(f) Insolvency Proceedings, Etc. Other than the Cases, (i) any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; (ii) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or (iii) any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. Subsequent to the date of the Emergence, (i) any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding $10,000,000 (to the extent not (x) covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage, (y) reserved in accordance with GAAP or (z) discharged under the Plan so long as the payment to be made on such claim under the Plan does not exceed $10,000,000 in cash or otherwise falls within section (ii) hereof), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount that could reasonably be expected to have a Material Adverse Effect, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount that could reasonably be expected to have a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01, Section 4.02 or Section 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien or second priority Lien, as the case may be (subject to Liens permitted by Section 7.01) on Collateral that is not immaterial purported to be covered thereby.

8.02 Remedies upon Event of Default. If any Event of Default occurs and at any time thereafter during the continuance of such event, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions, subject to any notice requirements in the Interim Approval Order or the Final Approval Order, as applicable:

(a) declare the Commitment of each Lender to make Loans to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself, the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an event described in Section 8.01(f), the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of that portion of the obligations constituting amounts owing under Interest Rate Agreements, ratably among the Lender Counterparties in proportion to the respective amounts described in this clause Fifth held by them; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

ARTICLE IX
ADMINISTRATIVE AGENT

9.01 Appointment of Agents. Barclays Bank PLC is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Barclays Bank PLC, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents. Barclays Bank PLC is hereby appointed Collateral Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Barclays Bank PLC, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents. Morgan Stanley is hereby appointed Syndication Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Morgan Stanley, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents. Barclays Bank PLC is hereby appointed Documentation Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Barclays Bank PLC, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Section 9.01 are solely for the benefit of Agents and Lenders

and no Loan Party shall have any rights as a third-party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower, Holdings or any of their Subsidiaries. Each of Syndication Agent and Documentation Agent, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, neither Morgan Stanley, in its capacity as Syndication Agent, nor Barclays Bank PLC, in its capacity as Documentation Agent, shall have any obligations but shall be entitled to all benefits of this Section 9.01.

9.02 Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies and perform such duties hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such actions, powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have or be deemed to have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

9.03 General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Loan Party to any Agent or any Lender in connection with the Loan Documents and the Transaction contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, nonappealable order. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any

of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 11.01) or, in the case of Collateral Agent, in accordance with the Security Agreement or other applicable Collateral Document, and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), or in accordance with the Security Agreement or other applicable Collateral Document, as the case may be, such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected and free from liability in relying on opinions and judgments of attorneys (who may be attorneys for the Loan Parties), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 11.01) or, in the case of Collateral Agent, in accordance with the Security Agreement or other applicable Collateral Document.

(c) Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." Administrative Agent will notify the Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to any such Default or Event of Default as may be directed by the Required Lenders in accordance with Section 8.02; provided, however, that unless and until Administrative Agent has received any such direction, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

9.04 Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower, Holdings or any of their Affiliates as if it were not performing the duties specified herein without notice to or consent of the Lenders, and may accept fees and other consideration from Borrower, Holdings or any of their Subsidiaries for services in connection herewith and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that pursuant to such activities, each Agent or any of its respective Affiliates may receive information regarding the Borrower, Holdings or any of their

Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower, Holdings or any of their Affiliates) and acknowledge that such Agent shall not be under any obligation to provide such information to them.

9.05 Lenders' Representations, Warranties and Acknowledgment. Each Lender represents and warrants to the Administrative Agent that it has made its own independent investigation of the financial condition and affairs of the Borrower, Holdings and their respective Subsidiaries, without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, in connection with its Credit Extension hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Borrower, Holdings and their respective Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

Each Lender, by delivering its signature page to this Agreement and funding its Loan, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable.

9.06 Right to Indemnity. Each Lender, in proportion to its Applicable Percentage, severally agrees to indemnify the Arrangers, each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees, representatives and agents of each Agent (each, an "Indemnitee Agent Party"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Loan Party (and without limiting its obligation to do so), for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Loan Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH AGENT**; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, nonappealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's pro rata share thereof; and provided, further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty,

action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

Without limitation of the foregoing, each Lender shall reimburse each Agent upon demand for its ratable share as provided above of any costs or out-of-pocket expenses (including counsel fees and disbursements) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower.

The undertakings of the Lenders in this Section 9.06 shall survive the payment of all Obligations hereunder and the resignation or replacement of the Administrative Agent.

9.07 Successor Agent. Any Agent may resign at any time by giving 30 days' prior written notice thereof to Lenders and Borrower. Upon any such notice of resignation or removal, Required Lenders shall have the right, with the consent of the Borrower, which may not be unreasonably withheld, but shall not be required during the continuance of an Event of Default, to appoint a successor Agent, as the case may be. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation or the giving of any notice of removal of any Agent, then the retiring or removed Agent may appoint a successor to such Agent from among the Lenders. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent and the retiring or removed Agent shall promptly (i) transfer to such successor Agent all sums, Equity Interests and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Agent under the Loan Documents as applicable, and (ii) execute and deliver to such successor Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the security interests created under the Collateral Documents whereupon such retiring or removed Agent shall be discharged from its duties and obligations hereunder. After any former Agent's resignation or removal hereunder, the provisions of this Article 9, and Section 11.01 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or Collateral Agent, as applicable, hereunder.

9.08 Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. Any such sub-agent or its Affiliates shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care. The exculpatory, indemnification and other provisions of Section 9.03 and Section 9.06 shall apply to any Affiliates of Administrative

Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of Section 9.03 and of Section 9.06 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third-party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges of a third-party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have the rights, directly or indirectly, as a third-party beneficiary or otherwise, against such sub-agent.

9.09 Collateral Documents and Guarantee.

(a) Agents under Collateral Documents and Guarantee. Each Lender hereby further irrevocably authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guarantee, the Collateral and the Collateral Documents. Subject to Section 11.01, without further written consent or authorization from Secured Parties, Administrative Agent or Collateral Agent, as applicable, may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other Disposition of assets permitted hereby or to which Required Lenders (or such other Lenders or Lender Counterparties as may be required to give such consent under Section 11.01) have otherwise consented, or (ii) release any Guarantor from its Guarantee or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 11.01) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Administrative Agent, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of a Secured Party in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Secured Party may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the

Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

(c) Rights under Interest Rate Agreements. No Interest Rate Agreement will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights in connection with the management or release of any Collateral except as expressly provided in Section 11.01 of this Agreement. By accepting the benefit of the Collateral, each Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agrees to be bound by the Loan Documents as a Secured Party, subject to the limitations set forth in this clause (c).

9.10 Posting of Approved Electronic Communications.

(a) Delivery of Communications. Borrower hereby agrees, unless directed otherwise by Administrative Agent or unless the electronic mail address referred to below has not been provided by Administrative Agent to Borrower that it will, or will cause its Subsidiaries to, provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent or to the Lenders pursuant to the Loan Documents, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Committed Loan Notice, (ii) relates to the payment of any principal or other amount due under this Agreement or any other Loan Document prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this Agreement or any other Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Loan or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to Administrative Agent to an electronic mail address as directed by Administrative Agent. In addition, Holdings and the Borrower agree to continue to provide the Communications to Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent reasonably requested by Administrative Agent.

(b) Platform. Borrower and Holdings further agree that Administrative Agent may make the Communications available to the Lenders by posting the Communications on the Platform.

(c) No Warranties as to Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE INDEMNITEES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE INDEMNITEES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE INDEMNITEES HAVE ANY LIABILITY TO ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER

OR NOT BASED ON STRICT LIABILITY, EXCEPT TO THE EXTENT THE LIABILITY OF ANY INDEMNITEES IS FOUND IN A FINAL, NONAPPEALABLE ORDER BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH INDEMNITEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) Delivery Via Platform. Administrative Agent agrees that the receipt of the Communications by Administrative Agent at its electronic mail address set forth above shall constitute effective delivery of the Communications to Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify Administrative Agent in writing (including by electronic communication) from time to time of such Lender's electronic mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such electronic mail address.

(e) Uses of the Platform. All uses of the Platform shall be governed by and subject to, in addition to this Section 9.10 separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform.

(f) No Prejudice to Notice Rights. Nothing herein shall prejudice the right of Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

9.11 Proofs of Claim. The Lenders, Holdings and the Borrower hereby agree that after the occurrence of an Event of Default pursuant to Section 8.01(f), in case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on any Loan Party) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Lenders, Administrative Agent and other Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, Administrative Agent and other agents and their agents and counsel and all other amounts due Lenders, Administrative Agent and other agents hereunder) allowed in such judicial proceeding; and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent and other agents hereunder. Nothing herein contained shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding. Further, nothing contained in this Section 9.11 shall affect or preclude the ability of any Lender to (i) file and prove such a claim in the event that Administrative Agent has not acted within ten days prior to any applicable bar date and (ii) require an amendment of the proof of claim to accurately reflect such Lender's outstanding Obligations.

9.12 Agents and Arrangers. Except as otherwise set forth herein, Syndication Agent, Documentation Agent and any arrangers shall not have any right, power, obligation, liability, responsibility or duty under this Agreement (or any other Loan Document) other than those applicable to all Lenders as such. Without limiting the foregoing, Syndication Agent, Documentation Agent and such arrangers shall not have or be deemed to have any fiduciary relationship with any other Lender. Each Lender acknowledges that it has not relied, and will not rely, on Syndication Agent, Documentation Agent or any arranger in deciding to enter into this Agreement and each other Loan Document to which it is a party or in taking or not taking action hereunder or thereunder.

9.13 Withholding Taxes. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form, as required herein, was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with all reasonable expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

ARTICLE X
CONTINUING GUARANTY

10.01 Guaranty. Holdings and Spansion Technology hereby absolutely and unconditionally guarantee, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, arising hereunder and under the other Loan Documents (including all renewals, extensions, amendments, refinancings and other

modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each of Holdings and Spansion Technology, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Holdings or Spansion Technology under this Guaranty, and each of Holdings and Spansion Technology hereby irrevocably waive any defenses each may now have or hereafter acquire in any way relating to any or all of the foregoing.

10.02 Rights of Lenders. Holdings and Spansion Technology consent and agree that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise Dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, Holdings and Spansion Technology consent to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings or Spansion Technology under this Guaranty or which, but for this provision, might operate as a discharge of Holdings or Spansion Technology.

10.03 Certain Waivers. Holdings and Spansion Technology waive (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower; (b) any defense based on any claim that Holdings' or Spansion Technology's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting Holdings' or Spansion Technology's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. Holdings and Spansion Technology expressly waive all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations. Holdings and Spansion Technology waive any rights and defenses that are or may become available to Holdings or Spansion Technology by reason of §§ 2787 and 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided below, this Guaranty shall be governed by, and construed in accordance with, the Laws of the State of New

York. The foregoing waivers and the provisions hereinafter set forth in this Guaranty which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Guaranty or the Obligations.

10.04 Obligations Independent. The obligations of Holdings and Spansion Technology hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings or Spansion Technology to enforce this Guaranty whether or not the Borrower or any other Person or entity is joined as a party.

10.05 Subrogation. Neither Holdings nor Spansion Technology shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facility is terminated. If any amounts are paid to Holdings or Spansion Technology in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash and the Commitments and the Facility with respect to the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower, Spansion Technology or Holdings is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings and Spansion Technology under this paragraph shall survive termination of this Guaranty.

10.07 Subordination. Holdings and Spansion Technology hereby subordinate the payment of all obligations and Indebtedness of the Borrower owing to Holdings and Spansion Technology, whether now existing or hereafter arising, including, but not limited to, any obligation of the Borrower to Holdings or Spansion Technology as subrogee of the Secured Parties or resulting from Holdings' or Spansion Technology's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or Indebtedness of the Borrower to Holdings or Spansion Technology shall be enforced and performance received by Holdings or Spansion Technology as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties

on account of the Obligations, but without reducing or affecting in any manner the liability of Holdings or Spansion Technology under this Guaranty.

10.08 Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Holdings, Spansion Technology or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings or Spansion Technology immediately upon demand by the Secured Parties.

10.09 Condition of the Borrower. Each of Holdings and Spansion Technology acknowledge and agree that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as Holdings or Spansion Technology require, and that none of the Secured Parties has any duty, and neither Holdings nor Spansion Technology is relying on the Secured Parties at any time, to disclose to Holdings or Spansion Technology any information relating to the business, operations or financial condition of the Borrower or any other guarantor (Holdings and Spansion Technology waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

10.10 Additional Guarantor Waivers and Agreements. (a) Holdings and Spansion Technology understand and acknowledge that if the Secured Parties foreclose judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that Holdings or Spansion Technology may have to seek reimbursement, contribution, or indemnification from the Borrower or others based on any right Holdings or Spansion Technology may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by Holdings or Spansion Technology under this Guaranty. Holdings and Spansion Technology further understand and acknowledge that in the absence of this paragraph, such potential impairment or destruction of Holdings' or Spansion Technology's rights, if any, may entitle Holdings or Spansion Technology to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, Holdings and Spansion Technology freely, irrevocably, and unconditionally: (i) waive and relinquish that defense and agree that each will be fully liable under this Guaranty even though the Secured Parties may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agree that neither will not assert that defense in any action or proceeding which the Secured Parties may commence to enforce this Guaranty; (iii) acknowledge and agree that the rights and defenses waived by each in this Guaranty include any right or defense that each may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledge and agree that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(b) Holdings and Spansion Technology waive all rights and defenses that each may have because any of the Obligations is secured by real property. This means, among other things: (i) the Secured Parties may collect from Holdings or Spansion Technology without first

foreclosing on any real or personal property collateral pledged by the other Loan Parties; and (ii) if the Secured Parties foreclose on any real property collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Secured Parties may collect from Holdings and Spansion Technology even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right Holdings or Spansion Technology may have to collect from the Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Holdings or Spansion Technology may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each of Holdings and Spansion Technology waive any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

ARTICLE XI
MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) (I) In the case of the Closing, waive any condition set forth in Section 4.01(d), (e), (g) or (i) or, in the case of any Borrowing, Section 4.02(d), (e) or (g)(i), without the written consent of each Lender and (II) extend the 60 day period in clause (a) of the definition of "Termination Date" without the written consent of the Super Majority Lenders;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to clause (ii) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(e) change (i) Section 2.11 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or

(ii) the order of application of any prepayment of Loans from the application thereof set forth in Section 2.03(b)(vii) in any manner that materially and adversely affects the Lenders under the Facility without the written consent of the Required Lenders;

(f) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(g) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(h) release all or substantially all of the value of the Guaranty, without the written consent of each Lender; or

(i) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

11.02 Notices; Effectiveness; Electronic Communications. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire or Lender Addendum.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of Holdings, the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by

the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender, their respective Affiliates, and the partners, directors, officers, employees, agents and advisors of the Administrative Agent and such Lender and of the Administrative Agent and such Lender's Affiliates from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11.04 Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Agents, Arrangers and their respective Affiliates (including the reasonable fees, charges and disbursements of counsel for the Agents and Arrangers), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transaction contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Agents, Arrangers or any Lender (including the fees, charges and disbursements of one common counsel for the Agents, Arrangers or any Lender provided that each Agent, Arranger or Lender will have the right to retain separate counsel to represent such Agent, Arranger or Lender if and to the extent the representation of two or more Agents, Arrangers or Lenders by the same counsel would be inappropriate due to actual or potential differing interests between them) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. In addition to the payment of expenses pursuant to Section 11.04(a), whether or not the Transaction contemplated hereby shall be consummated, Borrower agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender, their Affiliates and their respective officers, partners, directors, trustees, employees, shareholders, advisors, controlling Persons, counsel, representatives, agents and attorneys-in-fact of each Agent and each Lender and each of their heirs, successors and assigns (each, an "Indemnitee"), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH AGENT**; provided, Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified

Liabilities if such Indemnified Liabilities arise solely from the gross negligence, bad faith or willful misconduct of that Indemnitee as determined by a court of competent jurisdiction in a final, nonappealable order or a settlement tantamount thereto. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 11.04 may be unenforceable in whole or in part because they are violative of any law or public policy, Borrower shall 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. No Indemnitee shall be liable for any damages arising from the use by unauthorized persons of information or other materials sent through electronic, telecommunications or other information transmission systems that are intercepted by such persons or for any special, indirect, consequential or punitive damages in connection with the Transaction contemplated by the Loan Documents.

(c) Reimbursement by Lenders. To the extent permitted by applicable law, neither Borrower nor Holdings shall assert, and each of the Borrower and Holdings hereby waives, any claim against Lenders, Agents, and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the Transaction contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each of the Borrower and Holdings hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) The obligations in this Section 11.04 shall survive payment of the Loans and all other Obligations. At the election of any Indemnitee, the Borrower's indemnification obligations under this Section 11.04 shall include the obligation to defend such Indemnitee using one common legal counsel (provided that an Indemnitee will have the right to retain separate counsel to represent such Indemnitee who may be subject to liability arising out of any claim in respect of which indemnified coverage may be sought hereunder if and to the extent the representation of two or more Indemnitees by the same counsel would be inappropriate due to actual or potential differing interests between them) satisfactory to such Indemnitee, at the sole cost and expense of the Borrower. All amounts owing under this Section 11.04 shall be paid within 30 days after demand.

(e) Payments. All amounts due under this Section shall be payable not later than 30 days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any

part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns permitted hereby. Neither Borrower's nor Holdings' rights or obligations hereunder nor any interest therein may be assigned or delegated by Borrower or Holdings without the prior written consent of all Lenders (and any attempted assignment or transfer by Borrower or Holdings without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Right to Assign.

(i) Subject to the conditions set forth in Section 11.06(b)(ii), each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations, to any Person constituting an Eligible Assignee with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, who may not act unreasonably in giving such consent; provided that no consent of the Borrower shall be required for an assignment to any Person meeting the criteria of clause (a) of the definition of Eligible Assignee or, if an Event of Default under Section 8.01 (a), (b), (c), (f) or (g) has occurred and is continuing, any other Person; and

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Loan to (1) Barclays Bank PLC or an Affiliate thereof or (2) a Lender, an Affiliate of a Lender or an Approved Fund of the assignor.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans under the Facility, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of (I) the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or (II) if earlier, the "trade date" (if any) specified in such Assignment and Assumption) shall not be less than $1,000,000 or an integral multiple thereof, unless the Borrower and the Administrative Agent otherwise consent;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided that only one such fee shall be payable in the case of contemporaneous assignments to or by two or more Approved Funds; and

(C) the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(iii) Subject to acceptance and recording thereof pursuant to Sections 11.06(b)(iv) and 11.06(b)(v), from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits and subject to the obligations of Sections 3.01, 3.04 and 3.05). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.06 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(c). Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no assignee of interests shall be entitled to receive any greater payment under Section 3.01 than the applicable grantor of such assignment would have been entitled to receive with respect to the assigned interest had no such assignment been made, and no assignee shall be entitled to the benefits of Section 3.01 unless the Borrower is notified of the assignment and such assignee has complied with the requirements of Section 3.01(e).

(iv) Register. The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at its Principal Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and

addresses of the Lenders, and the Commitments of, and principal amount of and interest on the Loans owing and paid to, each Lender pursuant to the terms hereof from time to time and amounts received by the Administrative Agent from the Borrower and whether such amounts constitute principal, interest, fees or other and each Lender's share thereof (the "Register"). Borrower, Administrative Agent and the Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof (and the entries in the Register shall be conclusive for such purposes), and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until an Assignment and Assumption effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 11.06(b)(v). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans. Solely for the purposes of maintaining the Register and for tax purposes only Administrative Agent shall be deemed to be acting on behalf of the Borrower. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Eligible Assignee, the Eligible Assignee's completed Administrative Questionnaire (unless the Eligible Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.06(b)(ii)(B) and any written consent to such assignment required by Section 11.06(b)(i), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Participations.

(i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (other than Borrower, Holdings, any of its Subsidiaries or any of their respective Affiliates) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments, Loans or in any other Obligation); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that

such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly and adversely affected thereby pursuant to the proviso to the second sentence of Section 11.01 and (2) directly affects such Participant. Subject to Section 11.06(c)(ii) below, the Borrower agrees that each Participant shall be entitled to the benefits and subject to the obligations of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b).

(ii) A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent to such Participant's entitlement to such greater payments. No Participant shall be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees to comply with Section 3.01(e), as (and to the extent) applicable, as if such Participant were a Lender.

(d) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 11.06, any Lender may assign, pledge and/or grant a security interest in, all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System of the United States (or any successor) and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; and provided, further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder. The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in this Section 11.06(d).

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or

prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such Indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining

whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b)(ii)(B);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.01 or Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a material claim for compensation under Section 3.04 or material payments required to be made pursuant to Section 3.01, such assignment will result in a material reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK EXCEPT TO THE EXTENT GOVERNED BY THE PROVISIONS OF THE BANKRUPTCY CODE PRIOR TO THE EMERGENCE.

(b) SUBMISSION TO JURISDICTION. PRIOR TO THE EMERGENCE, ALL PARTIES HERETO SUBMIT TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF THE BANKRUPTCY COURT, OR IN THE EVENT THAT THE BANKRUPTCY COURT DOES NOT HAVE OR DOES NOT EXERCISE JURISDICTION, THEN IN ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. SUBJECT TO THE IMMEDIATELY PRECEDING SENTENCE, THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN

THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each Transaction contemplated hereby, the Borrower and Holdings each acknowledge and agree, and acknowledge their respective Affiliates' understanding, that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent and the Arrangers, on the other hand, and each of the Borrower and Holdings is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the Transaction

contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the Administrative Agent and each of the Arrangers is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower, Holdings or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Administrative Agent or either of the Arrangers has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or Holdings with respect to the Transaction contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent or the Arrangers has advised or is currently advising the Borrower, Holdings or any of their respective Affiliates on other matters) and none of the Administrative Agent or either of the Arrangers has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the Transaction contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Administrative Agent and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Administrative Agent or either of the Arrangers has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Administrative Agent and the Arrangers have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to the Transaction contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrower and Holdings hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty.

11.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act.

11.18 Time of the Essence. Time is of the essence of the Loan Documents.

11.19 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

11.20 Delivery of Lender Addenda. Each Lender (other than any Lender whose name appears on the signature pages to this Agreement) shall become a party to this Agreement by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

SPANSION LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

GUARANTORS:

SPANSION INC., a Delaware corporation

By: _____
Name: _____
Title: _____

SPANSION TECHNOLOGY LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

BARCLAYS BANK PLC, as
Administrative Agent and Collateral Agent

By: _____
Name: _____
Title: _____

Exhibit 9

New Governing Documents

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SPANSION INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

ARTICLE I.
NAME

The name of the corporation (herein called the "**Corporation**") is Spansion Inc.

ARTICLE II.
REGISTERED OFFICE AND AGENT

The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is Corporation Trust Company.

ARTICLE III.
PURPOSE & DURATION

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law ("**DGCL**"). The Corporation is to have a perpetual existence.

ARTICLE IV.
CAPITAL STOCK

SECTION 1. Authorized Capital Stock. The total number of shares of capital stock that the Corporation shall have the authority to issue is [_____] shares, consisting of: (i) [_____] shares of Class A Common Stock, par value $0.001 per share (the "**Class A Common Stock**"); (ii) one (1) share of Class B Common Stock, par value $0.001 per share (the "**Class B Common Stock**" and together with the Class A Common Stock, the "**Common Stock**"); and (iii) 50,000,000 shares of Preferred Stock, $0.001 par value per share (the "**Preferred Stock**"), issuable in one or more series as hereinafter provided.

SECTION 2. Preferred Stock.

(i) ***Authorization***. Subject to the voting and approval procedures set forth in the Corporation's Bylaws (the "**Bylaws**"), the Board of Directors of the Corporation (the "**Board**") is hereby expressly granted authority to authorize in accordance with law from time to time the issuance of one or more series of Preferred Stock, and with respect to any such series, to fix by resolution or resolutions the numbers, powers, designations, preferences and relative, participating, optional or other special rights of such series and the qualifications, limitations or restrictions thereof, including but without limiting the generality of the foregoing, the following:

(A) entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends, or to no dividends;

(B) entitling the holders thereof to receive dividends payable on a parity with, junior to, or in preference to, the dividends payable on any other class or series of capital stock of the Corporation;

(C) entitling the holders thereof to rights upon the voluntary or involuntary liquidation, dissolution or winding up of, or upon any other distribution of the assets of, the Corporation, on a parity with, junior to or in preference to, the rights of any other class or series of capital stock of the Corporation;

(D) providing for the conversion, at the option of the holder or of the Corporation or both, of the shares of Preferred Stock into shares of any other class or classes of capital stock of the Corporation or of any series of the same or into property of the Corporation or into the securities or properties of any other Person (as defined below), including provision for adjustment of the conversion rate in such events as the Board shall determine, or providing for no conversion;

(E) providing for the redemption, in whole or in part, of the shares of Preferred Stock at the option of the Corporation or the holder thereof, in cash, bonds or other property, at such price or prices (which amount may vary under different conditions and at different redemption dates), within such period or periods, and under such conditions as the Board shall so provide, including provisions for the creation of a sinking fund for the redemption thereof, or providing for no redemption;

(F) lacking voting rights or having limited voting rights or enjoying general, special or multiple voting rights; and

(G) specifying the number of shares constituting that series and the distinctive designation of that series.

All shares of any one series of Preferred Stock shall be identical in all respects with the other shares of such series, except that shares of any one series of Preferred Stock issued at different times may differ as to the dates from which dividends thereon shall be cumulative. The Board may change the powers, designation, preferences, rights, qualifications, limitations and restrictions of, and number of shares in, any series of Preferred Stock as to which no shares are issued and outstanding.

(ii) ***Dividends***. Dividends on outstanding shares of Preferred Stock shall be paid or declared and set apart for payment before any dividends shall be paid or declared and set apart for payment on the Common Stock with respect to the same dividend period.

(iii) ***Liquidation Rights***. If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed in accordance with the respective priorities and preferential amounts (including unpaid cumulative dividends, if any, and interest thereon, if any) payable with respect thereto, and among shares of any series of Preferred Stock, ratably among the shares of such series.

SECTION 3. Common Stock.

(i) ***Voting Generally***. In all elections of directors to the Board, (A) subject to reduction as provided in Article V, Section 3, the holders of the Class B Common Stock, acting as a separate class, shall be entitled to vote (or provide written consent) under law or under this Certificate of Incorporation for up to two (2) directors to the Board (the "**Class B Directors**"), and (B) the holders of the Class A Common Stock, voting as a separate class, shall be entitled to vote under law or under this Certificate of Incorporation for all other directors to the Board (the "**Class A Directors**" and, collectively with the Class B Directors, the "**Directors**"). The holders of the Common Stock are entitled to vote under law or under this Certificate of Incorporation with respect to all other matters put to a vote of the Corporation's stockholders. Except as otherwise provided in this Certificate of Incorporation or as required by law, the holders of Class A Common Stock and Class B Common Stock shall vote together as a single class and shall be entitled to one (1) vote for each share of Common Stock held by such stockholder.

(ii) ***Automatic Conversion***. The Class B Common Stock shall automatically, without any further act or deed on the part of this Corporation or any other Person, as defined immediately below, be converted into Class A Common Stock on a share-for-share basis (as may be adjusted pursuant to Article IV, Section 3(vi)) (A) upon the written consent of the holder of the Class B Common Stock; (B) in the event that any Person other than Silver Lake Sumeru, L.P. and its Affiliates and managed accounts (including their successors, "Silver Lake") becomes the owner of the Class B Common Stock; *provided*, *however*, that the holder of the Class B Common Stock

may elect to not have the Class B Common Stock so converted in connection with the sale of the Class B Common Stock to one or more Affiliated Persons; or (C) Silver Lake's Aggregate Ownership Interest, as defined below, ceases to be at least five percent (5%). At such time of automatic conversion of Class B Common Stock pursuant to this Article IV, Section 3(ii), the certificate formerly representing the outstanding share of Class B Common Stock will thereafter be deemed to represent a like number of shares of Class A Common Stock (as may be adjusted pursuant to Article IV, Section 3(vi)). Shares of the Class B Common Stock converted into shares of Class A Common Stock pursuant to this Article IV, Section 3(ii) shall be retired and the Corporation shall not be authorized to reissue such share of Class B Common Stock. "**Person**" means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm joint venture, other legal entity or other governmental authority. "**Affiliate**" of a Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with, such Person. The term "**control**" (including, with correlative meaning, the terms "controlled by" and "under common control with"), 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 and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. A Person shall be deemed an Affiliate of another Person only so long as such control relationship exists.

(iii) The holder of the Class B Common Stock shall be entitled to convert such Class B Common Stock into shares of Class A Common Stock on a share-for-share basis at any time.

(iv) As promptly as practicable after the presentation and surrender for conversion, during usual business hours at any office or agency of the Corporation, of any certificate representing shares of Class B Common Stock that have been converted into shares of Class A Common Stock pursuant to Article IV, Sections 3(ii) or 3(iii)hereof, the Corporation shall issue and deliver at such office or agency, to or upon the written order of the holder thereof, a certificate representing the number of shares of Class A Common Stock issuable upon such conversion. The issuance of certificates representing shares of Class A Common Stock issuable upon the conversion of shares of Class B Common Stock by the registered holder thereof shall be made without charge to the converting holder for any tax imposed on the Corporation in respect to the issue thereof. The Corporation shall not, however, be required to pay any tax which may be payable with respect to any transfer involved in the issue and delivery of any certificate in a name other than that of the registered holder of the shares being converted, and the Corporation shall not be required to issue or deliver any such certificate unless and until the Person requesting the issue thereof shall have paid to the Corporation the amount of such tax or has established to the satisfaction of the Corporation that such tax has been paid.

(v) In the event of a merger or consolidation of the Corporation with or into another entity in connection with which shares of Common Stock are converted into or exchangeable for shares of stock, other securities or property, including cash, all holders of Common Stock, regardless of Class, will be entitled to receive the same kind and amount of shares of stock and other securities and property, including cash.

(vi) In the event that the outstanding shares of Class A Common Stock are subdivided (by stock split, stock dividend or otherwise), into a greater number of shares of Class A Common Stock, the conversion ratio of the Class B Common Stock into Class A Common Stock then in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately increased. If the outstanding shares of Class A Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Class A Common Stock, the conversion ratio of the Class B Common Stock into Class A Common Stock then in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately decreased.

(vii) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock pursuant to this Article IV, Section 3, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient for such purpose, in addition to such other remedies as shall be available to a holder of such Class B Common Stock, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purpose, including, without

limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

SECTION 4. No Preemptive Rights. The holders of the capital stock of the Corporation shall have no preemptive rights to subscribe for, purchase or receive any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock.

ARTICLE V.
DIRECTORS

SECTION 1. Number of Directors. Except as otherwise provided for or fixed pursuant to the provisions of (i) Article IV, Section 2 with respect to the rights of holders of shares of Preferred Stock to elect additional Directors or (ii) Article V, Section 3 with respect to holders of shares of Class B Common Stock to elect Class B Directors, the number of Directors on the Board shall be not less than three (3) nor more than nine (9), with the then authorized number of directors being fixed by the Board.

SECTION 2. Classified Board. The Board (other than those directors elected by holders of any series of Preferred Stock) shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number as possible. Directors of Class I shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2006. Directors of Class II shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2007. Directors of Class III shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2008. Subject to Article V, Section 5 and Article V, Section 6 below with respect to filling of vacancies on the Board and the removal of Directors, at each annual meeting of the stockholders, the respective successors of the Directors whose terms are then expiring shall be elected for terms expiring at the annual meeting of stockholders held on the third anniversary thereof. Upon the filing of this Certificate of Incorporation, the Directors of the Board shall be as follows:

Class I:

Class II:

Class III:

The mailing address for each director listed above shall be c/o Spansion Inc., 915 DeGuigne Drive, P.O. Box 3453, Sunnyvale, California 94088.

SECTION 3. At any time that the Aggregate Ownership Interest, as defined below, of the holder of Class B Common Stock, together with shares of Class A Common Stock of the Corporation held by Silver Lake, falls below the designated thresholds listed in the table below (a "**Class B Triggering Event**"), then the number of Class B Directors shall be reduced to the corresponding number in the table below (and, subject to Article V, Section 5 below, the resulting size of the Board shall be reduced accordingly) and the appropriate number of Class B Directors shall resign from the Board (such resigning Class B Director(s) to be selected by the Class B Directors within ten (10) days of to the occurrence of the Class B Triggering Event); *provided, however*, that if any Class B Director so designated to resign in accordance with this Article V, Section 3 shall refuse to resign within ten (10) days of the Class B Triggering Event, the size of the Board shall be reduced by a number equal to the number of directors refusing to resign from such Class B directorship, with the Class B Director(s) whose last name(s) starts with the letter alphabetically closest to the letter "Z" being designated the person(s) no longer qualified to serve on the Board. In calculating whether the Class B Triggering Event has occurred, the Aggregate Ownership Interest shall be recalculated each time (a) a Transfer, as defined below, of shares of Silver Lake occurs (other than to an Affiliate) or (b) upon Silver Lake's receipt of written notice from the Corporation, which such notice shall be given by the Corporation when the Corporation reasonably believes that a Class B Triggering Event may have occurred. The number of Class B Directors that holders of Class B Common Stock can elect to the Board shall depend on an Aggregate Ownership Interest of such holders as follows:

Aggregate Ownership Interest	Number of Class B Directors
≥ 10%	2
≥ 5% and <10%	1
<5%	0

At any time that the Aggregate Ownership Interest of Silver Lake represents five percent (5%) or more of the outstanding Common Stock of the Corporation, unless otherwise agreed by the holders of a majority of shares of the Class B Common Stock (or as otherwise required by law or stock exchange rules), one director elected by the holders of the Class B Common Stock will be entitled to be a member of each committee of the Board. **"Aggregate Ownership Interest"** means, with respect to Silver Lake, the quotient, expressed as a percentage, obtained by dividing (a) the aggregate number of shares of Common Stock of the Corporation held by Silver Lake by (b) the aggregate number of outstanding shares, on an as converted to Common Stock basis, of Common Stock of the Corporation. "**Transfer**" with respect to any share of Common Stock or portion thereof, means a direct or indirect sale, conveyance, exchange, assignment, gift, bequest or other transfer or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by merger or operation of law), or a written agreement to do any of the foregoing.

SECTION 4. Protective Provisions. So long as a share of Class B Common Stock remains outstanding, the Corporation shall not take any of the following actions without the prior written consent of the holders of a majority of the shares of Class B Common Stock: (A) alter or change the rights or privileges of the shares of Class B Common Stock so as to affect adversely the shares of Class B Common Stock; (B) offer to purchase any shares of Class A Common Stock of the Corporation from all holders of such Class A Common Stock unless such offer is made pro rata to the holders of the Class B Common Stock; or (C) issue or commit to issue any additional Class B Common Stock.

SECTION 5. Vacancies. (i) At the time that the operation of Article V, Section 3 above results in vacancies such that the number of Directors serving on the Board is less than seven (7) Directors, then upon the affirmative vote of the majority of Directors, any such vacancies may be filled with that number of additional Class A Directors needed to maintain seven (7) Directors serving on the Board. Such additional Class A Director(s) shall be, if practicable, assigned to the same class or classes of Directors referred to in Article V, Section 2 above in which the vacancy or vacancies were created, but in any event so that the designated classes shall be as nearly equal in number as possible. Any Class A Director elected in accordance with this Article V, Section 5 shall hold office until the annual meeting of stockholders at which the term of office of the class to which such Class A Director has been elected expires, and until such Director's successor shall have been duly elected and qualified.

(ii) Except as provided in Article V, Sections 3 and 5(i) above:

(A) any vacancies resulting from death, resignation, disqualification, removal or other cause with respect to a Class A Director shall be filled by the affirmative vote of the remaining Directors then in office, even if less than a quorum of the Board;

(B) any vacancies resulting from death, resignation, disqualification, removal or other cause with respect to a Class B Director shall be filled by the sole remaining Class B Director. In the absence of a sole remaining Class B Director, such vacancies shall be filled by the holders of the Class B Common Stock voting separately as a class; and

(D) any directorships resulting from any increase in the number of Directors may be filled by the Board acting by a majority of the Directors then in office, even if less than a quorum.

Any Director elected in accordance with this Article V, Section 5(ii) shall hold office until the annual meeting of stockholders at which the term of office of the class to which such Director has been elected expires, and until such Director's successor shall have been duly elected and qualified.

SECTION 6. Removal. Except with respect to any directors elected by holders of Preferred Stock, notwithstanding any other provisions of this Certificate of Incorporation (and notwithstanding the fact that some lesser percentage may be specified by law or by this Certificate of Incorporation):

(i) Any Director may be removed at any time, with cause, by majority vote of the holders of Class A Common Stock and the Class B Common Stock (and any series of Preferred Stock then entitled to vote at an election of directors), voting together as one class.

(ii) Any Class B Director may be removed at any time, without cause, by majority vote of the holders of the Class B Common Stock, voting separately as a class.

SECTION 7. No Written Ballot. Unless and except to the extent that the Bylaws shall so require, the election of Directors of the Corporation need not be by written ballot.

SECTION 8. Amendment. Notwithstanding anything in this Certificate of Incorporation to the contrary, in addition to any vote of the stockholders required by this Certificate of Incorporation, for as long as there are outstanding any shares of Class B Common Stock and the affirmative vote of the holders of at least fifty percent (50%) of the outstanding shares of the Class B Common Stock, voting separately as a class, as applicable, shall be required to alter, amend or repeal, or adopt any provision inconsistent with, any provision of this Article V. Neither the alteration, amendment or repeal of this Article V nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article V shall eliminate or reduce the effect of this Article V in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article V, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

ARTICLE VI.
LIABILITY AND INDEMNIFICATION

SECTION 1. Liability. A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breaches of fiduciary duties as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. If the DGCL is amended after the Effective Time to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this provision shall be prospective only and shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification. The Corporation is authorized to provide by by-law, agreement or otherwise for indemnification of Directors, officers, employees and agents for breach of duty to the Corporation and its stockholders in excess of the indemnification otherwise permitted by applicable law.

SECTION 2. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "**Covered Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in this Article VI, Section 2, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board.

SECTION 3. Prepayment of Expenses. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided*, *however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an

SECTION 4. Claims. If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Article VI is not paid in full within thirty (30) days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

SECTION 5. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 6. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

SECTION 7. Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

SECTION 8. Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII.
AMENDING THE BYLAWS

Subject to Section 2.11 of the Bylaws, in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, (i) the Board is expressly authorized and empowered to make, amend, supplement or repeal the Bylaws in any manner, without the assent or vote of the stockholders, not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation, and (ii) the stockholders may change or amend or repeal the Bylaws in any manner pursuant to a vote of a majority of the voting power of the outstanding shares of capital stock entitled to vote.

ARTICLE VIII.
STOCKHOLDER ACTION

Except for actions taken by written consent by the holders of the Class B Common Stock, consenting separately by class, or as otherwise provided pursuant to the provisions of this Certificate of Incorporation (including any Preferred Stock designation) fixing the powers, privileges or rights of any class or series of stock other than the Common Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

ARTICLE IX.
AMENDMENT

Except as provided in Article V, Section 8, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter

prescribed by statute, provided that such action is approved in the manner, and otherwise complies with the requirements, set forth in this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE X.
NONVOTING EQUITY SECURITIES

The Corporation shall not issue any nonvoting equity securities to the extent prohibited by Section 1123(a)(6) of Title 11 of the United States Code (the "**Bankruptcy Code**") as in effect on the date of the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; *provided*, *however*, that this Article X (i) will have no further force and effect beyond that required under Section 1123 (a)(6) of the Bankruptcy Code, (ii) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation, and (iii) in all events may be amended or eliminated in accordance with such applicable law as from time to time may be in effect.

IN WITNESS WHEREOF, Spansion Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by its Chief Executive Officer on January __, 2010.

SPANSION INC.

By:_____
Name: John H. Kispert
Title: Chief Executive Officer

AMENDED AND RESTATED

BYLAWS

OF

SPANSION INC.

ARTICLE I.

OFFICES

SECTION 1.1. Delaware Office. The office of Spansion Inc. (the "***Corporation***") within the State of Delaware shall be in the City of Wilmington, County of New Castle.

SECTION 1.2. Other Offices. The Corporation may also have an office or offices and keep the books and records of the Corporation, except as otherwise may be required by law, in such other place or places, either within or without the State of Delaware, as the Board of Directors of the Corporation (the "***Board***") may from time to time determine or the business of the Corporation may require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS

SECTION 2.1. Place of Meetings. All meetings of holders of shares of capital stock of the Corporation shall be held at the office of the Corporation in the State of Delaware or at such other place, within or without the State of Delaware, as may from time to time be fixed by the Board or specified or fixed in the respective notices or waivers of notice thereof.

SECTION 2.2. Annual Meetings. An annual meeting of stockholders of the Corporation for the election of directors (the "***Directors***") and for the transaction of such other business as may properly come before the meeting (an "***Annual Meeting***") shall be held at such place, on such date, and at such time as the Board shall each year fix, which date shall be within thirteen (13) months of the last annual meeting of stockholders or, if no such meeting has been held, the date of incorporation.

SECTION 2.3. Special Meetings. Except as required by law and subject to the rights of holders of any series of Preferred Stock (as defined below), special meetings of stockholders may be called at any time only by the Chairman of the Board, any Class B Director (as defined in the Amended and Restated Certificate of Incorporation of the Corporation (the "***Certificate of Incorporation***")) or by the Board pursuant to a resolution approved by a majority of the then authorized number of Directors. Any such call must specify the matter or matters to be acted upon at such meeting and only such matter or matters shall be acted upon thereat.

SECTION 2.4. Notice of Meetings. Except as set forth in the Certificate of Incorporation or as otherwise may be required by law, notice of each meeting of stockholders, whether an Annual Meeting or a special meeting, shall be in writing, shall state the purpose or purposes of the meeting, the place, date and hour of the meeting and, unless it is an Annual Meeting, shall indicate that the notice is being issued by or at the direction of the Person or Persons, as defined below, calling the meeting, and a copy thereof shall be delivered or sent by mail, not less than ten (10) or more than sixty (60) days before the date of said meeting, to each stockholder entitled to vote at such meeting. If mailed, such notice shall be directed to such stockholder at such stockholder's address as it appears on the stock records of the Corporation, unless such stockholder shall have filed with the Secretary of the Corporation a written request that notices to such stockholder be mailed to some other address in which case it shall be directed to such stockholder at such other address. Notice of an adjourned meeting need not be given if the time and place to which the meeting is to be adjourned was announced at the meeting at which the adjournment was taken, unless (i) the adjournment is for more than thirty (30) days or (ii) the Board shall fix a new record date for such adjourned meeting after the adjournment. ***"Person"*** means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or governmental authority. "***Affiliate***" of a Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with, such Person. The term "***control***" (including, with correlative meaning, the terms "controlled by" and "under common control with"), 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 and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. A Person shall be deemed an Affiliate of another Person only so long as such control relationship exists.

SECTION 2.5. Quorum. At each meeting of stockholders of the Corporation, the holders of shares having a majority of the voting power of the capital stock of the Corporation issued and outstanding and entitled to vote thereat shall be present or represented by proxy to constitute a quorum for the transaction of business, except as otherwise provided by law. Where a separate vote by a class or classes is required, a majority of the shares of such class or classes in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

SECTION 2.6. Adjournments. In the absence of a quorum at any meeting of stockholders or any adjournment or adjournments thereof, the Chairman of the Board or holders of shares having a majority of the voting power of the capital stock present or represented by proxy at the meeting may adjourn the meeting from time to time until a quorum shall be present or represented by proxy. At any such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been present or represented by proxy thereat.

SECTION 2.7. Business Brought Before a Meeting. No business shall be transacted at a meeting of stockholders except in accordance with the following procedures.

(a) At any Annual Meeting, only such business shall be conducted as shall have been properly brought before the Annual Meeting. To be properly brought before an Annual Meeting, business must be (i) brought before the Annual Meeting by the Corporation and specified

in the notice of meeting given by or at the direction of the Board, (ii) brought before the Annual Meeting by or at the direction of the Board (or any duly authorized committee thereof) or (iii) otherwise properly brought before the Annual Meeting by any stockholder of the Corporation who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in this Section 2.7 is delivered to the Secretary of the Corporation and at the time of the meeting, (B) who is entitled to vote at the meeting and (C) who complies with the notice procedures set forth in this Section 2.7. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "***Exchange Act***"), and included in the notice of meeting given by or at the direction of the Board, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an Annual Meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.3. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.8, and this Section 2.7 shall not be applicable to nominations except as expressly provided in Section 2.8.

(b) Without qualification, for business to be properly brought before an Annual Meeting by a stockholder pursuant to clause (iii) of paragraph (a) of this Section 2.7, the stockholder must have given timely notice thereof in writing and in proper form to the Secretary of the Corporation and provide any updates or supplements to such notice at the times and in the forms required by this Section 2.7, and such business must otherwise be a proper matter for stockholder action as determined by the Board. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting of stockholders; *provided, however,* that in the event that the Annual Meeting is called for on a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10^{th}) day following the day on which the first public announcement of the date of the Annual Meeting was made or the notice of the meeting was mailed, whichever first occurs. In no event shall the public announcement of an adjournment or postponement of an Annual Meeting of stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The stockholder's notice shall contain, at a minimum, the information set forth in paragraph (c) of this Section 2.7. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(c) **Contents of Stockholder's Notice**. Any proper stockholder's notice required by this Section 2.7 shall set forth:

(i) For each item of business that the stockholder proposes for consideration before the Annual Meeting, (A) a reasonably detailed description of the business desired to be

brought before the Annual Meeting, (B) the text of the proposal or business (including the text on any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), (C) the reasons for conducting such business at the stockholder meeting and (D) a reasonably detailed description of any material interest in such business of such stockholder, beneficial owner, if any, on whose behalf the proposal is made, and any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner (each, a "***Proposing Person***"), including all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder;

(ii) As to each Proposing Person, (A) the name and address of such Proposing Person, as they appear on the Corporation's books, (B) the class and number of shares of capital stock of the Corporation which are owned beneficially and of record of such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "***Stockholder Information***"); and

(iii) As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation ("***Synthetic Equity Interests***"), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation ("***Short Interests***"), (D) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or if

any, Synthetic Equity Interests or Short Interests, and (E) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (E) are referred to as "***Disclosable Interests***"); *provided*, *however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

(d) A stockholder providing notice of business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.7 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to), or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an Annual Meeting except in accordance with this Section 2.7. Except as otherwise provided by law, the chair of the meeting shall have the power and duty, if the facts warrant, to (i) determine whether any business proposed to be brought before an Annual Meeting was proposed in accordance with the procedures set forth in this Section 2.7 and (ii) if any proposed business is not in compliance with this Section 2.7 (including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is made solicits (or is part of a group which solicits) proxies in support of such stockholder's proposal in compliance with these Bylaws), declare that such proposed business shall not be transacted.

(f) This Section 2.7 is expressly intended to apply to any business proposed to be brought before an Annual Meeting other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. Notwithstanding the foregoing provisions of this Section 2.7, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.7. Nothing in this Section 2.7 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

SECTION 2.8. Advance Notice of Nominations for Election of Directors at a Meeting. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred shares of the Corporation or shares of Class B Common Stock to nominate and elect a specified number of directors in certain

circumstances.

(a) (i) Nominations of persons for election to the Board may be made at an Annual Meeting or at a special meeting of stockholders (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) only (i) by or at the direction of the Board (or any duly authorized committee thereof) or the Chairman of the Board or (ii) by any stockholder of the Corporation who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in this Section 2.8 is delivered to the Secretary of the Corporation and at the time of the meeting, (B) who is entitled to vote at the meeting and (C) who complies with the notice procedures set forth in this Section 2.8 as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board at an Annual Meeting or special meeting.

(ii) Without qualification, for a stockholder to make any nomination of a person or persons to the Board at an Annual Meeting or at a special meeting of stockholders (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting), nominations to be properly brought before such meeting by a stockholder pursuant to clause (ii) of paragraph (a)(1) of this Section 2.8, the stockholder must have given timely notice thereof in writing and in proper form to the Secretary of the Corporation and provide any updates or supplements to such notice at the times and in the forms required by this Section 2.8. To be timely, for nominations of persons for election to the Board at an Annual Meeting, a stockholder's notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not less than ninety (90) nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting of stockholders; *provided, however,* that in the event that the Annual Meeting is called for on a date that is not within thirty (30) days before or after such anniversary date of the Annual Meeting, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10^{th}) day following the day on which the first public announcement of the date of the Annual Meeting was made or the notice of the meeting was mailed, whichever first occurs. To be timely, for nominations of persons for election to the Board at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting), a stockholder's notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not less than ninety (90) nor more than one hundred twenty (120) days prior to such special meeting; *provided, however,* that in the event that the special meeting is called for on a date that is less than ninety (90) days prior to the special meeting, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10^{th}) day following the day on which the first public announcement of the date of the special meeting was made or the notice of the meeting was mailed, whichever first occurs. In no event shall the public announcement of an adjournment or postponement of an Annual Meeting or special meeting, as applicable, of stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The stockholder's notice shall contain, at a minimum, the information set forth in paragraph (b) of this Section 2.8.

(iii) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 2.8 to the contrary, in the event that the number of directors to be elected to the Board of the Corporation at an Annual Meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least one hundred (100) days prior to the first anniversary of the preceding year's Annual Meeting, a stockholder's notice required by this Section 2.8 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the Corporation.

(b) Contents of Stockholder's Notice. Any proper stockholder's notice required by this Section 2.8 shall set forth:

(i) As to each stockholder providing the notice of the nomination proposed to be made at the meeting, beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and any affiliate or associate of such stockholder or beneficial owner (each, a "***Nominating Person***"), the name, age, nationality, business address and residence address of such Nominating Person, (ii) the principal occupation and employment of such Nominating Person and (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such Nominating Person;

(ii) As to any Nominating Person, any Disclosable Interests (as defined in Section 2.7(c)(iii), except that for purposes of this Section 2.8(b) the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.7(c)(iii) and the disclosure in clause (E) of Section 2.7(c)(iii) shall be made with respect to the election of directors at the meeting);

(iii) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 2.8(b) if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement as provided in this Section 2.8(e); and

(iv) The Corporation may require any proposed nominee to furnish such

other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Principles of Corporate Governance or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

(c) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to Section 2.8(b) shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to), or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(d) Notwithstanding anything in these Bylaws to the contrary, only such persons who are nominated in accordance with the procedures set forth in this Section 2.8 shall be eligible to be elected at an Annual Meeting or special meeting of stockholders of the Corporation to serve as directors. Except as otherwise provided by law, the chair of the meeting shall have the power and duty to (i) determine whether a nomination to be brought before an Annual Meeting or special meeting was made in accordance with the procedures set forth in this Section 2.8 and (ii) if any proposed nomination is not in compliance with this Section 2.8 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicits (or is part of a group which solicits), or fails to so solicit (as the case may be), proxies in support of such stockholder's nominee in compliance with such stockholder's representation as required by paragraph (e) of this Section 2.8), to declare that such nomination shall be disregarded.

(e) To be eligible to be a nominee for election as a director of the Corporation, if so requested by the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 2.8) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "***Voting Commitment***") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and

(iii) in such proposed nominee's individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(f) In addition to the requirements of this Section 2.8 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

SECTION 2.9. Proxies and Voting. Except as otherwise provided in the Certificate of Incorporation or these Bylaws, or pursuant to a resolution of the Board adopted pursuant thereto establishing a series of Preferred Stock of the Corporation ("***Preferred Stock***"), at each meeting of stockholders, each holder of shares of the Corporation's Common Stock, par value $0.001 per share ("***Common Stock***"), shall be entitled to one (1) vote for each such share standing in such holder's name on the stock records of the Corporation maintained in accordance with Section 7.2 hereof (i) at the time fixed pursuant to Section 7.4 of these Bylaws as the record date for the determination of stockholders entitled to vote at such meeting or (ii) if no such record date shall have been fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given. At each meeting of stockholders, all matters (except as otherwise provided in Section 3.3 of these Bylaws and except in cases where a larger vote is required by law or by the Certificate of Incorporation or these Bylaws) shall be decided by a majority of the votes cast at such meeting by the holders of shares of capital stock present or represented by proxy and entitled to vote thereon, a quorum being present. At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 2.9 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission. All voting, including on the election of Directors but excepting where otherwise required by law, may be by a voice vote; *provided, however*, that upon demand therefor by a stockholder entitled to vote or by such stockholder's proxy, a stock vote shall be taken. Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting.

SECTION 2.10. Inspectors. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. No person who is a candidate for an office at an election may serve as an inspector at such election. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated

shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspector's count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. The results of any election at which inspectors are appointed shall not be deemed final and effective until the receipt and approval by the Board of the inspector's certification and report.

SECTION 2.11. Consent of Stockholders in Lieu of Meeting. Except for actions taken by written consent by the holders of Class B Common Stock (as defined in the Certificate of Incorporation), consenting separately as a class, or as otherwise provided pursuant to the provisions of the Certificate of Incorporation fixing the powers, privileges or rights of any class or series of stock other than the Common Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

With respect to the written consents allowed by the Certificate of Incorporation, such consents shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in this Section.

SECTION 2.12. Meeting Procedures. Meetings of stockholders shall be presided over by the Chairman of the Board or by another chair designated by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be determined by the chair of the meeting and announced at the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chair of any meeting of stockholders shall have the exclusive right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the

safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE III.

DIRECTORS

SECTION 3.1. Powers. Except as otherwise required by law or the Certificate of Incorporation, the Board may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

(a) to declare dividends from time to time in accordance with law;

(b) to purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;

(c) to authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;

(d) to remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(e) to confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(f) to adopt from time to time such stock, option, stock purchase, bonus or other compensation plans for Directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;

(g) to adopt from time to time such insurance, retirement, and other benefit plans for Directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(h) to adopt from time to time regulations, not inconsistent with these Bylaws, for the management of the Corporation's business and affairs.

SECTION 3.2. Number; Terms and Vacancies. The Corporation shall have the number of Directors as is set forth in the Certificate of Incorporation. The Board shall be classified in the manner set forth in the Certificate of Incorporation. Any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled in the manner provided in the Certificate of Incorporation.

SECTION 3.3. Nominations; Election. Nominations for the election of Directors may be made by the Board or a committee appointed by the Board, or by any stockholder entitled to vote generally in the election of Directors who complies with the procedures set forth in Section 2.8. Directors shall be at least 21 years of age. Directors need not be stockholders. At each meeting of stockholders for the election of Directors at which a quorum is present, the persons receiving a plurality of the votes cast shall be elected Directors.

SECTION 3.4. Place of Meetings. Meetings of the Board shall be held at the Corporation's office in the State of Delaware or at such other places, within or without such State, as the Board may from time to time determine or as shall be specified or fixed in the notice or waiver of notice of any such meeting.

SECTION 3.5. Regular Meetings. The Board shall hold meetings at least once per every fiscal quarter at a date and time determined by the Board. Each Director shall use such Director's best efforts to attend each meeting in person.

SECTION 3.6. Special Meetings. Special meetings of the Board may be held at the request of any Director, upon not less than five (5) business days written notice (which may be provided in accordance with Section 3.7) or telephonic notice to each Director (which notice shall be provided to the other Directors by the requesting Director).

SECTION 3.7. Notice of Meetings. The regular quarterly meetings of the Board shall be held upon not less than five (5) business days written notice.

SECTION 3.8. Quorum and Manner of Acting. The presence of a majority of the total number of authorized Directors in person or by telephone conference or by other means of communications by means of which all Directors participating therein can hear each other, shall be necessary and sufficient to constitute a quorum for the purpose of taking action by the Board at any meeting of the Board. If a quorum shall not be present at any meeting of the Board, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. No action taken by the Directors at any meeting shall be valid unless the requisite quorum is present. Except where a different vote is required or permitted by law, the Certificate of Incorporation or these Bylaws or otherwise, all actions, determinations or resolutions of the Board at a meeting shall require the affirmative vote or consent of the majority of the Directors. Each Director shall be entitled to one (1) vote, and Directors shall not be entitled to cast their vote through proxies. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all members of the Board consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board; *provided, however*, that such electronic transmission or transmissions must either set forth or be submitted with information from which it can be determined that the electronic transmission or transmissions were authorized by the Director. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Interpreters will be provided for any meeting of the Board, at the cost of the Corporation, upon the request of any Director. The resolution and the written consents thereto by the Directors shall be filed with the minutes of the proceedings of the Board.

SECTION 3.9. Resignation. Any Director may resign at any time by giving written notice or by electronic transmission to the Corporation; *provided*, *however*, if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the Director; *provided, further*, *however*, that written notice to the Board, the Chairman of the Board, the Chief Executive Officer of the Corporation or the Secretary of the Corporation shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.10. Removal of Directors. Subject to the rights of holders of Preferred Stock to elect Directors under circumstances specified in a resolution of the Board, adopted pursuant to the provisions of the Certificate of Incorporation or these Bylaws establishing such series, (i) any Director may be removed at any time, with cause, by majority vote of the holders of the Class A Common Stock and the Class B Common Stock (and any series of Preferred Stock then entitled to vote at an election of directors), voting together as one class, and (ii) any Class B Director may be removed at any time, with or without cause, by majority vote of the holders of Class B Common Stock, voting separately as a class

SECTION 3.11. Compensation of Directors. The Board may provide for the payment to any of the Directors, other than officers or employees of the Corporation, of a specified amount for services as Director or member of a committee of the Board, or of a specified amount for attendance at each regular or special Board meeting or committee meeting, or of both, and all Directors shall be reimbursed for expenses of attendance at any such meeting; *provided, however*, that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 3.12. Chairman of the Board. The Board may elect a Chairman of the Board. The Chairman of the Board, if one is chosen, shall be chosen from among the members of the Board.

ARTICLE IV.

COMMITTEES OF THE BOARD

SECTION 4.1. Appointment and Powers of Audit Committee. The Board shall, by resolution adopted by the affirmative vote of a majority of the authorized number of Directors, designate an Audit Committee of the Board, which shall consist of three or more Directors, each of whom shall satisfy the independence requirements of the Nasdaq Stock Market and the U.S. Securities Exchange Commission, as then in effect and applicable to the Corporation. Subject to the approval of the Board, the Audit Committee shall adopt and from time to time assess and revise a written charter which will specify how the Audit Committee will carry out its responsibilities and such other matters as the Board and the Audit Committee determine are necessary or desirable.

SECTION 4.2. Appointment and Powers of Nominating and Corporate Governance Committee. The Board shall, by resolution adopted by the affirmative vote of a majority of the authorized number of Directors, designate a Nominating and Corporate Governance Committee of

the Board, which shall consist of three or more Directors, each of whom shall satisfy the independence requirements of the Nasdaq Stock Market and the U.S. Securities Exchange Commission, as then in effect and applicable to the Corporation. Subject to the approval of the Board, the Nominating and Corporate Governance Committee shall adopt and from time to time assess and revise a written charter which will specify how the Nominating and Corporate Governance Committee will carry out its responsibilities and such other matters as the Board and the Nominating and Corporate Governance Committee determine are necessary or desirable.

SECTION 4.3. Compensation Committee. The Board shall, by resolution adopted by the affirmative vote of a majority of the authorized number of Directors, designate a Compensation Committee of the Board, which shall consist of three or more Directors, each of whom shall satisfy the independence requirements of the Nasdaq Stock Market and the U.S. Securities Exchange Commission, as then in effect and applicable to the Corporation. Subject to the approval of the Board, the Compensation Committee shall adopt and from time to time assess and revise a written charter which will specify how the Compensation Committee will carry out its responsibilities and such other matters as the Board and the Compensation Committee determine are necessary or desirable.

SECTION 4.4. Other Committees. The Board may, by resolution adopted by the affirmative vote of a majority of the authorized number of Directors, designate members of the Board to constitute such other committees of the Board as the Board may determine. Such committees shall in each case consist of such number of Directors as the Board may determine, and shall have and may exercise, to the extent permitted by law, such powers as the Board may delegate to them in the respective resolutions appointing them. Each such committee may determine its manner of acting and fix the time and place of its meetings, unless the Board shall otherwise provide. A majority of the members of any such committee shall constitute a quorum for the transaction of business by the committee and the act of a majority of the members of such committee present at a meeting at which a quorum shall be present shall be the act of the committee. Unless otherwise agreed by the holders of the Class B Common Stock (or as otherwise required by law or stock exchange rules), one (1) member of any such committee shall be a Class B Director for so long as there are Class B Directors.

SECTION 4.5. Action by Consent; Participation by Telephone or Similar Equipment. Unless the Board shall otherwise provide, any action required or permitted to be taken at any meeting of any committee thereof may be taken without a meeting if all members of such committee consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of such committee; *provided, however*, that such electronic transmission or transmissions must either set forth or be submitted with information from which it can be determined that the electronic transmission or transmissions were authorized by the Director. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Unless the Board shall otherwise provide, any one or more members of any such committee may participate in any meeting of the committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting of the committee.

SECTION 4.6. Resignations; Removals. Any member of any committee may resign at any time by giving notice to the Corporation; *provided, however*, that notice to the Board, the Chairman of the Board, the Chief Executive Officer of the Corporation, the chairman of such committee or the Secretary of the Corporation shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective. Any member of any such committee may be removed at any time, either with or without cause, by the affirmative vote of a majority of the authorized number of Directors at any meeting of the Board called for that purpose.

ARTICLE V.

OFFICERS

SECTION 5.1. Number and Qualification. The Corporation shall have such officers as may be necessary or desirable for the business of the Corporation. The officers of the Corporation shall consist of a Chief Executive Officer, a Secretary, a Treasurer and such other officers as may from time to time be appointed by the Board. Officers shall be elected by the Board, which shall consider that subject at its first meeting after every Annual Meeting of stockholders. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. The failure to elect a Chief Executive Officer, Secretary or Treasurer shall not affect the existence of the Corporation.

SECTION 5.2. Chief Executive Officer. The Chief Executive Officer shall supervise the daily operations of the business of the Corporation, and shall report to the Board. Subject to the provisions of these Bylaws and to the direction of the Board, he or she shall perform all duties and have all powers which are commonly incident to the office of Chief Executive Officer or which are delegated to him or her by the Board. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation. The Chief Executive Officer may not serve as the Chairman of the Board.

SECTION 5.3. Treasurer. The Treasurer shall have the responsibility for maintaining the financial records of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. The Treasurer shall also perform such other duties as the Board may from time to time prescribe.

SECTION 5.4. Secretary. The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board. He or she shall have charge of the corporate books and shall perform such other duties as the Board may from time to time prescribe.

SECTION 5.5. Delegation of Authority. The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

SECTION 5.6. Removal. Any officer of the Corporation may be removed at any time,

with or without cause, by the Board.

SECTION 5.7. Resignations. Any officer may resign at any time by giving written notice to the Corporation; *provided, however,* that notice to the Board, Chairman of the Board, the Chief Executive Officer or the Secretary shall be deemed to constitute notice to the Corporation. Such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.8. Vacancies. Any vacancy among the officers, whether caused by death, resignation, removal or any other cause, shall be filled in the manner prescribed for election or appointment to such office.

SECTION 5.9. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, any officer of the Corporation authorized by the Board shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

SECTION 5.10. Bonds of Officers. If required by the Board, any officer of the Corporation shall give a bond for the faithful discharge of his or her duties in such amount and with such surety or sureties as the Board may require.

ARTICLE VI.

CONTRACTS, CHECKS, LOANS, DEPOSITS, ETC.

SECTION 6.1. Contracts. The Board may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation, to enter into any contract or to execute and deliver any instrument, which authorization may be general or confined to specific instances; and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or for any amount.

SECTION 6.2. Checks, etc. All checks, drafts, bills of exchange or other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed in the name and on behalf of the Corporation in such manner as shall from time to time be authorized by the Board, which authorization may be general or confined to specific instances.

SECTION 6.3. Loans. No loan shall be contracted on behalf of the Corporation, and no negotiable paper shall be issued in its name, unless authorized by the Board, which authorization may be general or confined to specific instances, and bonds, debentures, notes and other obligations or evidences of indebtedness of the Corporation issued for such loans shall be made, executed and delivered as the Board shall authorize.

SECTION 6.4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositors as may be selected by or in the manner designated by the Board. The Board or its designees may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of the Certificate of Incorporation or these Bylaws, as they may deem advisable.

ARTICLE VII.

CAPITAL STOCK

SECTION 7.1. Certificates of Stock. Shares of capital stock of the Corporation may be certificated or uncertificated, as provided for under the DGCL. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman of the Board or Chief Executive Officer and by the Secretary or an Assistant Secretary, Treasurer or an Assistant Treasurer of the Corporation, certifying the number of shares owned by such stockholder. Any or all of the signatures on the certificate may be by facsimile.

SECTION 7.2. Stock List. At least ten days before each meeting of stockholders, the officer in charge of the stock ledger of the Corporation shall prepare a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

SECTION 7.3. Transfers of Stock. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. If such stock is certificated and except where a certificate is issued in accordance with Section 7.5 of these Bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

SECTION 7.4. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect

of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; *provided, however*, that if no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than ten (10) days after the date upon which the resolution fixing the record date is adopted. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary of the Corporation, request the Board to fix a record date. The Board shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board and no prior action by the Board is required by the DGCL, the record date shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by Section 2.11 hereof. If no record date has been fixed by the Board and prior action by the Board is required by the DGCL with respect to the proposed action by written consent of the stockholders, the record date for determining stockholders entitled to consent to corporate action in writing shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

SECTION 7.5. Lost, Stolen or Destroyed Certificates. In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board may establish concerning proof of such loss, theft or destruction and concerning the giving of satisfactory bond or bonds of indemnity.

SECTION 7.6. Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board may establish.

ARTICLE VIII.

NOTICES

SECTION 8.1. Notices. Except as otherwise specifically provided herein or required by

law, all notices, requests, instructions or consents required or permitted under these Bylaws shall be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) ten (10) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt.

SECTION 8.2. Waivers. A written waiver of any notice, signed by a stockholder, Director, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such stockholder, Director, officer, employee or agent, and, to the extent permitted by law, his or her attendance at any such meeting requiring notice shall constitute waiver of such notice, except when he or she attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called for or convened. Neither the business nor the purpose of any meeting need be specified in such a waiver.

ARTICLE IX.

MISCELLANEOUS

SECTION 9.1. Signatures. In addition to the provisions for use of manual, facsimile or electronic signatures elsewhere specifically authorized in these Bylaws, manual, facsimile or electronic signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

SECTION 9.2. Corporate Seal. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Corporation's Treasurer or by an Assistant Secretary or Assistant Treasurer.

SECTION 9.3. Reliance Upon Books, Reports and Records. Each Director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such Director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

SECTION 9.4. Fiscal Year. The fiscal year of the Corporation shall be as fixed by the Board.

SECTION 9.5. Time Periods. In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE X.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 10.1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "***Covered Person***") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***proceeding***"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in this Section 10.1, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board.

SECTION 10.2. Prepayment of Expenses. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article X or otherwise.

SECTION 10.3. Claims. If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Article X is not paid in full within thirty (30) days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

SECTION 10.4. Non-Exclusivity of Rights. The rights conferred on any Covered Person by this Article X shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Corporation's Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 10.5 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

SECTION 10.6 Amendment or Repeal. Any repeal or modification of the foregoing

provisions of this Article X shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

SECTION 10.7 Other Indemnification and Prepayment of Expenses. This Article X shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

SECTION 10.8. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

ARTICLE XI.

AMENDMENTS

The Board may from time to time make, amend, supplement or repeal these Bylaws by vote of a majority of the Board, and the stockholders may change or amend or repeal these Bylaws by the affirmative vote of the majority of holders of the Common Stock, voting as a single class. In addition to and not in limitation of the foregoing, these Bylaws or any of them may be amended or supplemented in any respect at any time, either: (i) at any meeting of stockholders, provided that any amendment or supplement proposed to be acted upon at any such meeting shall have been described or referred to in the notice of such meeting; or (ii) at any meeting of the Board, provided that any amendment or supplement proposed to be acted upon at any such meeting shall have been described or referred to in the notice of such meeting or an announcement with respect thereto shall have been made at the last previous Board meeting, and provided further that no amendment or supplement adopted by the Board shall vary or conflict with any amendment or supplement adopted by the stockholders.

Exhibit 10

Proposed Members of Initial Board

Pursuant to an agreement by and among the Debtors, the Official Committee of Unsecured Creditors, the Senior Noteholders Informal Group, and the *Ad Hoc* Committee of Convertible Noteholders, the Debtors will file, on or before January 22, 2010, an exhibit disclosing the identity of the Persons proposed to serve on the initial board of directors of Reorganized Spansion Inc.

Exhibit 11

Proposed Confirmation Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:		Chapter 11
SPANSION INC, et al.,[1]	)	Case No. 09-10690 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Hearing: February 11, 2010 at 10:00 a.m.
	)	
	)	Related to D.I. ___

FINDING OF FACTS, CONCLUSIONS OF LAW, AND ORDER CONFIRMING DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION DATED DECEMBER 16, 2009 UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Spansion Inc., Spansion Technology LLC, Spansion LLC, Cerium Laboratories LLC and Spansion International, Inc. (defined hereinafter, collectively, as the "Debtors," and each individually as a "Debtor") having:

- filed voluntary petitions for relief commencing cases of the Debtors (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code[2] on March 1, 2009 (the "Petition Date");
- continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, and no trustee or examiner having been appointed in the Chapter 11 Cases;
- filed on October 26, 2009, the *Debtors' Joint Plan of Reorganization Dated October 26, 2009* [D.I. 1477];
- filed on October 26, 2009, the *Disclosure Statement for Debtors' Joint Plan of Reorganization Dated October 26, 2009* [D.I. 1479];

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Spansion Inc., a Delaware corporation (8239); Spansion Technology LLC, a Delaware limited liability company (3982); Spansion LLC, a Delaware limited liability company (0482); Cerium Laboratories LLC, a Delaware limited liability company (0482), and Spansion International, Inc., a Delaware corporation (7542). The mailing address for each Debtor is 915 Beguine Dr., Sunnyvale, CA 94085.

[2] Capitalized terms used and not otherwise defined herein shall have those meanings ascribed to them in the Plan (as defined herein).

- filed on November 25, 2009, the *Debtors' First Amended Joint Plan of Reorganization Dated November 25, 2009* [D.I. 1816];

- filed on November 25, 2009, the *First Amended Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Dated November 25, 2009* [D.I. 1817];

- filed on December 9, 2009, the *Debtors' Second Amended Joint Plan of Reorganization Dated December 9, 2009* [D.I. 1919];

- filed on December 9, 2009, the *Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Dated December 9, 2009* [D.I. 1921];

- filed on December 17, 2009, the *Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009* (the "Plan") [D.I. 2032];

- filed on December 17, 2009, the *Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization dated December 16, 2009* (the "Disclosure Statement") [D.I. 2034];

- obtained approval of the Disclosure Statement by that certain *Order (I) Approving Disclosure Statement, (II) Scheduling Confirmation Hearing (III) Approving Solicitation and Other Procedures, Including Fixing the Voting Record Date and Establishing Deadlines for Voting on the Plan and Objecting to the Plan, and (IV) Approving the Solicitation Package and Forms of Notice* (the "Disclosure Statement Approval Order") [D.I. 2042], which Disclosure Statement Approval Order also approved, among other things, solicitation procedures with respect to the Plan (the "Solicitation Procedures") and related notices, forms, Ballots and Master Ballots (collectively, the "Solicitation Materials").

- completed distributing the Solicitation Materials on December 23, 2009, consistent with the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Approval Order and the Solicitation Procedures as evidenced by the *Affidavit of Solicitation Mailing* (the "Affidavit of Solicitation") [D.I. 2204];

- filed on January 19, 2010, the various documents comprising the *Plan Supplement in Support of Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009* (as amended and supplemented, the "Plan Supplement") [D.I. __];

- filed on February __, 2010, the Debtors' [*Memorandum of Law (A) in Support of Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009 and (B) in Response to Objections Thereto]* (the "Confirmation Brief") [D.I. __];

- filed on _____, 2010, the [*Declaration of _____ with respect to the Tabulation of Votes on the Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009]* (the "Voting Report") [D.I. __]; and

- filed on _____, 2010 the *Declaration[s] of _____ In Support of Confirmation of Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009* (collectively, the "Confirmation Declarations") [D.I. __]; and

This Court having:

- entered the Disclosure Statement Approval Order;

- set February 11, 2010 at 10:00 a.m. prevailing Eastern time, as the date and time of the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;

- reviewed the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Brief, the Confirmation Declarations, the Voting Report, and all other pleadings, exhibits, statements, documents, and filings regarding confirmation of the Plan (the "Confirmation");

- heard and considered the statements of counsel and all other testimony and evidence proffered and/ or adduced at the Confirmation Hearing and in respect of Confirmation of the Plan;

- overruled any and all objections to the Plan and all statements and reservations of rights not consensually resolved or withdrawn; and

- taken judicial notice of the papers and pleading filed in the Chapter 11 Cases.

NOW, THEREFORE, it appearing to this Court that notice of the Confirmation Hearing and the opportunity for any Entity to object to Confirmation have been adequate and appropriate as to all Entities, including, without limitation, all Entities affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, this Court hereby makes and issues the following findings of fact, conclusions of law, and orders:[3]

[3] This "Confirmation Order" constitutes this Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED, AND ORDERED THAT:

A. Jurisdiction and Venue

1. On the Petition Date, each Debtor commenced a Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors were and are qualified to be debtors under section 109 of the Bankruptcy Code. By Order of the Bankruptcy Court [D.I. 58], the Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015. Venue in the District of Delaware was proper as of the Petition Date and continues to be proper. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b). This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Judicial Notice

2. This Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the clerk of this Court and/ or its duly appointed agent, including, without limitation, all pleadings and other documents on file, all Orders entered, and the transcripts of, and all evidence and arguments made, proffered, or adduced at the hearings held before this Court during the pendency of the Chapter 11 Cases (the "Docket"). This Court also finds that the Plan is dated and identifies the Plan's proponents, thereby satisfying Bankruptcy Rule 3016(a).

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conclusions of law even if they are stated as findings of fact. Further, any findings of fact and conclusions of law announced on the record in open court are incorporated by reference herein.

C. Burden of Proof

3. The Debtors, as the Plan proponents, have met their burden of proving the elements of section 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard in this Court. This Court also finds that the Debtors have satisfied the elements of section 1129(a) and 1129(b) of the Bankruptcy Code by clear and convincing evidence.

D. Solicitation Procedures Authorization

4. On December 18, 2009, this Court entered the Disclosure Statement Approval Order, which, among other things: (a) approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017; (b) fixed the Voting Deadline for holders of Claims in the Voting Classes to vote to accept or reject the Plan; (c) fixed the date and time for the commencement of the Confirmation Hearing; (d) established the objection deadline and procedures for objecting to the Plan; (e) fixed certain dates for the Rights Offering; (f) approved the form and method of notice of the Confirmation Hearing; (f) established the Voting Record Date; and (g) approved and established the Solicitation Procedures and Solicitation Materials.

E. Service of Solicitation Materials

5. As evidenced in the Affidavit of Solicitation and the Voting Report, the Debtors complied with the service requirements and procedures approved in the Disclosure Statement Approval Order.

F. Voting Report and Solicitation

6. On [•], 2010, the Voting Report certifying the method and results of the ballot tabulation for each of the Classes to accept or reject the Plan was filed with this Court.

7. Based upon the Voting Report, all procedures used to provide notice and distribute Solicitation Materials to the applicable Holders of Claims and to tabulate the Ballots were fair and conducted in accordance with the Disclosure Statement Approval Order, the Bankruptcy Code, the Bankruptcy Rules, the local rules of this Court, and all other applicable Orders, and federal, state, and local laws, rules, and regulations (collectively, the "Applicable Laws").

8. As evidenced by the Voting Report, all Ballots and Master Ballots were properly tabulated, and votes for acceptance and rejection of the Plan were solicited in good faith and complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Disclosure Statement Approval Order, all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and all other Applicable Laws.

9. Each of the Debtors and, to the extent applicable, their respective Affiliates, agents, directors, members, partners, officers, employees, advisors, and attorneys have solicited votes on the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Approval Order, and all other Applicable Laws.

G. Plan Supplement

10. The documents identified in the Plan Supplement were filed as required and were modified and supplemented in accordance with the Plan and Applicable Laws. Notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order, and no other or further notice is or shall be required. The Debtors are authorized to modify the Plan Supplement in conformity with the Plan through and including the Confirmation Date.

H. Plan Modifications

[Reserved]

I. Compliance with the Requirements of Section 1129 of the Bankruptcy Code

11. The Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code as follows.

(1) Section 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code

12. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including, without limitation, sections 1122 and 1123 of the Bankruptcy Code.

(i) Sections 1122 and 1123(a)(1)—Proper Classification

13. Article II of the Plan designates Classes of Claims and Interests other than Administrative Expense Claims and Priority Claims. As required by section 1122(a) of the Bankruptcy Code, each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Valid reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan. The Plan, therefore, satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(ii) Sections 1123(a)(2) and 1123(a)(3)—Specified Unimpaired and Impaired Classes

14. Article II of the Plan specifies that Claims in Classes 2, 4, 4A, 6 and 10 are Unimpaired. Additionally, Administrative Expense Claims and Priority Claims are Unimpaired and are not classified under the Plan. Article III of the Plan also specifies the treatment of each Impaired Class under the Plan, which are Classes 1, 3, 5A, 5B, 5C, 7, 8, 9, 11, 12, and 13. The Plan, therefore, satisfies section 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code.

(iii) Section 1123(a)(4)—No Discrimination

15. Article III of the Plan provides the same treatment for each Claim or Interest within a particular Class unless the Holder of a particular Claim or Interest has agreed to a less favorable treatment with respect to such Claim or Interest. The Plan, therefore, satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(iv) Section 1123(a)(5)—Adequate Means for Implementation of the Plan

16. The Plan and the various documents and agreements set forth in the Plan Supplement provide adequate and proper means for the Plan's implementation, including, without limitation: (a) formation and corporate governance of the Reorganized Debtors; (b) entry into the [New Senior Notes Documents and the New Convertible Notes Documents **OR** the New Spansion Debt Documents and the Backstop Rights Purchase Agreement]; (c) entry into the documents governing the Exit Financing Facility; (d) [upon the funding of the Exit Financing Facility on the Effective Date and the release of the proceeds of the Rights Offering and the New Spansion Debt from the escrow or segregated accounts holding such proceeds,] sufficient Cash to make all payments required to be made on the Effective Date or otherwise prescribed pursuant to the terms of the Plan; (e) authorization of corporate and limited liability action; (f) authorization to effectuate documents and further transactions; (g) exemption from certain transfer taxes and recording fees; [(h) authorization to consummate the Rights Offering and the New Spansion Debt Documents; **OR** (h) authorization to issue the New Senior Notes and the New Convertible Notes;] and (i) cancellation of the FRNs, Senior Notes, the Exchangeable Debentures, the Non-Compensatory Damage Claims, the Old Spansion Interests, the Securities Claims and the Non-Debtor Intercompany Claims. The Plan, therefore, satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

(v) Section 1123(a)(6)—Non-Voting Equity Securities

17. Article VII of the Plan provides that the New Governing Documents of the Reorganized Debtors shall provide, among other things, (i) a provision prohibiting the issuance of nonvoting equity securities, and (ii) to the extent necessary, a provision setting forth an appropriate distribution of voting power among classes of equity securities possessing voting power, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends. The Plan, therefore, satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

(vi) Section 1123(a)(7)—Designation of Directors and Officers

18. Article VII of the Plan and the documents in the Plan Supplement describe the manner of selection of directors and officers of the Reorganized Debtors and the identities and affiliations of any Entity proposed to serve as a director of Reorganized Spansion Inc. have been disclosed in the Plan Supplement. In addition, the identities and affiliations of any Entity proposed to serve as a director of any of the other Reorganized Debtors or a manager or an officer of any of the Reorganized Debtors have been disclosed at or before the Confirmation Hearing and the selection of each such director, manager, or officer is consistent with the interests of creditors, equity security holders, and public policy. The Plan, therefore, satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

(vii) Section 1123(b)—Discretionary Contents of the Plan

19. The other provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1123(b) of the Bankruptcy Code.

(2) Section 1129(a)(2)—the Debtors' Compliance with Applicable Provisions of the Bankruptcy Code

20. The Debtors, as Plan proponents, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018, and 3019. In particular, the Debtors are eligible debtors under section 109 of the Bankruptcy Code and proper Plan proponents under section 1121(a) of the Bankruptcy Code. Furthermore, the solicitation of acceptances or rejections of the Plan: (a) complied with the Disclosure Statement Approval Order; (b) complied with all Applicable Laws governing the adequacy of disclosure in connection with such solicitation; and (c) occurred only after disclosing "adequate information," as section 1125(a) of the Bankruptcy Code defines that term, to Holders of Claims and Interests. Accordingly, the Debtors, and their respective Affiliates, agents, directors, members, partners, officers, employees, advisors, and attorneys, have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

(3) Section 1129(a)(3)—Proposal of Plan in Good Faith

21. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, this Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, and the process leading to its formulation and Confirmation. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to reorganize and emerge from bankruptcy with a capital structure that will allow them to satisfy their obligations with sufficient liquidity and capital resources. The Plan, therefore, satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

(4) Section 1129(a)(4)—Bankruptcy Court Approval of Certain Payments as Reasonable

22. Payments made or to be made by the Debtors for services or for costs and expenses in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been approved by, or are subject to the approval of, this Court as reasonable. The Plan, therefore, satisfies the requirements of section 1129(a)(4) of the Bankruptcy Code.

(5) Section 1129(a)(5)—Disclosure of Identity of Proposed Management and Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy

23. The Debtors provided requisite disclosures regarding proposed directors and officers of the Reorganized Debtors following Confirmation, as required by section 1129(a)(5)(A) of the Bankruptcy Code, and have also disclosed the nature of compensation of insiders (as section 101 of the Bankruptcy Code defines that term) who will be employed or retained by the Reorganized Debtors, as required by section 1129(a)(5)(B) of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

(6) Section 1129(a)(6)—Approval of Rate Changes

24. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and will not require governmental regulatory approval. Therefore, section 1129(a)(6) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

(7) Section 1129(a)(7)—Best Interests of Creditors and Interest Holders

25. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis annexed to the Disclosure Statement and the other evidence related thereto, as supplemented by the evidence proffered or adduced at or prior to, or in the Confirmation

Declarations filed in connection with, the Confirmation Hearing, are persuasive and credible. The methodology used and assumptions made in the Liquidation Analysis, as supplemented by the evidence proffered or adduced at or prior to, or in the Confirmation Declarations filed in connection with, the Confirmation Hearing, are reasonable.

26. With respect to each Impaired Class, each Holder of an Allowed Claim or Interest in an Impaired Class has accepted the Plan or will receive under the Plan on account of its respective Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that each such Holder would have received if the Debtors were to have liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

(8) Section 1129(a)(8)—Acceptance of the Plan by Each Impaired Class

27. As indicated in Article II of the Plan, the following Classes are Unimpaired and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code:

Class Description	Class Designation
UBS Credit Facility Claims	2
Other Secured Claims	4
Travis County, Texas Tax Claims	4A
Convenience Class Claims	6
Other Old Equity	10

28. As indicated in the Voting Report, each of the following Impaired Classes voted to accept the Plan:

Class Description	Class Designation

29. As indicated in the Voting Report, each of the following Impaired Classes voted to reject the Plan (the "Impaired Rejecting Classes"):

Class Description	Class Designation

30. The Plan provides that Holders of Claims and Interests in the following Classes will not receive any distribution or retain any property and, therefore, Holders of Claims and Interests in such Classes are deemed to have rejected the Plan (the "Deemed to Reject Classes") pursuant to section 1126(g) of the Bankruptcy Code:

Claims Description	Class Designation
Non-Compensatory Damages Claim	7
Interdebtor Claims	8
Old Spansion Interests	9
Other Old Equity Rights	11
Securities Claims	12
Non-Debtor Intercompany Claims	13

31. The Plan, therefore, fails to satisfy the requirement of section 1129(a)(8) of the Bankruptcy Code; however, the Plan does satisfy section 1129(b) of the Bankruptcy Code as set forth in paragraphs 38 through 41 of this Confirmation Order.

(9) Section 1129(a)(9)—Treatment of Claims Entitled To Priority Pursuant To Section 507(a) of the Bankruptcy Code

32. The treatment of Administrative Claims, and Priority Claims as set forth in Article IV of the Plan is in accordance with the requirements of section 1129(a)(9) of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

(10) Section 1129(a)(10)—Acceptance By At Least One Impaired Class

33. As set forth in the Voting Report and herein, at least one Impaired Class has voted to accept the Plan. The Plan, therefore, satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

(11) Section 1129(a)(11)—Feasibility of the Plan

34. Based upon the evidence proffered or adduced at or prior to, or in the Confirmation Declarations filed in connection with, the Confirmation Hearing, the Plan is feasible and Confirmation of the Plan is not likely to be followed by the Reorganized Debtors liquidating or requiring further financial reorganization. The Plan, therefore, satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code.

(12) Section 1129(a)(12)—Payment of Bankruptcy Fees

35. Article IV of the Plan provides for the payment of all fees payable by the Reorganized Debtors under 28 U.S.C. § 1930(a). The Plan, therefore, satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

(13) Section 1129(a)(13)—Retiree Benefits

36. Prior to the Petition Date, none of the Debtors maintained or established any plan, fund or program (through the purchase of insurance or otherwise) under which it agreed, or is otherwise required, to pay to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependants, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death Therefore, section 1129(a)(13) of the Bankruptcy Code does not apply to the Chapter 11 Cases.

(14) Section 1129(a)(14), 1129(2)(15), and 1129(a)(16)

37. The Debtors do not owe any domestic support obligations, are not individuals, and are not nonprofit corporations. Therefore, sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to the Chapter 11 Cases.

(15) Section 1129(b)—Classification of Claims and Interests and Confirmation of Plan Over Nonacceptance of Impaired Classes

38. The classification and treatment of Claims and Interests in the Plan is (a) proper and in accordance with section 1122 of the Bankruptcy Code and (b) does not discriminate unfairly in accordance with section 1129(b)(1) of the Bankruptcy Code.

39. Notwithstanding the fact that not all Impaired Classes have voted to accept the Plan, the Plan may be confirmed pursuant to section 1129(b)(1) of the Bankruptcy Code if: (a) all of the requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8) have been met; (b) the Plan does not discriminate unfairly; and (c) the Plan is fair and equitable with respect to the Impaired Rejecting Classes and the Deemed to Reject Classes.

40. There is no Class of Claims or Interests junior to the Holders of Claims or Interests in the Impaired Rejecting Classes or Deemed to Reject Classes that will receive or retain any property under the Plan on account of their Claims or Interests. Accordingly the requirements of sections 1129(b)(2) of the Bankruptcy Code are satisfied with respect to the Impaired Rejecting Classes and the Deemed to Reject Classes, and the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to such Classes.

41. The Plan, therefore, satisfies the requirements of section 1129(b) of the Bankruptcy Code.

(16) Section 1129(c)—Only One Plan

42. Other than the Plan (including previous versions thereof), no other plan has been filed for the Debtors in the Chapter 11 Cases. The Plan, therefore, satisfies the requirements of section 1129(c) of the Bankruptcy Code.

(17) Section 1129(d)—Principal Purpose of the Plan Is Not Avoidance of Taxes

43. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act (15 U.S.C. § 77e). The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

J. Satisfaction of Confirmation Requirements

44. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

K. Good Faith

45. Based on the record before this Court in the Chapter 11 Cases, the Debtors, the Ad Hoc Consortium of Floating Rate Noteholders (the "Ad Hoc Consortium"), Silver Lake Sumeru, L.P. ("Silver Lake"), Barclays Capital ("Barclays"), the investment banking division of Barclays PLC, Morgan Stanley Senior Funding, Inc. ("Morgan Stanley," and together with Barclays, the "Arrangers"), Barclays Bank PLC as administrative agent and collateral agent, and Bank of America, N.A., and their respective Affiliates, agents, directors, members, partners, officers, employees, advisors, and attorneys, have acted in good faith and will continue to act in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby; and (b) take the actions authorized and directed by this Confirmation Order.

L. New Spansion Debt

46. Without limiting, impairing or modifying any previous Order of this Court approving or governing the New Spansion Debt (which Orders are hereby reaffirmed and ratified in their entirety), the proposed terms and conditions of the New Spansion Debt, as set forth in the credit agreement for the New Spansion Debt included in the Plan Supplement (together with all documents, agreements and instruments that have been or might be entered into in connection therewith, the "New Spansion Debt Documents"), are fair and reasonable and are approved. The New Spansion Debt is an essential element of the Plan and entry into and consummation of the transactions contemplated by the New Spansion Debt is in the best interests of the Debtors, the Estates, and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in connection with the New Spansion Debt and the proposed terms thereunder have been negotiated in good faith and at arm's-length and are fair and reasonable. The New Spansion Debt is valid, binding, and enforceable and shall not be in conflict with any Applicable Laws. The Reorganized Debtors are authorized, without further notice to or action, Order, or approval of this Court or any other Entity, to enter into and perform under the New Spansion Debt consistent with the New Spansion Debt Documents, and execute and deliver all agreements, documents, instruments, and certificates relating to the New Spansion Debt, and take such actions necessary to obtain the release of liens or claims against property pursuant to section 11.1 of the Plan.

M. Rights Offering

47. Without limiting, impairing or modifying any previous Order of this Court approving or governing the Rights Offering, the Backstop Commitment or the Backstop Party (which Orders are hereby reaffirmed and ratified in their entirety), the proposed terms and conditions of the Rights Offering and Backstop Commitment, as set forth in the Plan and the

Backstop Rights Purchase Agreement included in the Plan Supplement, are fair and reasonable and are approved. The Rights Offering, including the Backstop Commitment, is an essential element of the Plan and entry into and consummation of the transactions contemplated by the Rights Offering and the Backstop Rights Purchase Agreement is in the best interests of the Debtors, the Estates, and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in connection with the Rights Offering and the Backstop Rights Purchase Agreement and the proposed terms thereunder have been negotiated in good faith and at arm's-length and are fair and reasonable. The Backstop Rights Purchase Agreement is valid, binding, and enforceable and is not in conflict with any Applicable Laws. The Reorganized Debtors are authorized, without further notice to or action, Order, or approval of this Court or any other Entity, to consummate and perform under the Rights Offering and to enter into and perform the Backstop Rights Purchase Agreement, and execute and deliver all agreements, documents, instruments, and certificates relating to the Rights Offering and the Backstop Rights Purchase Agreement.

N. Exit Facility

48. The proposed terms and conditions of the Exit Facility, as set forth in the credit agreement for the Exit Facility attached as Exhibit A to [NAME OF PLEADING] (the "Exit Facility Documents"), are fair and reasonable and are approved. The Exit Facility is an essential element of the Plan and entry into and consummation of the transactions contemplated by the Exit Facility is in the best interests of the Debtors, the Estates, and Holders of Claims and is approved in all respects. The Debtors have exercised reasonable business judgment in connection with the Exit Facility and the proposed terms thereunder have been negotiated in good faith and at arm's-length and are fair and reasonable. The Exit Facility shall, upon execution, be valid, binding, and enforceable and shall not be in conflict with any Applicable

Laws. The Reorganized Debtors are authorized, without further notice to or action, Order, or approval of this Court or any other Entity, to enter into and perform under the Exit Facility consistent with the Exit Facility Documents, and execute and deliver all agreements, documents, instruments, and certificates relating to the Exit Facility provided such agreements, documents, instruments, and certificate are acceptable, in form and substance, to the Ad Hoc Consortium.]

O. Disclosure of Agreements and Other Documents

49. The Debtors have disclosed all material facts under the Plan regarding: (a) the adoption of the New Governing Documents, as set forth in the Plan Supplement; (b) the selection of directors and officers for the Reorganized Debtors; [(c) the issuance of the New Senior Notes and the New Convertible Notes; **OR** (c) the Rights Offering and the incurrence of the New Spansion Debt]; (d) the distribution of Cash in accordance with the Plan; (e) the issuance of New Spansion Common Stock; (f) the adoption, execution, and implementation of the other matters provided for under the Plan involving corporate action to be taken by or required of the Debtors, or the Reorganized Debtors; (g) securities registration exemptions; (h) the exemption under section 1146(a) of the Bankruptcy Code; (i) the equity incentive plan for employees, management and the directors of the Reorganized Debtors; and (j) the adoption, execution, and delivery of all other contracts, leases, instruments, releases, indentures, and other agreements related to any of the foregoing.

P. Implementation of Other Necessary Documents and Agreements

50. All documents and agreements necessary to implement the Plan, including, without limitation, those contained in the Plan Supplement, which are incorporated into and are a part of the Plan as set forth in Article XIII of the Plan, and all other relevant and necessary documents and agreements are in the best interests of the Debtors, the Reorganized Debtors, and Holders of Claims and Interests and have been negotiated in good faith and at arm's-length. The

Debtors have exercised reasonable business judgment in determining to enter into all such documents and agreements and have provided sufficient and adequate notice of such documents and agreements to parties in interest. The Debtors and the Reorganized Debtors, as applicable, are authorized, without further notice to, or action, Order, or approval of this Court or any other Entity, to execute and deliver all agreements, documents, instruments, and certificates relating to such documents and agreements and to perform their obligations thereunder, including, without limitation, to pay all fees, costs, and expenses thereunder. The terms and conditions of such documents and agreements are reaffirmed or approved, as applicable, in all respects, and shall, upon completion of documentation and execution, be valid, binding, and enforceable and shall not conflict with any Applicable Laws.

Q. Authorization and Issuance of New Equity; Securities Law

51. Distributions of securities, including, without limitation, New Spansion Common Stock, as contemplated by the Plan shall be issued without registration under the Securities Act or any similar Applicable Laws pursuant to section 1145 of the Bankruptcy Code as follows and are exempt from such laws to the maximum extent permitted by law:

a. in reliance on the exemptions set forth in section 1145 of the Bankruptcy Code, the New Spansion Common Stock to be issued to Holders of Allowed Claims in Classes 5A, 5B and 5C as well as the Rights Offering Purchasers; and

b. in reliance upon the exemption set forth in section 701 of the Securities Act or as a result of the issuance or grant of such equity award not constituting a "sale" under section 2(3) of the Securities Act, awards under the Reorganized Debtors' equity incentive plan for employees, management and the directors of Reorganized Debtors.

52. Except with respect to securities held by any entity that is an "underwriter" as that term is defined in section 1145(b) of the Bankruptcy Code, the issuance of securities pursuant to the Plan shall be (a) validity issued, fully paid and nonassessable, and (b) freely tradable.

Section 5 of the Securities Act and any state or local law requiring registration for the offer or sale of a security, or registration or licensing of an issuer or underwriter or broker or dealer in securities, do not apply to the offer or sale of any New Equity in accordance with the Plan.

R. Executory Contracts and Unexpired Leases

53. The Debtors have exercised reasonable business judgment in determining whether to assume or reject each of their executory contracts and unexpired leases as set forth in Article V of the Plan, the Contract/Lease Schedule, or otherwise and in this Confirmation Order. Each assumption or rejection of an executory contract or unexpired lease pursuant to this Confirmation Order and in accordance with Article V of the Plan or otherwise shall be legal, valid, and binding upon the applicable Debtor or Reorganized Debtor and all non-Debtor Entities party to such executory contract or unexpired lease, all to the same extent as if such assumption or rejection had been authorized and effectuated pursuant to a separate Order of this Court that was entered pursuant to section 365 of the Bankruptcy Code prior to Confirmation.

S. Adequate Assurance

54. The Debtors have provided adequate assurance of future performance for each of the assumed executory contracts and unexpired leases that are being assumed by the Reorganized Debtors, as applicable, pursuant to the Plan.

55. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each of the executory contracts and unexpired leases that are being assumed by the Reorganized Debtors, as applicable, pursuant to the Plan.

56. The Plan, therefore, satisfies the requirements of section 365 of the Bankruptcy Code.

T. Approval of Settlements and Compromises

57. Pursuant to section 363 of the Bankruptcy Code, Bankruptcy Rule 9019, and any Applicable Laws, and as consideration for the distributions and other benefits provided under the Plan, all settlements and compromises of Claims and Interests embodied in the Plan constitute good faith compromises and settlements of Claims and Interests, and such compromises and settlements are fair, equitable, reasonable, appropriate in light of the relevant facts and circumstances underlying such compromise and settlement, and are in the best interests of the Debtors and Holders of Claims and Interests.

U. Transfers by Debtors; Vesting of Assets

58. All transfers of property of the Debtors' Estates shall be free and clear of all Liens, charges, Claims, encumbrances and other interests, except as expressly provided in the Plan. On the Effective Date, all Assets of the Estates, including, without limitation, all claims, rights and Causes of Action and any assets acquired by any Debtor or Reorganized Debtor under or in connection with the Plan (including Retained Actions, but excluding Assets that have been abandoned pursuant to an Order of this Court), shall vest in the Reorganized Debtors or their successors or assigns free and clear of all Claims, Liens, charges, other encumbrances and interests, except as specifically set forth in the Plan. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or Applicable Laws.

59. On and after the Effective Date, each Reorganized Debtor may operate its business, may use, acquire and dispose of property, may retain, compensate and pay any professionals or advisors, and compromise or settle any Claims or Interests without supervision of or approval by this Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan.

60. The continued existence, operation and ownership of the Non-Debtor Affiliates are a material component of the Debtors' businesses. All of the Interests and other property interests in such Non-Debtor Affiliates held by any Debtor on the Petition Date (other than Non-Debtor Affiliates owned by other Non-Debtor Affiliates) shall vest in the applicable Reorganized Debtor or its successor on the Effective Date free and clear of all Claims, Liens, charges, other encumbrances, and interests, except as specifically set forth in the Plan. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or Applicable Laws.

V. No Successor Liability

61. The transfer of assets as set forth above shall not result in any of the Reorganized Debtors (a) having any liability or responsibility for any Claim against the Debtors, the Debtors' Estates or against any Affiliate or Insider of the Debtors, or (b) having any liability or responsibility to the Debtors, each except as expressly set forth in the Plan. Without limiting the effect or scope of the foregoing, and to the fullest extent permitted by Applicable Laws, the transfer of assets contemplated above does not and will not subject the Reorganized Debtors, their respective properties or assets or their respective Affiliates, successors, or assigns to any liability for Claims against the Debtors' interests in such assets by reason of such transfer under any Applicable Laws, including, without limitation, any successor liability.

W. Releases, Exculpation, and Injunction

62. The release, exculpation, and injunction provisions set forth in the Plan, including, without limitation, the releases, exculpations, and injunctions contained in Sections 4.2(2), 11.1, 11.3, 11.4 and 11.8 of the Plan, constitute good faith compromises and settlements of the matters covered thereby. Such compromises and settlements are: (i) made in exchange for good, valuable and adequate consideration provided by the Entities being released or exculpated and represent good faith settlement and compromises of the claims being released; (ii) in the best

interests of the Debtors, the Estates and Holders of Claims and Interests; (iii) fair, necessary, equitable, and reasonable; and (iv) integral elements of the resolution of the Chapter 11 Cases in accordance with the Plan. Proper, timely, adequate and sufficient notice of the release, exculpation, and injunction provisions set forth in the Plan, including, without limitation, the releases, exculpations, and injunctions contained in Sections 4.2(2), 11.1, 11.3, 11.4 and 11.8 of the Plan, has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Order of this Court and due process, interested parties have had a sufficient and adequate opportunity to object to such provisions and be heard as to their objections, and no other of further notice of such provisions is required for entry of this Confirmation Order. Upon entry of this Confirmation Order, such provisions will be a bar to the Debtors, the Reorganized Debtors, or any other Entity asserting any claim released pursuant to such provisions. Each of the release, exculpation, and injunction provisions set forth in the Plan and this Confirmation Order is: (a) within the jurisdiction of this Court under 28 U.S.C. § 1334(a), 1334(b), and 1334(d); (b) an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) an integral element of the transactions incorporated into the Plan; (d) conferring material benefit on, and is in the best interests of, the Debtors, the Estates, and Holders of Claims or Interests; (e) important to the overall objectives of the Plan to finally resolve all Claims among or against the Entities in the Chapter 11 Cases with respect to the Debtors, their organization, capitalization, operation, and reorganization in accordance with the Plan; and (f) consistent with sections 105, 1123, and 1129 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code.

X. Conditions to Confirmation

63. The condition to Confirmation set forth in Section 10.1(1) of the Plan has been satisfied. Entry of this Confirmation Order shall satisfy the conditions to Confirmation set forth

in Sections 10.1(2) and (3) of the Plan, provided that the requirements of Sections 10.1(4) and (5) shall be satisfied or waived in accordance with the Plan prior to Confirmation.

Y. Likelihood of Satisfaction of Conditions Precedent To Effective Date

64. Based on the statements of the parties in open court, and all other related pleadings, exhibits, and other relevant documents, each of the conditions precedent to the Effective Date, as set forth in Section 10.2 of the Plan, is reasonably likely to be satisfied or waived in accordance with the Plan.

Z. Retention of Jurisdiction

65. This Court may properly retain jurisdiction over all matters arising out of or related to the Chapter 11 Cases, the Debtors, and the Plan after the Effective Date, to the fullest extent permitted by law, in accordance with Article XII of the Plan.

* * * *

B.

ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, DECREED, AND DETERMINED THAT:

A. Confirmation of the Plan

66. The Plan (including each of its provisions), all documents and agreements necessary to implement the Plan, including, without limitation, those contained in the Plan Supplement, which are incorporated into and are a part of the Plan as set forth in Section 13.4 of the Plan, and all other relevant and necessary documents and agreements are approved and confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code. The terms of the Plan, the Plan Supplement, all exhibits and addenda thereto, and the Docket are

incorporated by reference into, and are an integral part of, this Confirmation Order (subject to any provision incorporated by such reference being governed by an express and contradictory provision herein). Subject to the conditions precedent set forth in Section 10.2 of the Plan, the terms of the Plan, the Plan Supplement, and all agreements, documents, instruments, and certificates relating thereto, shall be effective and binding as of the Effective Date of the Plan.

67. Notwithstanding the foregoing or any other provision herein, if there is any direct conflict between the Plan, the Plan Supplement, all exhibits and addenda thereto, and the Docket (including the terms of the Plan, the Plan Supplement, all exhibits and addenda thereto, and the Docket incorporated by reference herein), and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

B. Objections to Plan Overruled

68. All objections and responses to the Plan, and all statements and reservation of rights to Confirmation, to the extent not already withdrawn, waived, or settled, shall be, and hereby are, overruled on the merits.

C. Provisions of Plan and Confirmation Order Nonseverable and Mutually Dependent

69. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are each nonseverable and mutually dependent.

D. Preparation, Delivery, and Execution of Additional Documents By Third Parties

70. All Holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

E. Record Closed

71. The record of the Confirmation Hearing is closed.

F. Notice

72. Good and sufficient notice has been provided with respect to: (a) the Confirmation Hearing; (b) the deadline for filing and serving objections to the Plan; (c) the proposed Cure Amounts and the deadline for filing objections to Cure Amounts; (d) settlements, releases, exculpations, injunctions, and related provisions in the Plan; (e) the Administrative Expense Claim Bar Date; and (f) other hearings described in the Disclosure Statement Approval Order and the Plan. Such notice has been and is hereby approved.

G. Plan Classification Controlling

73. The terms of the Plan alone shall govern the classification of Claims and Interests for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the Creditors in connection with voting to accept or reject the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification or amounts of such Claims under the Plan for distribution purposes; (c) may not be relied upon by any Creditor as representing the actual classification or amounts of such Claims under the Plan for distribution purposes; and (d) do not bind the Debtors or the Reorganized Debtors.

H. Treatment Is Full Satisfaction

74. The treatment of Claims and Interests set forth in the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights that each Entity holding a Claim or an Interest may have against or in the Debtors, the Estates, or their respective property. This treatment supersedes and replaces any agreements or rights those Entities may have in or against the Debtors, the Estates, or their respective property.

I. Matters Relating to Implementation of the Plan

(1) Substantive Consolidation

75. The Plan is predicated on the substantive consolidation of the Estates for all purposes associated with Confirmation and consummation of the Plan and transactions described therein or contemplated thereby ("Consummation"), as set forth more fully in Article II of the Plan.

76. Substantive consolidation of the Debtors is in the best interests of all Holders of Claims and Interests, necessary for the implementation of the Plan, and is appropriate in the Debtors' Chapter 11 Cases. Substantive consolidation of the Estates is approved.

77. Substantive consolidation shall not affect any Debtor's or Reorganized Debtor's status as a separate legal entity, change the organizational or legal structure of the Debtors' or Reorganized Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities or cause the transfer of any Assets of any of the Debtors or their Estates. Substantive consolidation as contemplated by the Plan serves only as a mechanism to effect a fair distribution of value to the Debtors' constituencies. Any alleged defaults under any applicable agreement with the Debtors or the Reorganized Debtors arising from substantive consolidation under the Plan shall be deemed cured as of the Effective Date.

(2) Implementation of the Plan; Effectuating Documents and Further Transactions

78. In accordance with section 1142 of the Bankruptcy Code, the implementation and consummation of the Plan in accordance with its terms shall be, and hereby is, authorized and approved, and the Debtors and the Reorganized Debtors, or any other Entity designated pursuant to the Plan shall be, and hereby are, authorized, empowered, and directed to issue, execute,

deliver, file, and record any document whether or not such document is specifically referred to in the Plan, the Plan Supplement, the Disclosure Statement, or any exhibit thereto, and to take any action necessary or appropriate to consummate the Plan and all transactions and agreements therein in accordance with its terms, without further notice to or action, Order, or approval of this Court or any other Entity.

79. Each of the Debtors and Reorganized Debtors, as applicable, and any of their respective officers and designees, is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents (including, without limitation, any documents relating to the Exit Financing Facility[, the Rights Offering or the New Spansion Debt **OR**, the New Senior Notes and the New Convertible Notes]), provided that such documents are in form and substance satisfactory to the Ad Hoc Consortium, and take such actions or seek such Orders, judgments, injunctions and rulings as the Debtors or Reorganized Debtors deem necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, or any notes or securities issued pursuant to the Plan, or to otherwise comply with applicable law.

(3) Operation of the Debtors Between the Confirmation Date and the Effective Date

80. The Debtors shall continue to operate as debtors in possession pursuant to the Bankruptcy Code and the Bankruptcy Rules during the period from the Confirmation Date through and until the Effective Date.

(4) Transfer of Assets; No Successor Liability

81. To the fullest extent permitted by Applicable Laws, neither Reorganized Debtor, nor their respective successors or assigns, nor their respective properties shall, as a result of Confirmation of the Plan (a) be or be deemed to be a successor to the Debtors or the Estates; (b)

have or be deemed to have, *de facto* or otherwise, merged or consolidated with or into the Debtors or the Estates; or (c) be or be deemed to be a continuation or substantial continuation of the Debtors, Estates, or any enterprise of the Debtors.

82. To the fullest extent permitted by Applicable Laws, without limiting the effect or scope of the foregoing, except as is expressly set forth in the Plan, as a result of Confirmation of the Plan neither Reorganized Debtor, nor their respective successors or assigns, nor their respective properties shall have any successor or vicarious liabilities of any kind or character, including, without limitation, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown, now existing or hereafter arising, asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to the Debtors, Estates, any enterprise of the Debtors, or any obligations of the Debtors or Estates arising prior to the Effective Date.

(5) Corporate Existence; Vesting of Assets in the Reorganized Debtors

83. Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, or other form, as the case may be, with all the powers of a corporation, limited liability company, or other form, as the case may be, pursuant to the Applicable Laws in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended by or in accordance with the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval.

84. Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated therein, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. Except as otherwise provided in the Plan on and after the Effective Date, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims or Causes of Action without further notice to or action, Order, or approval of this Court or any other Entity, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

(6) Intercompany Interests; Cancellation of Notes and Interests

85. The Debtors shall compromise a single Estate for the purpose of voting on the Plan, Confirmation of the Plan and making Distributions in respect of Claims and Interests under the Plan.

86. Except as otherwise provided in the Plan, such treatment shall not affect any Debtor's status as a separate legal entity and all Debtors shall continue to exist as separate legal entities.

87. The obligations of the Debtors under the indentures governing the FRNs, the Senior Notes, and the Exchangeable Debentures shall be fully released and discharged.

(7) Post-Confirmation Property Sales; Transfers of Property

88. To the extent the Debtors or the Reorganized Debtors, as applicable, sell any of their property prior to or including the date that is one year after Confirmation, the Debtors or the Reorganized Debtors, as applicable, may elect to sell such property pursuant to sections 363, 1123, and 1146(a) of the Bankruptcy Code.

89. Any transfers from a Debtor to a Reorganized Debtor or to any other Entity pursuant to the Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtors' Assets will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, pursuant to section 1146(a) of the Bankruptcy Code. All appropriate state or local governmental officials or agents are directed to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any instrument or other documents necessary or desirable for Consummation without the payment of any such tax or governmental assessment.

(8) Corporate Action

90. Each of the matters provided for by the Plan involving the corporate or limited liability company structure of the Debtors, or corporate, limited liability company, or related actions to be taken by or required of the Reorganized Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan, and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by Holders of Claims or Interests, directors or managers of the Debtors, or any other Entity.

(9) Binding Effect; Effectiveness; Successors and Assigns

91. Notwithstanding Bankruptcy Rules 3020(e), 6004(g), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests (irrespective of whether any such Holders of Claims or Interests failed to vote to accept or reject the Plan, voted to accept or reject

the Plan, or are deemed to accept or reject the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors.

92. The Plan shall be binding upon and inure to the benefit of the Debtors, the Holders of Claims or Interests affected by the Plan, and any other Entity named or referred to in the Plan or Plan Supplement, and their respective successors and assigns, including, without limitation, any trustee subsequently appointed in any of the Cases or in any superseding chapter 7 case.

(10) Issuance of Reorganized Securities

93. Reorganized Spansion Inc. is authorized to issue or reserve for issuance the New Spansion Common Stock pursuant to the terms and conditions of the Plan. Reorganized Spansion Inc. shall use good faith efforts to list the New Spansion Common Stock on a national securities exchange or over-the-counter trading market within 90 days of the Effective Date. [Except as set forth in the New Senior Notes Documents and the New Convertible Notes Documents, Reorganized Spansion Inc. shall have no liability if it is unable to list the New Spansion Common Stock as described above.]

(11) [New Spansion Debt

94. Without limiting, impairing or modifying any previous Order of this Court approving or governing the New Spansion Debt (which Orders are hereby reaffirmed and ratified in their entirety), subject to Sections 10.1 and 10.2 of the Plan, the New Spansion Debt, the New Spansion Debt Documents, and the transactions contemplated thereby pursuant to the New Spansion Debt Documents, are approved in their entirety, and the New Spansion Debt is in full force and effect and is valid, binding, and enforceable in accordance with its terms without

further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity or other act or action under Applicable Laws. Subject to Sections 10.1 and 10.2 of the Plan, the Debtors are authorized, without further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity, to: (a) perform under the New Spansion Debt consistent with the New Spansion Debt Documents; (b) execute and deliver all agreements, documents, instruments, and certificates relating to the New Spansion Debt; (c) pay all fees, costs, and expenses in connection with the New Spansion Debt; and (d) take any actions and execute any necessary agreements, documents, instruments, or certificates in order to have proceeds from the New Spansion Debt released from the escrow account into which they were deposited to make the payments to Class 3 contemplated by Section 3.3(2)(b) of the Plan. Subject to Sections 10.1 and 10.2 of the Plan, the loans and other extensions of credit made pursuant to the New Spansion Debt and the granting of Liens, including, without limitation, any Liens that are to be granted on the Effective Date pursuant to the New Spansion Debt Documents, to secure such loans and other extensions of credit are approved and authorized in all respects. Such Liens shall be valid, binding, perfected and enforceable liens and security interests in the real property and personal property described in the New Spansion Debt Documents, and the granting of such Liens, the making of such loans and other extensions of credit, and the execution and consummation of the New Spansion Debt shall not be subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as such term is defined in the Bankruptcy Code) of any kind under any Applicable Laws as of the Effective Date.

(12) Rights Offering

95. Without limiting, impairing or modifying any previous Order of this Court approving or governing the Rights Offering, the Backstop Commitment or the Backstop Party (which Orders are hereby reaffirmed and ratified in their entirety), subject to Sections 10.1 and

10.2 of the Plan, the Rights Offering, the Backstop Purchase Agreement and any other agreements relating to the Rights Offering or the Backstop Commitment, and the transactions contemplated thereby pursuant to the Plan and the Backstop Purchase Agreement, are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Rights Offering and the Backstop Purchase Agreement shall be in full force and effect and valid, binding, and enforceable in accordance with its terms without further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity or other act or action under Applicable Laws. Subject to Sections 10.1 and 10.2 of the Plan, the Debtors are authorized, without further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity, to: (a) enter into and perform under the Backstop Purchase Agreement; (b) execute and deliver all agreements, documents, instruments, and certificates relating to the Rights Offering; (c) pay all fees, costs, and expenses in connection with the Rights Offering and the Backstop Purchase Agreement; (d) issue shares of New Spansion Common Stock to the Backstop Party and the Rights Offering Purchasers in accordance with the terms of the Plan and the Backstop Purchase Agreement; and (e) take any actions and execute any necessary agreements, documents, instruments, or certificates in order to have proceeds from the Rights Offering released from the escrow or segregated account into which they were deposited to make the payments to Class 3 contemplated by Section 3.3(2)(b) of the Plan.

(13) Exit Facility

96. Subject to Sections 10.1 and 10.2 of the Plan, the Exit Facility, the Exit Facility Documents, and the transactions contemplated thereby pursuant to the Exit Facility Documents, are approved in their entirety and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, the Exit Facility shall be in full force and effect and

valid, binding, and enforceable in accordance with its terms without further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity or other act or action under Applicable Laws. Subject to Sections 10.1 and 10.2 of the Plan, the Debtors are authorized, without further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity, to: (a) enter into and perform under the Exit Facility consistent with the Exit Facility Documents; (b) execute and deliver all agreements, documents, instruments, and certificates relating to the Exit Facility provided such agreements, documents, instruments, and certificate are acceptable, in form and substance, to the Ad Hoc Consortium; and (c) pay all fees, costs, and expenses in connection with the Exit Facility. Subject to Sections 10.1 and 10.2 of the Plan, the loans and other extensions of credit contemplated by the proposed terms of the Exit Facility and the granting of Liens to secure such loans and other extensions of credit are approved and authorized in all respects. Such Liens shall be valid, binding, perfected and enforceable liens and security interests in the personal property described in the Exit Facility Documents, and the granting of such Liens, the making of such loans and other extensions of credit, and the execution and consummation of the Exit Facility shall not be subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as such term is defined in the Bankruptcy Code) of any kind under any Applicable Laws as of the Effective Date.]

J. Boards of Directors

97. The initial board of directors of Reorganized Spansion Inc. (the "Initial Board") shall consist of the seven (7) Persons set forth in the Plan Supplement. On the Effective Date and effective as of the Effective Date, the new members of the Initial Board shall be deemed appointed, without the need for any further notice to or action, Order or approval of this Court, or other act or action under Applicable Laws. The Initial Board shall choose the members of the

boards of directors or managers of each of the other Reorganized Debtors on the Effective Date or as soon as practicable thereafter. Each of the Persons on the Initial Board, the post-Effective Date board of directors or managers of each of the Reorganized Debtors (other than Reorganized Spansion Inc.), and each of the initial officers of the respective Reorganized Debtors shall serve in accordance with the governing documents of each of the respective Reorganized Debtors, as the same may be amended from time to time.

98. Unless otherwise provided in the Debtors' disclosure pursuant to section 1129(a)(5) of the Bankruptcy Code, on the Effective Date and effective as of the Effective Date, the officers of each of the Debtors shall continued to serve in their current capacities after the Effective Date, without the need for any further notice to or action, Order, or approval of this Court, or other act or action under Applicable Laws.

K. Executory Contracts and Unexpired Leases; Cure Costs

99. In addition to all executory contracts and unexpired leases that have been previously assumed by the Debtors by Order of this Court, each of the executory contracts and unexpired leases of the Debtors that are identified in the Contract/Lease Schedule, shall be deemed assumed in accordance with the provision and requirements of sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

100. The Cure Amounts owed under each executory contract and unexpired lease to be assumed pursuant to the Plan, as set forth in the Contract/Lease Schedule, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Amount in Cash on the later of (i) the Effective Date (or as soon as practicable thereafter), (ii) as due in the ordinary course of business or (iii) on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree.

101. Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases not assumed or rejected pursuant to a Final Order prior to the Effective Date, or listed on the Contract/Lease Schedule or the subject of a motion to assume Filed prior to the commencement of the Confirmation Hearing, shall be deemed to be rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

102. Executory contracts or unexpired leases subject to a motion to assume or reject pending on the Effective Date shall remain effective pursuant to the terms thereof and shall remain subject to an applicable Final Order. Any Proofs of Claim asserting Claims arising from the rejection of executory contracts and unexpired leases pursuant to the Plan or otherwise must be Filed within the earlier of (a) thirty (30) days following entry of an Order by the Bankruptcy Court authorizing rejection of the applicable contract or lease, and (b) thirty (30) days after the Confirmation Date. Any Proofs of Claim arising from the rejection of the Debtors' executory contracts or unexpired leases that are not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, Order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.

103. Entry of this Confirmation Order shall constitute an order approving the assumption or rejection of such executory contracts or unexpired leases as set forth in the Plan, all pursuant to section 365(a) and 1123 of the Bankruptcy Code.

104. Unless otherwise indicated herein, all assumptions or rejections of executory contracts and unexpired leases pursuant to the Plan are effective as of the Effective Date.

Executory contracts and unexpired leases subject to a motion to assume or reject with a proposed effective date beyond the Effective Date shall be deemed assumed or rejected, as applicable, upon the proposed effective date or upon such other date as is determined by the Bankruptcy Court.

105. Each executory contract and unexpired lease assumed and/or assigned pursuant to the Plan and this Confirmation Order (or pursuant to a Bankruptcy Court Order) shall remain in full force and effect and be fully enforceable by the applicable Reorganized Debtor(s) in accordance with its terms, except as modified by the provisions of the Plan, or any Order of the Bankruptcy Court authorizing and providing for its assumption. To the extent applicable, all executory contracts or unexpired leases of the Reorganized Debtors assumed during the Chapter 11 Cases, including those assumed pursuant to this Confirmation Order and Section 5.1 of the Plan, shall be deemed modified such that the transactions contemplated by the Plan shall not be a "change of control," however such term may be defined in the relevant executory contract or unexpired lease, and any required consent under any such contract or lease shall be deemed satisfied by the confirmation of the Plan.

106. As of the Effective Date, the Reorganized Debtors shall continue to honor all of the obligations of the Debtors to insurers, including those incurred on or prior to the Effective Date, under: (i) all applicable workers' compensation laws; and (ii) the Debtors' written contracts, agreements, agreements of indemnity, self-insurer workers' compensation bonds, policies, programs, and plans for workers' compensation and workers' compensation insurance. Notwithstanding anything to the contrary in the Plan, nothing in the Plan or this Confirmation Order shall: (a) limit, diminish, or otherwise alter or impair the Debtors', Reorganized Debtors' and/or insurers' defenses, claims, Causes of Action, or other rights under applicable non-

bankruptcy law with respect to any such contracts, agreements, policies, programs and/or plans; or (b) preclude or limit, in any way, the rights of the Debtors, Reorganized Debtors and/or insurers to contest and/or litigate with any party the existence, primacy and/or scope of available coverage under any alleged applicable policy, provided further that nothing herein shall be deemed to impose any obligations on the Debtors, Reorganized Debtors or insurers beyond what is provided for in the applicable laws, policies and/or related insurance agreements.

107. Nothing in the Plan, including the injunction and release provisions of Sections 11.1, 11.3, 11.4 and 11.8 of the Plan, or in this Confirmation Order shall preclude the Debtors or any insurer from asserting in any proceeding any and all claims, defenses, rights or causes of action that it has or may have under or in connection with any insurance policy or any insurance settlement agreement, including the rights of the insurers to contest and/or litigate with any party, including the Debtors, the existence, primacy and/or scope of available coverage under any alleged applicable insurance policy.

L. Resolution of Disputed Claims and Interests

108. Except as expressly provided in this Confirmation Order, the Plan, or as ordered by this Court prior to the Effective Date, no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or this Court has entered a Final Order allowing such Claim. Any Claim that is not an Allowed Claim shall be determined, resolved, or adjudicated in accordance with the terms of Article IX of the Plan or other applicable provision of the Plan.

109. From and after the Effective Date, the Reorganized Debtors shall have the exclusive right to evaluate, make, File, prosecute, settle and abandon objections to any Disputed Claims, provided that the Reorganized Debtors shall not be entitled to object to any Claims

(A) that have been Allowed by a Final Order entered by this Court prior to the Effective Date, or (B) that are Allowed by the express terms of the Plan.

110. After the Effective Date, the Reorganized Debtors may settle or compromise any Disputed Claim without approval of this Court, provided that (a) the Reorganized Debtors shall promptly File with this Court and serve on the United States Trustee a written notice of any settlement or compromise of such Claim that results in an Allowed Claim in excess of $100,000 or a potential recovery in excess of $100,000, and (b) the United States Trustee shall be authorized to contest the proposed settlement or compromise by Filing a written objection with this Court and serving such objection on the Reorganized Debtors within 20 days of the service of the settlement notice. If no such objection is Filed, the applicable settlement or compromise shall be deemed final without further action of this Court.

111. Any claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the claims register, which the Claims and Voting Agent maintains in the Chapter 11 Cases (the "Claims Register"), by the Reorganized Debtors without a Claims objection having to be Filed and without any further notice to, or action, Order, or approval of this Court or any other Entity, except to the extent such notice, action, Order or approval is expressly required under the Plan. Additionally, any Claim that is duplicative or redundant with another Claim against the same Debtor or any Claim that is duplicative or redundant with another Claim after substantive consolidation of any of the Debtors may be adjusted or expunged on the Claims Register by the Reorganized Debtors without a Claims objection having to be Filed and without any further notice to, or action, Order, or approval of this Court or any other Entity.

112. Consistent with Bankruptcy Rule 3003(c), the Debtors and Reorganized Debtors shall recognize the Proofs of Claim Filed by the Indenture Trustees in respect of the Claims for the Holders each represents, in the amounts as Allowed in the Plan. Accordingly, any Claim Filed by the registered or beneficial holder of such Claims is hereby Disallowed as duplicative of the Claims of the Indenture Trustees without the need for any further action or Order.

113. All Claims Filed on account of an employee benefit referenced in Section 5.6 of the Plan shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent the Reorganized debtors elect to assume and honor such employee benefit, without any further notice to, or action, Order, or approval of this Court or any other Entity.

114. On or after the Effective Date, except as otherwise provided in the Plan, a Claim may not be Filed, asserted or amended without the prior authorization of this Court, or unless the Reorganized Debtors otherwise consent, and, absent such authorization or consent, any such new or amended Claim Filed or asserted shall be deemed disallowed in full and expunged without any further notice to, or action, Order, or approval of this Court or any other Entity.

M. Settlement, Release, Injunction, and Exculpation

(1) Compromise and Settlement

115. Any and all compromises or settlements of all Claims and Interests reflected in the Plan or this Confirmation Order are hereby approved.

(2) Discharge of Claims and Termination of Interests

116. Except as otherwise specifically provided in the Plan, the distributions, rights, and treatments that are provided in the Plan shall be in full and complete satisfaction, discharge, and release in accordance with Article XI of the Plan. Except as otherwise specifically provided in the Plan or this Confirmation Order, upon the occurrence of the Effective Date, this Confirmation Order shall act as a discharge of any and all Claims against and all debts and

liabilities of the Reorganized Debtors, as provided in sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment against each Reorganized Debtor at any time obtained to the extent that it relates to a discharged Claim or terminated Interest.

(3) Release and Exculpation Provisions in the Plan

The release and exculpation provisions set forth in Article XI of the Plan, which are set forth verbatim below, are essential provisions of the Plan and are hereby approved and authorized in their entirety

Release by Debtors of Certain Parties (Section 11.3 of the Plan). EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, ON THE EFFECTIVE DATE, THE DEBTORS AND REORGANIZED DEBTORS, IN THEIR INDIVIDUAL CAPACITIES AND AS DEBTORS-IN-POSSESSION, WILL BE DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES (OTHER THAN THE RIGHTS OF THE DEBTORS OR REORGANIZED DEBTORS TO ENFORCE THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, REORGANIZED DEBTORS, THE PARTIES RELEASED PURSUANT TO THIS SECTION, THE CHAPTER 11 CASES, THE PLAN OR THE DISCLOSURE STATEMENT, AND THAT COULD HAVE BEEN ASSERTED BY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES OR THE REORGANIZED DEBTORS, WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR IN ANY REPRESENTATIVE OR ANY OTHER CAPACITY, AGAINST: (I) THE CURRENT DIRECTORS, OFFICERS AND EMPLOYEES OF THE DEBTORS (OTHER THAN FOR MONEY BORROWED FROM OR OWED TO THE DEBTORS BY ANY SUCH DIRECTORS, OFFICERS OR EMPLOYEES AS SET FORTH IN THE DEBTORS' BOOKS AND RECORDS) AND THE DEBTORS' FORMER AND CURRENT ATTORNEYS, FINANCIAL ADVISORS, INVESTMENT BANKERS, ACCOUNTANTS AND OTHER PROFESSIONALS RETAINED BY SUCH ENTITY; (II) THE CREDITORS' COMMITTEE AND ITS CURRENT AND FORMER MEMBERS (SOLELY IN SUCH CAPACITY), THE INDENTURE TRUSTEES, THEIR RESPECTIVE ADVISORS (INCLUDING ANY FORMER OR CURRENT ATTORNEYS, FINANCIAL ADVISORS, INVESTMENT BANKERS, ACCOUNTANTS AND OTHER PROFESSIONALS RETAINED BY SUCH ENTITIES SOLELY IN THEIR CAPACITIES AS SUCH) AND THEIR PRESENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (SOLELY IN THEIR CAPACITIES AS SUCH); (III) ALL HOLDERS OF SECURED CREDIT FACILITY CLAIMS SOLELY WITH RESPECT TO CLAIMS RELATING TO OR ARISING

IN CONNECTION WITH SUCH CLAIMS AND ALL HOLDERS OF FRN CLAIMS, OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, MEMBERS, MANAGERS AND ADVISORS (INCLUDING ANY ATTORNEYS, FINANCIAL ADVISORS, INVESTMENT BANKERS, ACCOUNTANTS AND OTHER PROFESSIONALS RETAINED BY SUCH ENTITIES), AND THE FRN INDENTURE TRUSTEE OR ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, MEMBERS, MANAGERS AND ADVISORS (INCLUDING ANY ATTORNEYS, FINANCIAL ADVISORS, INVESTMENT BANKERS, ACCOUNTANTS AND OTHER PROFESSIONALS RETAINED BY SUCH ENTITIES) RELATING TO OR ARISING IN CONNECTION WITH THE FRN CLAIMS; (IV) THE BACKSTOP PARTY, IF ANY, AND ITS AFFILIATES AND THEIR RESPECTIVE ADVISORS (INCLUDING ANY FORMER OR CURRENT ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS AND OTHER PROFESSIONALS RETAINED BY SUCH ENTITY SOLELY IN THEIR CAPACITY AS SUCH) AND THEIR RESPECTIVE PRESENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (SOLELY IN THEIR CAPACITIES AS SUCH); AND (V) THE DEBTORS OR THEIR RESPECTIVE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, MEMBERS, MANAGERS AND ADVISORS (INCLUDING ANY ATTORNEYS, FINANCIAL ADVISORS, INVESTMENT BANKERS, ACCOUNTANTS AND OTHER PROFESSIONALS RETAINED BY SUCH ENTITIES), EXCEPT CLAIMS ARISING IN THE ORDINARY COURSE OF THE DEBTORS' BUSINESS WITH RESPECT TO EMPLOYEE MATTERS. THOSE ENTITIES DESCRIBED IN SUBSECTIONS (I) THROUGH (V) OF THE PRECEDING SENTENCE SHALL BE REFERRED TO AS THE "**DEBTOR RELEASEES**". NOTWITHSTANDING THE FOREGOING, NOTHING IN THE PLAN SHALL RELEASE ANY DEBTOR RELEASEE OTHER THAN THE DEBTORS FROM (A) ANY CLAIMS ASSERTED BY THE DEBTORS THAT ARE THE SUBJECT OF A PENDING LITIGATION, ADVERSARY PROCEEDING OR OTHER CONTESTED MATTER OR JUDGMENT AS OF THE EFFECTIVE DATE, (B) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER, (C) ANY OBJECTIONS BY THE DEBTORS OR THE REORGANIZED DEBTORS TO CLAIMS FILED BY SUCH ENTITY AGAINST THE DEBTORS AND/OR THE ESTATES OR (D) ANY OBLIGATIONS OF SUCH PERSON UNDER OR IN CONNECTION WITH THIS PLAN. THIS RELEASE, WAIVER AND DISCHARGE WILL BE IN ADDITION TO THE DISCHARGE OF CLAIMS AND TERMINATION OF INTERESTS PROVIDED HEREIN AND UNDER THE CONFIRMATION ORDER AND THE BANKRUPTCY CODE.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASES SET FORTH HEREIN, WHICH INCLUDE BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND FURTHER SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE DEBTOR RELEASES ARE: (A) IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE DEBTOR RELEASEES, REPRESENTING GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASES; (B) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS; (C) FAIR, EQUITABLE AND REASONABLE; (D) APPROVED

AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (E) A BAR TO THE DEBTORS, THE REORGANIZED DEBTORS, OR ANY OTHER ENTITY ACTING ON BEHALF OF THEM ASSERTING ANY CLAIM RELEASED BY THE DEBTOR AGAINST ANY OF THE DEBTOR RELEASEES OR THEIR RESPECTIVE ASSETS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, THE RELEASE OF THE DEBTORS' OFFICERS, DIRECTORS AND EMPLOYEES SET FORTH ABOVE SHALL BE OF NO FORCE AND EFFECT IN FAVOR OF ANY OFFICER, DIRECTOR OR EMPLOYEE WHO ASSERTS ANY PRE-EFFECTIVE DATE CLAIM AGAINST THE DEBTORS OR REORGANIZED DEBTORS FOR INDEMNIFICATION, DAMAGES OR ANY OTHER CAUSES OF ACTION OTHER THAN FOR UNPAID COMPENSATION, WAGES OR BENEFITS THAT AROSE IN THE ORDINARY COURSE OF BUSINESS OR PURSUANT TO THE PLANS AND PROGRAMS APPROVED BY THE BANKRUPTCY COURT PURSUANT TO ITS (A) ORDER (I) APPROVING CERTAIN INCENTIVE PLANS AND (II) AUTHORIZING PAYMENT THEREUNDER PURSUANT TO SECTIONS 105(E), 363(B) AND 503(C) OF THE BANKRUPTCY CODE, ENTERED ON JUNE 29, 2009 [D.I. 730], (B) ORDER (I) APPROVING CERTAIN INCENTIVE PLANS AND (II) AUTHORIZING PAYMENT THEREUNDER PURSUANT TO SECTIONS 105(E), 363(B) AND 503(C) OF THE BANKRUPTCY CODE, ENTERED ON JULY 22, 2009 [D.I. 849], AND (C) ORDER (I) APPROVING INCENTIVE PLANS AND (II) AUTHORIZING PAYMENT THEREUNDER PURSUANT TO SECTIONS 105(E), 363(B) AND 503(C) OF THE BANKRUPTCY CODE, ENTERED ON JULY 23, 2009 [D.I. 874].

Release by Holders of Claims and Interests (Section 11.4 of the Plan). EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN, ON THE EFFECTIVE DATE: (A) EACH ENTITY THAT VOTES TO ACCEPT THIS PLAN OR IS PRESUMED TO HAVE VOTED FOR THIS PLAN PURSUANT TO SECTION 1126(f) OF THE BANKRUPTCY CODE; (B) EACH ENTITY WHO OBTAINS A RELEASE UNDER THE PLAN; AND (C) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, EACH ENTITY (OTHER THAN A DEBTOR), THAT HAS HELD, HOLDS OR MAY HOLD A CLAIM OR INTEREST (EACH, A "RELEASE OBLIGOR"), IN CONSIDERATION FOR THE OBLIGATIONS OF THE DEBTORS, THE DEBTORS AND THE REORGANIZED DEBTORS UNDER THIS PLAN AND THE CASH, NEW SPANSION COMMON STOCK, AND OTHER CONTRACTS, INSTRUMENTS, RELEASES, AGREEMENTS OR DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THIS PLAN, SHALL HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER, RELEASED AND DISCHARGED EACH PARTY RELEASED IN SECTION 11.3 HEREOF FROM ANY CLAIM, RETAINED ACTION, OBLIGATION, SUIT, JUDGMENT, DAMAGE, DEMAND, DEBT, RIGHT, CAUSES OF ACTION, LIABILITY, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE ARISING FROM, BASED ON OR RELATING TO, IN WHOLE OR IN PART, THE SUBJECT MATTER OF, OR THE TRANSACTION OR EVENT GIVING RISE TO, THE CLAIM OF SUCH RELEASED OBLIGOR, AND ANY ACT, OMISSION, OCCURRENCE OR EVENT IN ANY MANNER RELATED TO SUCH SUBJECT MATTER, TRANSACTION OR OBLIGATION, PROVIDED THAT NOTHING IN THE PLAN WILL

RESTRICT ANY GOVERNMENTAL OR REGULATORY AGENCY FROM PURSUING ANY REGULATORY OR POLICE ENFORCEMENT ACTION AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THEIR CURRENT OR FORMER OFFICERS, DIRECTORS OR EMPLOYEES, AND THEIR RESPECTIVE AGENTS, ADVISORS, ATTORNEYS AND REPRESENTATIVES ACTING IN ANY CAPACITY, OTHER THAN ANY ACTION OR PROCEEDING OF ANY TYPE TO RECOVER MONETARY CLAIMS, DAMAGES, OR PENALTIES AGAINST THE DEBTORS FOR AN ACT OR OMISSION OCCURRING PRIOR TO CONFIRMATION. THIS RELEASE, WAIVER AND DISCHARGE WILL BE IN ADDITION TO THE DISCHARGE OF CLAIMS AND TERMINATION OF INTEREST PROVIDED HEREIN AND UNDER THE CONFIRMATION ORDER AND THE BANKRUPTCY CODE.

NOTWITHSTANDING THE FOREGOING AND ANYTHING CONTAINED IN THIS PLAN, THE SENIOR NOTES INDENTURE TRUSTEE DOES NOT RELEASE, AND THE DEBTORS AND EXCHANGEABLE DEBENTURES INDENTURE TRUSTEE ARE NOT RELEASED, FROM THE CLAIMS AND CAUSES OF ACTION SET FORTH IN ADV PRO. NO. 09-52274.

Exculpation and Limitation of Liability (Section 11.8 of the Plan). The Debtors, the present and former members of the Creditors' Committee and the Ad Hoc Consortium in their capacities as such, the Indenture Trustees in their capacities as such, the Backstop Party, if any, in its capacity as such, and any of such parties' respective current and/or post-Petition Date and pre-Effective Date Affiliates, members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, or agents and any of such parties' successors and assigns, shall not have or incur, and are hereby released from, any claim, obligation, cause of action, or liability to one another or to any Holder of any Claim or Interest, or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the negotiation and filing of this Plan, the filing of the Chapter 11 Cases, the settlement of Claims or renegotiation of executory contracts and leases, the pursuit of Confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan or the exercise of the powers and duties conferred on the Indenture Trustees by the indentures, this Plan or any order of the Bankruptcy Court, except for their willful misconduct or gross negligence or any obligations that they have under or in connection with this Plan or the transactions contemplated in this Plan, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan (collectively, the "Exculpated Claims"). No Holder of any Claim or Interest, or other party-in-interest, none of their respective agents, employees, representatives, financial advisors, attorneys, or Affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Debtors, the Creditors' Committee, the Ad Hoc Consortium, the present and former members of the Creditors' Committee and the Ad Hoc Consortium in their capacities as such, each of the Indenture Trustees in its capacity as such, and any of such parties' respective current and/or post-Petition Date and pre-Effective Date Affiliates, members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, or agents and any of such parties' successors and assigns with respect to the Exculpated Claims. No

Holder of any Claim or Interest, or other party-in-interest, none of their respective agents, employees, representatives, financial advisors, attorneys, or Affiliates, and no successors or assigns of the foregoing, shall have or pursue any claim or cause of action against the Indenture Trustees for making Distributions in accordance with this Plan or for implementing the provisions of this Plan.

Notwithstanding the foregoing and anything contained in this Plan, the Senior Notes Indenture Trustee does not release, and the Debtors and the Exchangeable Debentures Indenture Trustee are not released from, the claims and causes of action set forth in ADV Pro. No. 09-52274.

Release of Liens (Section 11.1 of the Plan). Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, on the Effective Date, all mortgages, deeds of trust, Liens or other security interests against the Assets of any Estate shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens or other security interests, including any rights to any collateral thereunder, will revert to the applicable Reorganized Debtor and its successors and assigns

(4) Injunction

117. The commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan are hereby enjoined, including, without limitation, the Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, Liens or liabilities released in Sections 11.1, 11.3, 11.4 and 11.8 of the Plan; provided, however, that nothing in this Confirmation Order will restrict any governmental or regulatory agency from pursuing any regulatory or police enforcement action against the Debtors, the Reorganized Debtors, their current or former officers, directors or employees, and their respective agents, advisors, attorneys and representatives acting in any capacity, other than any action or proceeding of any type to recover monetary claims, damages or penalties against the Debtors for an act or omission occurring prior to Confirmation. In addition, the injunction provisions of Section 4.2(2) are approved, and any Holder of an Allowed Priority Tax Claim is hereby enjoined from commencing or continuing any action or proceeding against any responsible person, officer or director of the Debtors or the Reorganized Debtors that might be

liable to such Holder for payment of a Priority Tax Claim so long as the Debtors or Reorganized Debtors, as the case may be, are in compliance with Section 4.2(2) of the Plan as to such Allowed Priority Tax Claim. So long as the Holder of an Allowed Priority Tax Claim is enjoined from commencing or continuing any action or proceeding against any responsible person, officer or director under Section 4.2(2) of the Plan or pursuant to this Confirmation Order, the statute of limitations for commencing or continuing any such action or proceeding shall be tolled.

(5) Existing Injunctions and Stays Remain in Effect Until Effective Date.

118. All injunctions or stays provided in, or in connection with, the Chapter 11 Cases, whether pursuant to sections 105 or 362 of the Bankruptcy Code, or any other Applicable Laws or Final Order, in effect immediately prior to the Confirmation of the Plan, shall remain in full force and effect thereafter if so provided by the Confirmation Order, the Plan or their own terms. Nothing herein shall bar the taking of such other actions as are necessary to effectuate the transactions specifically contemplated by the Plan or by the Confirmation Order.

N. Retained Actions

119. Except as set forth in Section 6.6 of the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may exclusively enforce any Retained Actions subject only to any express waiver or release thereof in the Plan or in any other contract, instrument, release, indenture or other agreement entered into, in connection with the Plan.

120. Approval of the Plan is a res judicata determination of such rights to retain and exclusively enforce such Causes of Action, and no such Retained Action is deemed waived, released or determined by virtue of the entry of this Confirmation Order or the occurrence of the Effective Date, notwithstanding that the specific Claims and Retained Actions are not identified

or described in more detail than as contained in the Plan or in the Disclosure Statement. All Retained Actions may be asserted or prosecuted before or after solicitation of votes on the Plan and before or after the Effective Date.

121. Absent an express waiver or release as referenced above, nothing in the this Confirmation Order shall (or is intended to) prevent, estop or be deemed to preclude the Reorganized Debtors from utilizing, pursuing, prosecuting or otherwise acting upon all or any of their Retained Actions and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or latches shall apply to such Retained Actions upon or after Confirmation, the Effective Date or the consummation of the Plan.

O. Waiver or Estoppel

122. Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including, without limitation, the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, as secured, or not subordinated by virtue of an agreement made with the Debtors or their counsel, the Creditors Committee or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with this Court prior to the Confirmation Date.

P. Failure to Consummate the Plan

123. In the event that all of the conditions to the Effective Date are not satisfied or waived by March 31, 2010 (or such longer period as is agreed to by the Debtors and the Backstop Party) or in any event, within three (3) months following entry of this Confirmation Order (or such longer period as is agreed to by the Debtors, the Backstop Party and the Ad Hoc Consortium: (a) any party-in-interest may request that the Bankruptcy Court vacate this Confirmation Order; (b) no Distributions shall be made; (c) the Debtors and all Holders of

Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; (d) all settlements included in the Plan or incorporated into the Plan, including settlements implicit in the terms of the Plan, shall be deemed revoked; (e) the Debtors shall immediately return to the Backstop Party all New Capital Proceeds received from such Entity pursuant to the Backstop Commitment; provided, that the Debtors may retain all other New Capital Proceeds until the expiration of three (3) months following entry of this Confirmation Order (or such longer period as is agreed to by the Debtors and the Ad Hoc Consortium), and, upon expiration of such period, as it may be extended, the Debtors shall immediately return all other New Capital Proceeds to those Entities that funded such New Capital Proceeds in accordance with any respective agreements governing the funding of such New Capital Proceeds; and (f) the Debtors' obligations with respect to the Claims and Interests shall remain unchanged (except to the extent of any payments made after entry of this Confirmation Order but prior to the Effective Date) and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Interests by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors.

Q. Dissolution of Creditors' Committee

124. On the Effective Date, unless an appeal is pending from this Confirmation Order, the Creditors' Committee shall dissolve automatically, whereupon its members, Professionals, and agents shall be released and discharged from any further duties and responsibilities in the Chapter 11 Cases and under the Bankruptcy Code. The Professionals retained by the Creditors' Committee and the members thereof shall be entitled to assert claims for reasonable fees for services rendered and expenses incurred in connection with the consummation of the Plan or File applications for allowance of compensation and reimbursement of expenses of the Creditors'

Committee's members or Professionals pending on the Effective Date or Filed and served after the Effective Date pursuant to Section 4.2 of the Plan.

125. In the event an appeal is pending from this Confirmation Order as of the Effective Date the Creditors' Committee shall remain in existence only for purposes related to the prosecution and defense of such appeal, and the Creditors' Committee Professionals shall be entitled to compensation and reimbursement of expenses in connection with such matters.

R. Payment of Statutory Fees

126. All fees payable after the Effective Date pursuant to section 1930 of title 28 of the United States Code shall be paid prior to the closing of the Chapter 11 Cases, either when due or as soon thereafter as practicable.

S. Treatment of Multiple Claims

127. A Creditor which holds multiple Claims against a single Debtor or multiple Claims against multiple Debtors, all of which Claims are based upon or relate to the same or similar indebtedness or obligations, whether by reason of guarantee, indemnity agreement, joint and several obligation or otherwise, shall be deemed to have only one Claim against the Estates in an amount equal to the largest of all such similar Allowed Claims for purposes of Distributions under the Plan.

T. Allowance and Payment of Certain Administrative Claims

(1) Professional Compensation

128. Entities requesting Professional Compensation pursuant to any of sections 327, 328, 330, 331, 363, 503(b) and 1103 of the Bankruptcy Code for services rendered on or before the Confirmation Date shall File and serve on the Debtors, or the Reorganized Debtors, as applicable, the Fee Auditor, the United States Trustee, and any other party entitled to receive a copy of such application pursuant to rule or Order of this Court, an application for final

allowance of compensation and reimbursement of expenses on or before sixty (60) days after the Effective Date.

(2) Other Administrative Claims

129. Except as otherwise provided in Article IV of the Plan, Administrative Expense Claims shall be Filed and served on counsel for the Reorganized Debtors no later than (x) the Administrative Expense Claim Bar Date, or (y) such later date, if any, as this Court shall order upon application made prior to the expiration of the Administrative Expense Claim Bar Date. Holders of Administrative Expense Claims (including, without limitation, the Holders of any Claims for federal, state or local taxes) that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date shall be forever barred from asserting such Claims against any of the Debtors or the Reorganized Debtors or any of their respective properties.

130. The Reorganized Debtors are authorized to settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, Order, or approval of this Court or any other Entity.

U. <u>Changes to the Plan</u>

131. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, each of the Debtors expressly reserves its respective rights to revoke or withdraw, or to alter, amend, or modify the Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in this Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or this Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement

shall be considered a modification of the Plan and shall be made in accordance with Article XIII of the Plan.

V. References to Plan Provisions

132. The Plan is confirmed in its entirety and hereby incorporated into this Confirmation Order by reference (subject to any provision incorporated by such reference being governed by an express and contradictory provision herein). The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of, or otherwise affect, the validity, binding effect, and enforceability of such provision, and each provision of the Plan shall have the same validity, binding effect, and enforceability as if fully set forth in this Confirmation Order.

W. Return of Deposits

133. All utilities (including, without limitation, gas, electric, telephone, trash, and sewer services), including, without limitation, any Entity that received a deposit or other form of adequate assurance of performance pursuant to section 366 of the Bankruptcy Code during the Chapter 11 Cases (collectively, the "Deposits"), shall return such Deposits to the Debtors and/or the Reorganized Debtors, as applicable, either by setoff against postpeitition indebtedness or by cash refund, within 45 days following the Effective Date, and as of the Effective Date such utilities are not entitled to make requests for or receive Deposits.

X. Headings

134. Headings utilized herein are for convenience and reference only, and shall not constitute a part of the Plan or this Confirmation Order for any other purpose.

Y. Notice of Entry of this Confirmation Order

135. In accordance with Bankruptcy Rules 2002 and 3020(c), no later than ten (10) Business Days after the date of entry of this Confirmation Order, the Debtors shall serve a notice

of Confirmation (the "Confirmation Notice") by hand, overnight courier service, or United States mail, first class postage prepaid, to all Entities having been served with the notice of the Confirmation Hearing; provided, however, that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed a notice of the Confirmation Hearing but received such notice returned marked "undeliverable as addressed," "moved, left no forwarding address," "forwarding order expired," or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity's new address.

136. Mailing of the Confirmation Notice in the time and manner set forth in the preceding paragraph shall constitute good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no other or further notice of Confirmation is necessary.

Z. Retention of Jurisdiction

137. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court shall retain jurisdiction as provided in the Plan over all matters arising out of, or related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by Applicable Laws, including, without limitation, jurisdiction over those matters set forth in Article XII of the Plan.

AA. Effectiveness of All Actions

138. Except as set forth in the Plan, all actions authorized to be taken under the Plan shall be authorized and effective on, prior to, or after the Effective Date (as applicable) pursuant to this Confirmation Order, without the need for any further notice to, or action, Order or approval of this Court, or other act or action under Applicable Laws, except those expressly required pursuant to the Plan.

139. The Debtors or the Reorganized Debtors, as applicable, are authorized and directed to take all actions necessary or appropriate to consummate the Plan, including, without limitation, entering into, implementing and consummating the contracts, instruments, releases, indentures, and other agreements or documents created in connection with or described in the Plan.

BB. Approval of Consents and Authorization To Take Acts Necessary To Implement Plan

140. Except as provided in the Plan, the Debtors or the Reorganized Debtors, as applicable, may take all actions to execute, deliver, File, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, including, without limitation, the distribution of the securities to be issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any further notice to, or action, Order or approval of this Court, or other act or action under Applicable Laws. The secretary and any assistant secretary of any Debtor are authorized to certify or attest to any of the foregoing actions.

141. Except as provided in the Plan, all matters provided for pursuant to the Plan that would otherwise require approval of the shareholders, directors, or members of the Debtors shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as applicable) pursuant to Applicable Laws and without any requirement of further action by the shareholders, directors, or managers of the Debtors, or the need for any approvals, authorizations, actions, or consents.

142. Except as provided in the Plan, this Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, and regulations of all states and any

other governmental authority with respect to the implementation of the Plan or Consummation and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement, and any documents, instruments, or agreements and any amendments or modifications thereto.

CC. Modifications To the Plan and Plan Supplement

143. The Debtors are authorized to modify the Plan Supplement after the date hereof to make: (a) non-material or non-adverse modifications; (b) material or adverse modifications that have been approved by all affected Entities; and (c) modifications for which this Court has granted approval.

DD. Record Date

144. The Record Date shall be [_____], 2010.

EE. Final Order

145. The period in which an appeal of this Confirmation Order must be filed shall commence upon the entry hereof.

146. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Confirmation Order shall be immediately effective and enforceable upon its entry.

147. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, or vacated by subsequent Order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken pursuant to, or in connection with the Plan prior to the Debtors' receipt of written notice of such Order. Notwithstanding any such reversal, modification, or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in

reliance on, this Confirmation Order prior to the effective date of such reversal, modification, or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all related documents or any amendments or modifications thereto.

FF. Authorization To Consummate

148. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order, subject to the satisfaction or waiver of the conditions precedent to Consummation set forth in the Plan. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

IT IS SO ORDERED.

Date: _____, 2010
Wilmington, Delaware

_____
Kevin J. Carey
Chief United States Bankruptcy Judge